

## **ARTICLE II - CONSTRUCTION OF LANGUAGE AND DEFINITIONS**

### **Section 200. - Construction of language.**

The following rules of construction apply to the text of this ordinance:

1. The particular shall control the general.
2. In case of any difference of meaning or implication between the text of this ordinance and any caption or illustration, the text shall control.
3. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
4. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural and the singular, unless the context clearly indicates the contrary.
5. A "building" or "structure" includes any part thereof.
6. The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," or "occupied for."
7. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
8. Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions, or events connected by the conjunction "and," "or," "either ...or," the conjunction shall be interpreted as follows:
  - a. "And" indicates that all the connected items, conditions, provisions, or events shall apply.
  - b. "Or" indicates that the connected items, conditions, provisions, or events may apply singly or in any combination.
  - c. "Either ... or" indicates that the connected items, conditions, provisions, or events shall apply singly but not in combination.
9. Terms not herein defined shall have the meaning customarily assigned to them.

### **Section 201. - Definitions.**

*Administrative review.* A form of site plan review that is conducted by the building official, the city planner and the city clerk, or their designee, for the purpose of reviewing an addition to an existing development for any public or private project that does not necessarily need a formal review before the city's planning commission based on and subject to the criteria found in section 1800.1.c. of this ordinance.

*Administrative approval:* A form of site plan approval that is conducted by the building official, the city planner and the city clerk, or their designee, for the purpose of approving an addition to an existing development for any public or private project that does not necessarily need a formal review before the city's planning commission based on and subject to the criteria found in section 1800.1.c. of this ordinance.

*Temporary use or minor building.* A use or building permitted by the zoning board of appeals to exist during a specified period of time. Tents or similar enclosures used for short term events not to exceed 5 days shall not be defined as a temporary building or use.

*Tent.* Tents used in this ordinance shall mean a shelter or canvas or the like supported by poles and fastened by cords or pegs driven into the ground and shall not include those types of tents used traditionally for children's recreational purposes.

*Use.* Any purpose for which a lot, building, or other structure or a tract of land may be designated, arranged, intended, maintained, or occupied; or activity, occupation, business, or operation carried on or intended to be carried on in a building or other structure or on a tract of land, and to also include the conduct of an activity or the performance of a function or operation, on a site or in a building or facility; and any functional, social, or technological activity that is imposed or applied to land or to structures on the land; and the employment or occupation of a building, structure, or land for a person's service, benefit, or enjoyment.

*(Ord. No. 129-3, 10-8-1996; Ord. No. 129-18, 4-11-2006; Ord. of 11-27-2006)*

## **ARTICLE XVIII - REVIEW AND APPROVAL PROCEDURES**

### **Section 1800. - Review and approval of site plans.**

1. *Application.* Prior to the establishment of a new use, change of use, addition to an existing use, the reoccupancy of any building, or the erection of any building in a zoning district, subject to the conditions listed below, a site plan (or site sketch where appropriate) shall be submitted and approved, approved with conditions, or disapproved by the city planning commission in accordance with the ordinance requirements of this article.
  - a. Site plan reviews are required for all permitted principal uses and structures in all zoning districts (except for the single-family detached and two-family dwellings and their accessory uses) and all conditional approval uses in all zoning districts. Site plans are required for all new construction, exterior remodeling, additions to the existing structure, and/or if the building has been vacant for over 180 days. For those cases of a building reoccupancy, applicants may submit a site sketch.
  - b. When the proposed new construction or remodeling constitutes an addition to an existing building, or use, site plan or site sketch review procedures may be modified, at the discretion of the building official and city clerk to provide for an administrative review by the building official, city clerk and city planner in lieu of a more formal review by the city planning commission provided both of the following are true:
    - (1) No variances to the ordinance are required.
    - (2) The proposed new construction would not increase the total square footage of the building greater than 25 percent.
  - c. For those cases requiring site plan or site sketch review solely as a result of building reoccupancy, review procedures may be modified, at the discretion of the building official and city clerk to provide for an administrative review by the building official, city clerk and city planner in lieu of a more formal review by the city planning commission provided all of the following are true:
    - (1) Such use is conducted within a completely enclosed building.
    - (2) Reoccupancy does not create additional parking demands, beyond 25 percent of that which exists.
    - (3) Reoccupancy does not substantially alter the character of the site.
  - d. Every site plan or site sketch submitted for review shall be in accordance with the requirements of this ordinance. Administrative review procedures are not intended to modify any ordinance, regulation or development standard.

2. *Copies required.* Every site plan or site sketch submitted to the planning commission shall be in accordance with the requirements of this ordinance. Two complete copies of all site plans or site sketch shall be filed with the city clerk who shall place the request on the next planning commission agenda. An electronic copy of the site plan or site sketch shall also be provided to the city clerk.
3. *Information required.* The following information shall be included on the site plan:
  - a. A scale of not less than one inch equals 50 inches if the subject property is less than three acres and one inch equals 100 inches if three acres or more.
  - b. Date, north point and scale.
  - c. The dimensions of all lot and property lines, showing the relationship of the subject property to abutting properties and buildings within 100 feet.
  - d. Legal description of parcel.
  - e. Existing and proposed topography with contours at two-foot intervals (based on U.S.G.S. datum) extending a minimum of 100 feet beyond site boundaries.
  - f. An inventory of existing vegetation on the site and an indication of any alterations.
  - g. The location and nature of any streams, drains, swamps, marshes, and/or unstable soils.
  - h. An indication of basic drainage patterns, existing and proposed, and including any structures, retention basins and fencing which are proposed. The applicant shall contact the municipality and municipal engineer to determine the adequacy of utility and storm water proposals, slope and sod erosion requirements to determine if any such requirements will adversely affect the site plan.
  - i. A schedule of parking needs. Separate drawings may be submitted to indicate usable floor areas, etc., for computation of parking needs.
  - j. A detailed planting plan and schedule of plant materials and sizes.
  - k. Cross section drawings of any walls, berms, etc.
  - l. The location and width of all existing and proposed sidewalks on or bordering the subject site. Where the subject site borders a public right-of-way, a concrete sidewalk five feet in width shall be provided within the public right-of-way one foot from the subjects site's property line. If a sidewalk in good condition exists within the public right-of-way, the above requirement may be waived by the building official.
  - m. The location of all existing and proposed structures of the subject property and all existing structures within 100 feet of the subject property. The setbacks to all existing and proposed structures to be retained or constructed on the site shall be indicated; this includes buildings, signs, trash storage areas, walls, fences, berms, parking areas, etc. The height of all proposed structures shall also be indicated.
  - n. The location of all existing and proposed drives and parking areas.
  - o. The location and right-of-way widths of all abutting streets and alleys.
  - p. The names, addresses, and telephone numbers of the architect, planner, designer, engineer or person responsible for the preparation of the site plan.
  - q. The names, addresses and telephone numbers of the developers.

- r. In addition to the above information, the applicant shall submit a supplementary explanation as to the specific type(s) of activities proposed. Such information shall include, but not be limited to:
  - (1) Estimated number of employees, resident shoppers, etc.
  - (2) Hours of operation.
  - (3) Any changes anticipated in terms of dust, odor, smoke, fumes, noise, lights, etc.
  - (4) Modifications to vegetative cover, drainage patterns, earth work, problem areas.
  - (5) Any ancillary improvements that the applicant proposes to remedy or prevent problems created by the development.
  - (6) Estimated costs of proposed landscaping berms, walls, acceleration-deceleration lanes, or bypass lanes or any other required site improvement not covered in the building permit cost estimates shall be provided.
- 4. *Information required.* The following information shall be included on the site sketch:
  - a. An electronic or hand drawing, drawn to scale.
  - b. General Floorplan
  - c. Property address, date, north point and scale.
  - d. The dimensions of all lot and property lines.
  - d. A schedule of parking needs. Separate drawings may be submitted to indicate usable floor areas, etc., for computation of parking needs.
  - e. The location of all existing and proposed structures of the subject property; this includes buildings, signs, trash storage areas, walls, fences, berms, parking areas, etc. The height of all proposed structures shall also be indicated.
  - f. The location of all existing and proposed drives and parking areas.
  - p. The names, addresses, and telephone numbers of the architect, planner, designer, engineer or person responsible for the preparation of the site plan.
  - q. The names, addresses and telephone numbers of the developers.
  - r. In addition to the above information, the applicant shall submit a supplementary explanation as to the specific type(s) of activities proposed. Such information shall include, but not be limited to:
    - (1) Estimated number of employees, resident shoppers, etc.
    - (2) Hours of operation.
    - (3) Any changes anticipated in terms of dust, odor, smoke, fumes, noise, lights, etc.
    - (4) Any ancillary improvements that the applicant proposes to remedy or prevent problems created by the development.
- 5. *Content of site plan file.* The site plan(s), all supplementary data, together with minutes of any meeting and/or hearings related to the proposed site plan shall become part of the official site plan file.

6. *Standards for approval.* In the process of reviewing the site plan or site sketch, the planning commission shall consider:
  - a. Specific development requirements set forth in the zoning ordinance.
  - b. The location and design of driveways providing vehicular ingress to and egress from the site, in relation to streets giving access to the site, and in relation to pedestrian traffic.
  - c. The traffic circulation features within the site and location of automobile parking areas; and may make such requirements with respect to any matters as will ensure:
    - (1) Safety and convenience of both vehicular and pedestrian traffic, both within the site and in relation to access streets.
    - (2) Satisfactory and harmonious relationships between the development on the site and the existing and prospective development of contiguous land and adjacent neighborhoods.
    - (3) Accessibility afforded to emergency vehicles.
  - d. The arrangement of use areas on the site in relation to functional, efficient and compatible arrangements within the site and also to adjacent uses.
  - e. The planning commission may further require landscaping, fences, and walls in pursuance of these objectives and same shall be provided and maintained as a condition of the establishment and the continued maintenance of any use to which they are appurtenant.
  - f. In those instances wherein the planning commission finds that an excessive number of ingress and/or egress points may occur with relation to major or secondary thoroughfares, thereby diminishing the carrying capacity of the thoroughfare, the planning commission may recommend marginal access drives. For a narrow frontage, which will require a single outlet, the planning commission may recommend that money be placed in escrow with the municipality so as to provide for a marginal service drive equal in length to the frontage of the property involved. Occupancy permits shall not be issued until the improvement is physically provided, or monies have been deposited with the clerk.
  - g. The cost estimates as required in this section shall be reviewed by the appropriate municipal official (i.e., building official, engineer or planner) for their compliance with current cost estimates. These reviews and recommendations shall be forwarded to the planning commission for inclusion in any approved site plan.
  - h. The planning commission may waive site plan information for topography, vegetation, problem soils, landscaping, employment data environmental considerations, etc., when such concerns are obviously not pertinent to the proposed development.
  - i. The planning commission, or building official as part of administrative review procedures, shall seek the input from local public safety officials as part of the site plan review process, prior to approving, disapproving, or approving with conditions, the site plan.
7. *Planning commission actions.* The planning commission, upon reviewing a site plan, shall take one of the following actions:
  - a. *Approval.* If the site plan meets all the zoning ordinance and related development requirements and standards, the planning commission shall record such approval and the chairman shall sign three copies of the site plan filing one in the official site plan file, forwarding one to the building official, and returning one to the applicant.

- b. *Disapproval.* If the site plan does not meet zoning ordinance and related development requirements and standards, the planning commission shall record the reasons for denial. The applicant may subsequently refile a corrected site plan under the same procedures followed for the initial submission.
  - c. *Conditional approval.* If minor corrections to the site are necessary, which can be clearly noted, then the planning commission shall so note such conditions and the chairman shall sign three site plans as conditionally approved and stating the necessary conditions. One copy shall be retained in the official site plan file, one forwarded to the building official, and one returned to the applicant.
  - d. *Table.* If the site plan is found to be in violation of the requirements or incomplete with respect to necessary information, the planning commission may table action on the site plan until ordinance compliance is shown or required additional information is provided.
8. *Performance guarantees.* To ensure compliance with the zoning ordinance and any condition imposed thereunder, the planning commission may require that a cash certified check, irrevocable bank letter of credit, or surety bond acceptable to the city covering the estimated cost of improvements associated with a project for which site plan approval is sought be deposited with the city to ensure faithful completion of the improvements and also be subject to the following:
- a. The performance guarantee shall be deposited prior to the issuance of a temporary certificate of occupancy. The city shall establish procedures whereby a rebate of any cash deposits in reasonable proportion to the ratio of work completed on the required improvements will be made as work progresses. Any partial release of funds shall be less than ten percent which shall be retained by the municipality until all work has been completed and subsequently inspected and approved by the building official. This does not relieve the applicant from satisfying all applicable maintenance warranties and/or guarantees necessary to ensure the proper functioning of said public improvements.
  - b. This section shall not be applicable to improvements for which a cash deposit, certified check, irrevocable bank letter of credit, or surety bond has been deposited pursuant to Act 288 of the Public Acts of 1967, as amended (the state subdivision control act (MCL 560.101 et seq)).
  - c. As used in this section, "improvements" mean those features and actions associated with a project which are considered necessary by the body or official granting zoning approval to protect natural resources, or the health, safety, and welfare of the residents of the city and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening, landscaping, and surface drainage. Improvements do not include the entire project which is the subject of zoning approval.
9. *Period of completion.* An approved site plan shall remain valid for a period of one year from the date of approval. In the event all improvements are not installed, then any such remaining improvements shall be completed no later than July 1 of the following construction season except that the planning commission may, at its discretion, upon application by the owner and for cause shown, provide for up to two successive 12-month extensions.

(Ord. of 11-27-2006)

**State law reference—** Site plans, MCL 125.584c, 125.584d.

Section 1802. - Review and approval of conditional uses.

1. *Application.*
  - a. The uses identified as special condition uses are recognized as possessing characteristics of such unique and special nature (relative to location, design, size, public utility needs, and other similar characteristics) as necessitating individual standards and conditions in order to safeguard the general health, safety and welfare of the community.
  - b. The city council, as provided herein, shall have the authority to approve conditional use permits, subject to such conditions of design, operation, and appropriate and reasonable safeguards as the city may require for any special condition use included in the various provisions of this zoning ordinance. Conditional use site plan additions or amendments may be reviewed and approved administratively, at the discretion of the building official, city clerk, city planner and mayor, if the revision complies with the conditions of Section 1800 (1) c. and it does not alter the use or function of the site.
2. *Data required.*
  - a. Application for any conditional use permit as provided under the provisions of this ordinance shall be made to the building official by filing an official special condition use permit application form; submitting required data, exhibits, and information; and depositing the required fee as established by resolution of the city council, and as may be amended from time to time. No portion of such fee shall be reimbursable to the applicant.
  - b. An application for a conditional use permit shall contain the following:
    - (1) Applicant's name, address and telephone number.
    - (2) Address and tax description number of the subject parcel.
    - (3) A signed statement that the applicant is the owner of the subject parcel, or is acting as the owner's representative.
    - (4) A certified survey drawing of the subject parcel.
    - (5) A complete site plan containing all of the applicable data outlined in section 1800, review and approval of site plans.
    - (6) Supporting statements, evidence, data, information and exhibits which address those standards and requirements for assessing special condition use permit applications outlined in section 1802.4 below.
3. *Public hearing requirements.* Upon receipt of an application for a use requiring conditional approval, the planning commission shall hold a public hearing, one notice of which shall be published at least 15 days prior to the public hearing date in a newspaper of general circulation in the city and sent by first class mail to the owners of the property for which special condition approval is being considered, to the owners of record of all real property and to the occupants of all structures located within 300 feet of the boundaries of the property in question. The notice shall:
  - a. Describe the nature of the special condition use request.
  - b. Adequately describe the property in question.
  - c. State the date, time, and place of the public hearing.
  - d. Indicate when and where written comments concerning the request will be received.
4. *Standards for approval.*

- a. The planning commission shall review the particular circumstances and facts applicable to each proposed special condition use in terms of the following standards and requirements and shall make a determination as to whether the use proposed to be developed on the subject parcel meets the following standards and requirements:
- (1) Will be harmonious with and in accordance with the general objective of the future land use plan.
  - (2) Will be designed, constructed, operated, maintained, in harmony with existing and intended character of the general vicinity and so that such use will not change the essential character of that area.
  - (3) Will not be hazardous or detrimental to existing or future neighboring uses.
  - (4) Will represent a substantial improvement to property in the immediate vicinity and general benefit to the community as a whole.
  - (5) Will be served adequately by essential public services and facilities, such as highways, streets, drainage structures, police and fire protection and refuse disposal; or persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately for such services.
  - (6) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community.
  - (7) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive smoke, fumes, glare, noise, vibration or odors.
  - (8) Will be consistent with the intent and purposes of this ordinance.
- b. If the facts regarding the special condition use being reviewed do not establish by a preponderance of the evidence that the standards and requirements set forth in this zoning ordinance will be met by the proposed use, the planning commission shall not recommend special condition approval to the city council.

In recommending approval of a special condition use permit to the city council, the planning commission shall recommend imposition of such reasonable conditions of use as it deems necessary to protect the best interests of the city and the general vicinity, to achieve the objectives of this ordinance and to ensure that the general public health, safety, and welfare will not be infringed upon.

The planning commission may recommend denial, approval or approval with conditions, on a request for special condition use approval. The recommendation on a special condition use shall be incorporated in a statement containing the conclusions relative to the special condition use under consideration which specifies the basis for the decision and any conditions recommended.

- c. Upon holding a public hearing and review of the special condition use request, the planning commission shall within 30 days forward to the city council its finding and recommendation. The finding shall include a record of those conditions which are recommended to be imposed. The city council, upon receipt of the finding and recommendation, may deny, approve, or approve with conditions any request for a special condition use approval. Any decision on such a request shall state the findings of fact and specify the conclusions drawn therefrom and any conditions imposed thereon. Any conditions imposed shall remain unchanged except upon the mutual



consent of a majority of the city council and the landowner, and the city council shall maintain a record of all conditions that are changed. All records of proceedings hereunder shall be kept and made available to the public.

- d. The conditional use review and site plan review may occur concurrently at the discretion of the planning commission.

**State law reference**— Special land uses, MCL 125.584a.

## ARTICLE XIX - APPEAL PROCEDURES

FOOTNOTE(S):

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**State Law reference**— Appeals, MCL 125.585 et seq. [\(Back\)](#)

Section 1900. - Intent.

An appeals procedure is herein established in order that the objectives of this ordinance may be fully and equitably achieved, that a means shall be provided for competent interpretation of this ordinance, that adequate but controlled flexibility be provided in the application of this ordinance, that the health, safety, and welfare of the public is secured, and that justice be done.

Section 1901. - Membership.

The city council shall act as the board of appeals upon questions arising under this ordinance. In this capacity, it shall perform its duties and exercise its powers as provided in Section 5 of P.A. 207 of 1921, as amended (MCL 125.585).

Section 1902. - Meetings.

1. All meetings shall be held at the call of the mayor.
2. All hearings conducted shall be open to the public. The city council shall keep minutes of its proceedings showing the vote of each member in question, or if absent, or failing to vote, indicating such fact; and shall also keep records of its hearings and other official actions in the office of the city clerk, and shall be a public record.
3. The city council shall not conduct business unless a majority of the members are present. The concurring vote of a majority of the full membership of city council shall be necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which they are required to pass under an ordinance, or to effect a variation in an ordinance.
4. The city council shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony, and the production of books, papers, files, and other evidence pertinent to the matters before it.

Section 1903. - Appeal and notice requirements.

1. An appeal may be taken to the city council by any person or entity affected by a decision of the building official. Such appeal shall be taken within such time as shall be prescribed by the city council by general rule, by filing with the building official, a notice of appeal, specifying the grounds thereof. The building official shall forthwith transmit to the city council all of the papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from unless the building official certifies to the city council, after notice of appeal has 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 which case, the proceedings shall not be stayed, otherwise than by a restraining order which may be granted by a court of record.

2. The city council shall select a reasonable time and place for the hearing of the appeal and give due notice of the appeal to the parties, and to whom real property within 300 feet of the premises in question is assessed, and to the occupants of single- and two-family dwellings within 300 feet, the notice to be delivered personally, or by mail, addressed to the respective owners and tenants at the address given in the last assessment role. The city council shall decide the appeal within a reasonable time. If the tenants name is unknown, the term occupant may be used. Public notice of the time, date, and place of the hearing shall also be given in the manner required by Act 267 of the Public Acts of 1976 (MCL 15.261 et seq.), and by insertion in a newspaper of general circulation in the city 15 days prior to said hearing date. Such notice shall contain the address, if available, and the location of the property for which the ruling of the city council is sought, as well as a brief description of the nature of the appeal. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.
3. No appeal shall be taken to the city council from a decision of the planning commission and city council in connection with a special conditional use.
4. No appeal shall be taken to the city from a decision of the planning commission in connection with an approved site plan unless such appeal has first been reviewed by the planning commission and a recommendation on the variance is provided by the planning commission.

#### Section 1904. - Jurisdiction.

The city council may reverse or affirm, wholly or partly, or may modify the order, requirement, decision of determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal was taken and may issue or direct the issuance of a permit. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this ordinance, the city council shall have the power in passing upon appeals to vary or modify any of its rules, regulations or provisions so that the spirit of this ordinance shall be observed, public safety secured, and substantial justice done. Nothing herein contained shall be construed to give or grant to the city council the authority to make changes in the zoning ordinance or the zoning map acting under the authority of appeal board. The power and authority to rezone is reserved to the city council in the manner provided by Section 4 of P.A. 207 of 1921, as amended (MCL 125.584).

#### Section 1905. - Powers and duties.

The city council shall have the following specified powers and duties acting as the appeal board:

1. *Administrative review.* To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision, or refusal made by the building official or any other administrative official in carrying out, or enforcing, any provisions of this ordinance.
2. *Interpretation.* To hear and decide in accordance with the provisions of this ordinance:
  - a. Appeals for the interpretation of the provisions of the ordinance.
  - b. Requests to determine the precise location of the boundary lines between the zoning districts as they are displayed on the zoning map, when there is dissatisfaction with the decision on such subject.
3. *Variances.* The city council shall have the power to authorize, upon appeal, specific variances from such dimensional requirements as lot area and width regulations, building height and square foot regulations, yard width and depth regulations, such requirements as off street parking and

loading space, and sign regulations, and other similar requirements as specified in the ordinance. To obtain a variance, the applicant must show "practical difficulty," by demonstrating:

- a. Whether strict compliance with area, setbacks, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render the conformity unnecessarily burdensome;
- b. Whether a variance would do substantial justice to the applicant, as well as to other property owners in the district, or whether a lesser relaxation would give substantial relief and be more consistent with justice to others;
- c. Whether the plight of the owner is due to the unique circumstances of the property; and
- d. Whether the problem is self-created.

4. *Approval of temporary uses.*

- a. The city council shall have the power to grant permits authorizing temporary land uses for seasonal sales of produce, firewood or Christmas trees, and similar uses; under the following conditions:
  - (1) *Zoning districts where permitted.* Temporary uses shall be restricted to nonresidential zoning districts.
  - (2) *Application and submittal requirement.* The application for a temporary use permit shall be accompanied by plans and specifications including a plot plan, in triplicate, drawn to scale, showing the following:
    - (i) The shape, location, and dimensions of the lot, including the shape, size, and location of all buildings or other structures already on the lot, off street parking layout, and the location of any designated fire lanes.
    - (ii) The materials to be utilized in and the shape, size, and location of all buildings and structures to be erected or moved onto the lot, including all tents, tables, stands, or display racks.
    - (iii) The anticipated automobile traffic flow to and from the lot and any adjacent thoroughfares, loss of off-street parking spaces, if any, as well as the anticipated flow of pedestrian traffic upon lot sidewalks.
  - (3) *Time limitations.*
    - (i) A temporary use permit for the sale of Christmas trees, seasonal items such as flowers and similar uses shall by its terms be effective for no longer than 30 days. No more than one temporary use permit for the sale of Christmas trees shall be issued for any given location within a single calendar year.
    - (ii) A temporary use permit for a vegetable, fruit or produce stand or for the sale of firewood or similar use shall, by its terms, be effective for no longer than three months. No more than one temporary use permit for such uses shall be issued for any given location within a single calendar year.
- b. The city council shall have the power to grant permits authorizing temporary land uses for uses which do not require the erection of any capital improvement of a structural nature, not otherwise permitted in any district (such as art fairs, carnivals, and civic festival events), not to exceed 12 months.

In classifying uses as not requiring capital improvement, the city council shall determine that they are either demountable structures related to the permitted use of land; recreation developments, such as, but not limited to: golf driving range and outdoor archery courts; or structures which do not require foundations, heating systems, or sanitary connections.

- c. The granting of a temporary use shall be in writing, and state all conditions as to time, nature of development permitted and arrangements for removing the use at the termination of said temporary permit.
  - d. No temporary use permit shall be granted without first giving notice to owners of adjacent property of the time and place of a public hearing to be held as further provided for in this ordinance. Further, the city council shall seek the review and recommendation of the planning commission prior to the taking of any action.
5. *Essential services.* The city council shall review and approve, after a public hearing, the location of overhead or underground and necessary poles and towers to be erected to service primarily those areas beyond the municipality.
6. *Standards for approval for temporary uses and essential services.* A temporary use permit shall only be granted if the city council determines that the proposed use, including the erection of any temporary building or structure, will:
- a. Provide adequate light and ventilation between buildings and structures.
  - b. Provide adequate automobile and pedestrian traffic flow and provide adequate off-street parking.
  - c. Provide adequate lot access for fire protection purposes.
  - d. Not adversely affect the stability and integrity of the zoning plan prescribed by this ordinance or otherwise interfere with the protection of public health, safety, and general welfare.
  - e. Not be incompatible with or otherwise adversely affect the physical character of the community and, in particular, the surrounding area with a distance of 1,000 feet.
  - f. When the proposed temporary use is to be conducted on an otherwise vacant or unused lot, the use shall comply with all applicable zoning regulations for the district in which the temporary special use is to be located, including all requirements pertaining to lot size, height, setback, open space ratio, maximum percentage of covered lot area, and off street parking.

Section 1906. - Prohibited variances.

1. No variance shall be made in connection with a condition attached to a special condition use approved by the city.
2. A use variance shall not be permitted, except as described under section 1905.4, approval of temporary uses.

Section 1907. - Attachment of conditions.

The city council may impose conditions upon an affirmative decision. The conditions may include conditions necessary to ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall do all the following:

1. Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being of those who will use the land use or activity under consideration, residents, and landowners immediately adjacent to the proposed land use, or activity, and the community as a whole.
2. Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
3. Be necessary to meet the intent and purpose of the zoning regulations; be related to the standards established in the ordinance for the land use or activity under consideration and be necessary to ensure compliance with those standards.
4. The conditions imposed with shall be recorded in the record of the approval action and shall remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of changes granted in conditions.

Section 1908. - Fees.

The city council may from time to time prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeal proceedings. At the time an application is filed, said fee shall be paid to the city clerk.

Section 1909. - Rehearing.

1. The decision of the city council shall be final. However, a person having an interest affected by the zoning ordinance may appeal to circuit court.
2. The city council is without general authority to reconsider a matter it has decided and from reversing its previous decision unless the facts and circumstances which actuated the decision have so changed as to vitiate or materially affect the reason which produced and supported it, and no vested rights have intervened.

**ARTICLE XXI - ADMINISTRATION AND ENFORCEMENT FOOTNOTE(S):**

--- (13) ---

Cross reference— Administration, ch. 2. [\(Back\)](#)

Section 2100. - Enforcement.

The provisions of this ordinance shall be administered and enforced by the building official or by such deputies of his department as the building official may delegate to enforce the provisions of this ordinance.

Section 2101. - Duties of building official.

The building official shall have the power to grant zoning compliance and occupancy permits, to make inspections of buildings or premises necessary to carry out his duties in the enforcement of this ordinance. It shall be unlawful for the building official to approve any plans or issue any permits or certificates of occupancy for any excavation or construction until he has inspected such plans in detail and found them to conform to this ordinance.

The building official shall record all nonconforming uses existing at the effective date of this ordinance for the purpose of carrying out the provisions of section 1403.

Under no circumstances is the building official permitted to make changes to this ordinance nor to vary the terms of this ordinance in carrying out his duties as building official.

The building official shall not refuse to issue a permit when conditions imposed by this ordinance are complied with by the applicant despite violations of contracts, such as covenants or private agreements which may occur upon the granting of said permit.

Section 2102. - Plot plan.

The building official shall require that all applications for building permits shall be accompanied by plans and specifications including a plot plan, in triplicate, drawn to scale, showing the following:

1. The actual shape, location, and dimensions of the lot.
2. The shape, size, and location of all buildings or other structures to be erected, altered, or moved and of any building or other structures already on the lot.
3. The existing and intended use of the lot and of all such structures upon it, including, in residential areas, the number of dwelling units the building is intended to accommodate.
4. Such other information concerning the lot or adjoining lots as may be essential for determining whether the provisions of this ordinance are being observed.

Section 2103. - Permits.

The following shall apply in the issuance of any permit:

1. *Permits not to be issued.* No building permit shall be issued for the erection, alteration or use of any building or structure, or part thereof, or for the use of any land, which is not in accordance with all provisions of this ordinance.
2. *Permits for new use of land.* No land heretofore vacant shall hereafter be used or an existing use of land be hereafter changed to a use of a different class or type unless a certificate of occupancy is first obtained for the new or different use.
3. *Permits for new use of buildings.* No building or structure, or part thereof, shall be changed to or occupied by a use of a different class or type unless a certificate of occupancy is first obtained for the new or different use.
4. *Permits required.* No building or structure, or part thereof, shall be hereafter erected, altered, moved, or repaired unless a building permit shall have been first issued for such work. The terms "altered" and "repaired" shall include any changes in structural parts, stairways, type of construction, type, class or kind of occupancy, light or ventilation, means of egress and ingress, or other changes affecting or regulated by the City of Utica Building Code, housing law, or this ordinance, except for minor repairs or changes not involving any of the aforesaid features.

Section 2104. - Certificates.

No land, building, or part thereof shall be occupied by or for any use unless and until a certificate of occupancy shall have been issued for such use. The following shall apply in the issuance of any certificate:

1. *Certificate not to be issue.* No certificates of occupancy shall be issued for any buildings, structure or part thereof, or for the use of any land, which is not in accordance with all the provisions of this ordinance.
2. *Certificates required.* No building or structure, or parts thereof, which is hereafter erected, or altered, shall be occupied or used or the same caused to be done, unless and until a certificate of occupancy shall have been issued for such building or structure.
3. *Certificates including zoning.* Certificates of occupancy as required by the city building code for new buildings or structures, or parts thereof, or for alterations to or changes of use of existing

buildings or structures, shall also constitute certificates of occupancy as required by this ordinance.

4. *Certificates for existing buildings.* Certificates of occupancy shall be issued for existing buildings, structures, or parts thereof, or existing uses of land if, after inspection, it is found that such buildings, structures, or parts thereof, or such use of land, are in conformity with the provisions of this ordinance.
5. *Record of certificates.* A record of all certificates issued shall be kept on file in the office of the building official, and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the property involved.
6. *Certificates for dwelling accessory buildings.* Buildings or structures accessory to dwellings shall not require separate certificates of occupancy but may be included in the certificate of occupancy for the dwelling when shown on the plot plan and when completed at the same time as such dwellings.
7. *Application for certificates.* Application for certificates of occupancy shall be made in writing to the building official on forms furnished by that department, and such certificates shall be issued within ten days after receipt of such application if it is found that the building or structure, or part thereof, or the use of land is in accordance with the provisions of this ordinance. If such certificate is refused for cause, the applicant therefore shall be notified of such refusal and cause thereof, within the aforesaid ten-day period.

#### Section 2105. - Final inspection.

The holder of every building permit for the construction, erection, alteration, repair, or moving of any building, structure or part thereof shall notify the building official immediately upon the completion of the work authorized by such permit, for a final inspection.

#### Section 2106. - Fees.

Fees for inspection and the issuance of permits or certificates or copies thereof required or issued under the provisions of this ordinance may be collected by the building inspector in advance of issuance. The amount of such fees shall be established by resolution of the city council and shall cover the cost of inspection and supervision resulting from enforcement of this ordinance.

#### Section 2107. Temporary tents and uses of a temporary nature

Temporary tents and uses of a temporary nature, such as, but not limited to, seasonal sales, tent sales, holiday sales, on-site events of a house of worship, school or non-profit group, temporary signs, and the like may be permitted by the city clerk, city planner and building official, or their designee, subject to the following standards:

1. An application form, available from the city clerk's office, shall be submitted along with the fee established from time-to-time by City Council.
2. A site sketch shall be submitted, drawn to scale that illustrates the location of the proposed temporary use on the applicant's property.
3. If the property in question is not owned by the applicant, a letter signed by the owner shall be submitted giving the applicant authorization to use the property for the specific period of time requested in the temporary tent or use permit application.
4. If the temporary tent or use is not an accessory use to the parcel's identified use, the application shall require review and approval by the Zoning Board of Appeals before a temporary use permit is issued.
5. The application shall clearly describe the nature of the temporary tent or use and the proposed time period to be covered by the permit. If the temporary tent or use will be in place for a period of time exceeding 5 days, the application shall require review and approval by the Zoning Board of Appeals before a temporary use permit is issued.

6. The applicant may be granted up to four temporary use permits in one calendar year. If the applicant wishes to exceed this number of permits, the application shall require review and approval by the Zoning Board of Appeals before a temporary use permit is issued.
7. An applicant shall not apply for more than one temporary tent or use permit in a given month or within a 30 day period of the previously approved permit without review and approval by the Zoning Board of Appeals before a temporary use permit is issued.
8. If the temporary tent or use exceeds 800 square feet in size, the application shall require review and approval by the Zoning Board of Appeals before a temporary use permit is issued.
9. The applicant shall agree that the temporary tent or use will be removed immediately upon expiration of the temporary permit.
10. The application shall clearly demonstrate no potential adverse impact on adjoining properties or residence from the proposed temporary tent or use.
11. Prior to the issuance of a temporary use permit, the application shall be reviewed by the fire chief or their designees.
12. At the discretion of the city planner, city clerk and building inspector, an application for a temporary permit for a temporary tent or use may be referred to the zoning board of appeals for their review and approval, approval with conditions, or denial under the provisions of Section 1905.04.