CITY OF ALBION
ORDINANCE 2013-06

AN ORDINANCE TO AMEND CHAPTER 30, ARTICLE II, DIVISION 4 OF THE 1984 ZONING CODE OF CITY OF ALBION, BY AMENDING SECTIONS 30-78 AND 30-79 OF THE ZONING ORDINANCE TO INCLUDE THE DUTIES OF THE SIGN APPEALS BOARD.

Findings and Purpose

To amend Chapter 30, Article II, Division 4: Zoning Board of Appeals to include the duties of the Sign Appeals Board. The Zoning Board of Appeals shall hear also hear sign appeals, sign permit denials, and sign variances. It is the intention of the City Council that the provisions this Ordinance shall become and be made part of the Code of Ordinances, City of Albion, Michigan, and the Sections of this Ordinance may be renumbered to accomplish such intention.

THE CITY OF ABLION ORDIANS:

Section 30-76. Appointment and membership.

The zoning board of appeals, as constituted at the time of enactment of the ordinance from which this chapter is derived, shall continue in power. Effective on July 15, 1985, the board of appeals shall consist of seven (7) members. Future appointments to the seven-member board by the city council shall be for a term of three (3) years each; provided that two (2) of the members shall serve for a term of one year, two (2) for a term of two (2) years, thereafter each member to hold office for the full three-year term.

The mayor, with the consent of city council, shall also appoint two (2) alternate members with three-year terms. An alternate member may be called to sit as a regular member of the zoning board of appeals in the absence of a regular member if a regular member is absent from or unable to attend two (2) or more consecutive meetings of the board of appeals or for a period of more than thirty (30) consecutive days. An alternate member may also be called to serve in the place of a regular board member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member having been appointed shall serve in the case until a final decision has been made. The alternate board member shall have the same voting rights as a regular member of the board of appeals.

No elective official or employee of the City of Albion may be appointed to the board of appeals. Members of the board shall be removable for nonperformance of duty, misconduct in office, or other cause by the city council upon written charges having been filed with the council and after a public hearing has been held regarding such charges. The member shall be given an opportunity to be heard and answer such charges. Vacancies shall be filled by the city council and shall be for the unexpired term.

(Code 1980, § 20.20-1; Ord. No. 1985-3, § 2, 5-6-85; Ord. No. 1985-9, § 2, 6-3-85)

Section 30-77. Meetings.

The board of appeals shall adopt its own rules of procedure and meetings shall be held at the call of the chairman and at such other times as the board may determine. Such meetings shall be open to the public. A record of its proceedings, showing the action of the board and the vote of each of the members on every question considered, shall be kept. The presence of four (4) members shall be necessary to constitute a quorum.
(Code 1980, § 20.20-2)

Section 30-78. Application, appeals, hearings and stay of proceedings.

(a) Zoning

i. *Applications; when and by whom taken.* An application, in cases in which the board of appeals has original jurisdiction under the provisions of this chapter, may be taken by any property owner, including a tenant, or by any officer, department, board or bureau. Such application shall be filed with the zoning inspector who shall transmit same to the board.

ii. *Appeals; when and by whom taken*. An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the zoning inspector. Such appeal shall be taken within ten (10) days after the decision, by filing with the zoning inspector and the board of appeals a notice of appeal specifying the grounds thereof. The zoning inspector shall forthwith transmit to the board all the papers constituting the record upon which the action appealed was taken.

iii. *Hearings*. The board of appeals shall fix a reasonable time for the hearing of the application or appeal and give ten (10) days' notice thereof to the parties, including all owners of record of property within three hundred (300) feet of the premises in question, such notice to be delivered personally or by registered mail addressed to the respective owners at the address given in the last assessment roll. All occupants of property within three hundred (300) feet of such premises in question shall also be notified of the hearing in the same manner. At the hearing any party may appear in person or by agent or by attorney.

iv. *Adjournment of hearings.* Upon the day for hearing any application or appeal, the board may adjourn the hearing in order to permit the obtaining of additional information, or to cause such further notice as it deems proper to be served upon such other property owners or occupants as it decides may be substantially interested in said application or appeal. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of said hearing, unless the board so decides.

v. *Decisions of the board.* The board shall decide all application and appeals

within thirty (30) days after the final hearing thereon. A certified copy of the board's decision shall be transmitted to the applicant or appellant, and to the zoning inspector. Such decision shall be binding upon the zoning inspector and observed by him, and he shall incorporate the terms and conditions of the same in the permit to the applicant or appellant, whenever a permit is authorized by the board.
A decision of the board shall not become final until the expiration of five (5) days from the date such decision is made, unless the board shall find the immediate effect of such decision is necessary for the preservation of property or personal rights and shall so certify on the record.

vi. *Stay of proceedings.* An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certified to the board of appeals after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by an order which may, on due cause shown, be granted by the board of appeals on application after notice to the zoning inspector, or by judicial proceedings. When an appeal is filed, the zoning inspector shall immediately notify personally or by mail all parties concerned.

vii. *Review by circuit court.* Any party aggrieved by any order, determination or decision of any office, agency, board, commission, or board of appeals may obtain a review thereof both on the facts and law, in the circuit court for the county wherein the property involved or some part thereof is situated; provided, that application is made to the court within thirty (30) days after delivery of a copy of such order, determination or decision, by certiorari or by any other method permissible under the rules and practices of the circuit courts of this state. On such review the courts shall have jurisdiction to make such further orders in respect thereto as justice may require.

(b) Sign Permit Appeals

i. The zoning appeals board shall have the following powers in regard to sign appeals. The board shall have power to hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, interpretation or determination made by the zoning administrator, the planning commission, or any other administrative official, in connection with the enforcement of this chapter and Chapter 64 of the Albion Code of Ordinances. The board shall have power to authorize a variance from the strict application of this chapter, where such application will result in practical difficulties or unnecessary hardships to the person owning or having the beneficial use of the property or sign for which a variance is sought. The board shall have the power to hear and decide on special approval or waiver situations on which this chapter specifically authorizes the board to pass. Any variance, special approval or waiver shall be subject to such conditions as the board may require to preserve and promote the purpose of this chapter. Prior to the granting of an appeal or of a variance by the board, appropriate city staff shall be given a reasonable

opportunity to study the appeal or request for variances and to make recommendation thereon to the board. The concurring vote of four members shall be necessary to reverse or modify any order, requirement, decision, or determination of the zoning administrator, or any other administrative official, or to grant any variance from the strict application of this chapter and Chapter 64 of the Albion Code of Ordinances.

ii. An owner of record aggrieved by any decision or order of the zoning appeals board may appeal the decision or order to the county circuit court by filing a complaint within 21 days from the date of decision.

iii. *Sign permit denial.*

(1) It shall be the duty of the planning director/zoning administrator or other authorized official to issue a sign permit, provided the proposed sign, when erected, will comply with this chapter and Chapter 64 of the Albion Code of Ordinances and all applicable codes and ordinances of the city.

(2) If application for a sign permit is denied, the planning director/zoning administrator or other authorized official shall give written notice of the denial, together with a written statement as to the reasons for denial, to the applicant. Appeal of such denial shall be to the zoning appeal board, which shall handle such appeal in accordance with the following procedure:

a. Any denial of a permit under this chapter and Chapter 64 of the Albion Code of Ordinances shall be in writing stating the reasons for same and shall be effective upon the applicant receiving personal service or upon mailing to the last known address of the applicant.

b. Any person, firm or corporation denied a permit under this chapter and Chapter 64 of the Albion Code of Ordinances shall have the right to a hearing before the zoning appeal board upon the appropriateness of such denial, provided a written request for such hearing is filed with the planning department within ten calendar days after the mailing or personal service of the notice of denial to the applicant.

c. Upon such request, the zoning appeal board shall conduct a hearing, and based upon a preponderance of the evidence presented, shall by vote of a majority of its membership either overturn the action or affirm the action of the planning director, building inspector or other authorized official and sustain the denial.

d. If an applicant whose permit has been denied fails to request a hearing as provided herein, or in the event the zoning appeal board, after a hearing, affirms the action of the planning director/zoning administrator, or other authorized official, the permit shall be deemed to be denied.

iv. *Sign variances.*

(1) *Application of the variance power.* A variance may be allowed by the board only in cases involving practical difficulties or unnecessary hardships when the evidence in the official record of the variance request supports all the following affirmative findings:

a. That the alleged hardships or practical difficulties, or both, are peculiar to the property of the person requesting the variance and result from conditions which do not exist generally throughout the city.

b. Because of special conditions applicable to the sign, building, or property in question, the provisions of this section, if strictly applied, would result in unnecessary hardship, and

c. The grant of an exception would not be contrary to the public health, safety, and welfare, and

d. The granting of an exception would result in substantial justice to the property owner, the owners of the property in the area, and the general public.

(2) *Variance request procedure.*

a. Variance requests shall be commenced by a person filing a notice for a variance with the zoning administrator (on a form to be supplied by the administrator) accompanied by a variance request fee made payable to the city. The schedule of fees shall be set by resolution of the city council. The request for variance shall be signed. It shall also specify the requirements from which a variance is sought and the nature and extent of such variance.

b. The board shall fix a reasonable time for the hearing of variance requests and shall give ten days' notice thereof to the parties, including all owners of record of property within 300 feet of the premises in question, such notice to be delivered personally or by registered mail addressed to the respective owners at the address given in the last assessment roll. All occupants of property within 300 feet of such premises in question shall also be notified of the hearing in the same manner. At the hearing any party may appear in person or by agent or attorney.

c. Upon denial of any variance request hereunder, the variance request fee paid shall not be refunded.

v. *Sign variances.*
(1)

Section 30-79. Powers.

(a) Reserved.

(b) Where there is a question as to the location of any boundary line between zoning districts, as provided for in Section 30-98 of this Code, the board shall interpret the map in such a way as to carry out the intent and purpose of this chapter.

(c) The board shall have the power to hear and decide zoning and sign permit appeals, filed as provided for in Section 30-78 of this Code where it is alleged by the appellant that there is an error in any order, requirement, decision, grant or refusal made by the zoning inspector or other administrative official in the interpretation of this chapter.

(d) The board shall have the power to authorize upon appeal the specific cases, filed as provided for in Section 30-78 of this Code such variances from the provisions of this chapter, subject to conditions stipulated by the board, as will not be contrary to the public interest; but only in such cases where owing to special conditions pertaining to a specific piece of property, the literal enforcement of the provisions or requirements of this ordinance would cause practical difficulties or unnecessary hardship. In authorizing a variance with attached conditions, the board shall require such evidence and a guarantee or bond as it may deem necessary that the conditions attached are being and will be complied with.

(e) No such variance in the provisions or requirements of this chapter shall be authorized by the board unless the board finds, beyond reasonable doubt that all of the following facts and conditions exist:

(1) That there are exceptional or extraordinary conditions applying to the property, that do not apply to other properties or classes of uses in the same zoning district.

(2) That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity.

(3) That the authorizing of such variance will not be of substantial detriment to adjacent property and will not impair the purposes of this ordinance or the public interest.

(4) That such variance shall in no manner or guise be construed to mean a change of use, but shall mean only a variation or modification from the provisions of this chapter.

(f) The board shall have the power to hear and make determination regarding applications for the erection and use of a building, or an addition to an existing building, or a public service corporation or for public utility purposes as described in Section 30-106 of this Code in any zoning district to a greater height or of larger area than the district requirements herein established and permit the location in any use district of a public utility building structure or use if the board shall find such use,

height, area, building or structure reasonably necessary for the public convenience and service.

(Code 1980, § 20.20-4; Ord. No. 1985-2, § 3, 5-6-85)

Section 30-80. Fees.

Before accepting for filing any requests in which the board of appeals has appellate or original jurisdiction under the provisions of this chapter, the City of Albion shall charge and collect the fees in accordance with the schedule of fees adopted by the City Council resolution

(Code 1980, § 20.20-5; Ord. of 4-5-82)

This Ordinance shall take effect after publication and on May 30, 2013.

First Reading:

Ayes 7
Nays 0
Absent 0

Jill Domingo,
City Clerk

Second Reading & Adoption:

Ayes 6
Nays 0
Absent 1

Joseph V. Domingo,
Mayor