

Mapleton City Planning Commission Staff Report

Meeting Date: January 10, 2013

Item: 4

Applicant: Mapleton City

Location: City wide

Prepared by: Sean Conroy, Community Development Director

Public Hearing Item: No

Zone: All

REQUEST

Policy discussion regarding the elimination of the Board of Adjustment (BOA) and the transfer of the Board's responsibilities to the Planning Commission.

BACKGROUND AND EVALUATION

Mapleton City Code (MCC) 16.04 outlines the duties and responsibilities of the BOA (see attached). The Board's primary responsibilities include:

- Reviewing variance and special exception requests;
- To hear appeals of staff decisions;
- To hear appeals of Planning Commission decisions related to Conditional Use Permits and the development code.

Staff is recommending that the BOA be dissolved and that the majority of its responsibilities be transferred to the Planning Commission. Some of its responsibilities, such as appeals of Planning Commission decisions, would be transferred to the City Council. Staff is recommending this approach for the following reasons:

- For the past several years, the Board of Adjustment has met only a hand full of times. This makes it difficult to maintain a well-trained Board, which could create problems for the City if and when future appeals or variance requests are submitted.
- The Planning Commission is the land use agency for the City and has a broad understanding of land use issue. The Commission is better suited to handle appeals and variance requests.
- The proposal would result in a more efficient and streamlined government. For example, if an applicant was applying for a commercial site plan, but also was requesting a variance, the Commission could act on both applications simultaneously rather than requiring a separate body to review the variance, as would be the case currently.
- Less administrative strain on staff. It is often difficult to find willing and qualified candidates to fill both the BOA and the Planning Commission. Having one body fill both responsibilities makes sense administratively.

Staff is requesting that the Commission discuss this issue and provide direction to staff. If the Commission is supportive of the proposal, staff will draft an ordinance that could be reviewed at a future meeting.

STAFF RECCOMENDATION

Provide direction to staff.

Chapter 16.04

BOARD OF ADJUSTMENT

- 16.04.010: ESTABLISHMENT; APPOINTMENT; COMPOSITION; VACANCIES:**
- 16.04.020: ORGANIZATION OF BOARD; MEETINGS; DUTIES OF MEMBERS:**
- 16.04.030: POWERS AND DUTIES OF BOARD:**
- 16.04.040: POWER OF BOARD LIMITED:**
- 16.04.050: APPEALS TO BOARD; TIME; PERSONS ENTITLED; TRANSMISSION OF RECORDS:**
- 16.04.060: STAY OF PROCEEDINGS PENDING APPEAL:**
- 16.04.070: NOTICE OF HEARING OF APPEAL; RIGHT OF APPEARANCE:**
- 16.04.080: DECISION ON APPEAL:**
- 16.04.090: VOTE NECESSARY FOR REVERSAL:**
- 16.04.100: JUDICIAL REVIEW OF BOARD'S DECISION:**

16.04.010: ESTABLISHMENT; APPOINTMENT; COMPOSITION; VACANCIES¹:

Pursuant to authority granted in title 10-9-6 Utah Code Annotated 1953, as amended, the city council hereby creates a board of adjustment within and for the city. Said board of adjustment shall consist of five (5) members and such alternate members as the mayor with the advice and consent of the council deems appropriate, each to be appointed by the mayor with the advice and consent of the council for a term of five (5) years, provided that the terms of the members appointed shall be such that the term of one member shall expire each year. Alternate members shall serve in the absence of a member under rules established by the council. Provided that no more than two (2) alternate members shall sit at any meeting of the board at any one time. Any member of the board of adjustment may be removed for cause by the city council upon written charges and after public hearing, if such public hearing is requested by the member. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. (Ord. 97-02)

16.04.020: ORGANIZATION OF BOARD; MEETINGS; DUTIES OF MEMBERS²:

The board of adjustment shall organize and elect a chairman and adopt rules for its proceedings. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine.

The chairman or, in his absence, the acting chairman may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its examinations and other official actions; all of which shall be immediately filed in the office of the board and shall be public record. (1986 Code)

16.04.030: POWERS AND DUTIES OF BOARD:

The board of adjustment shall have the following powers:

A. Appeal Of An Administrative Ruling: To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the planning and zoning director or other official responsible for the enforcement of the zoning regulations. (Ord. 00-12)

B. Special Exception: To hear and decide appeals for approval of special exceptions to the terms of the zoning regulations. The board shall not authorize a special exception unless specifically granted authority to do so under the terms of the zoning regulations and state law. (Ord. 2006-20, 7-19-2006)

C. Variances³: To authorize upon appeal such variance from the terms of the zoning regulations as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the applicable provision will result in unnecessary hardship; provided that the spirit of the ordinance shall be observed and substantial justice done. Before any variance may be authorized, however, it shall be shown that:

1. The variance will not substantially affect the comprehensive plan or zoning regulations of the city and that adherence to the strict letter of the zoning regulations will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.
2. There are special circumstances attached to the property covered by the application which do not generally apply to the other property in the same zone.
3. That because of said special circumstances, the property covered by the application is deprived of privileges possessed by other properties in the same zone; and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.

D. Interpretation Of Text Or Map: To make, upon appeal, an interpretation of the zone map regarding the location of zone boundary lines, or decide the meaning of disputed terms or phrases within the text of the zoning regulations.

E. Approval Of Building Permit Within Proposed Street On Official Map⁴: To authorize upon appeal the grant of a permit for a building or structure or part thereof within any mapped street location in any case in which the board of adjustment, upon the evidence, finds:

1. That the property of the appellant of which such mapped street location forms a part, will not yield a reasonable return to the owner unless such permit be granted, or
2. That, balancing of interest of the city in preserving the integrity of the official map and the interest of the owner in the use and benefits of the property, the grant of such permit is required by consideration of justice and equity. In the event that the board of adjustment decides to authorize a building permit, it shall have the power to specify the exact location, ground area, height, and other details and conditions of extent and character and also the duration of the building, structure, or part thereof to be permitted. (Ord. 00-12)

F. Appeal Of A Denial For A Conditional Use Permit: (Rep. by Ord. 2007-09, 5-15-2007)

G. Appeals From Decisions Applying The Development Code: To hear and decide all other appeals of decisions applying the development code. (Ord. 2006-20, 7-19-2006)

16.04.040: POWER OF BOARD LIMITED:

The powers and duties of the board are limited to the judicial and administrative actions specifically authorized in the zoning regulations. The board shall not have the authority to amend the development code, to hear appeals of decisions of the planning commission or city council regarding amendments of the development code, or to act outside the rules governing the activities of the board as set forth in the zoning regulations; and all decisions shall be made in such a way so as not to destroy the intent and purpose of this chapter. (Ord. 2006-20, 7-19-2006)

16.04.050: APPEALS TO BOARD; TIME; PERSONS ENTITLED; TRANSMISSION OF RECORDS⁵:

Any person, organization, corporation or unit or department of government which has been aggrieved by a decision allegedly made in error by the planning and zoning director or is requesting approval of a special exception, variance or other action upon which the board is authorized to act may do so by filing a formal request in writing with the board; provided, any appeal from a decision made by the planning and zoning director shall be made by filing an application with the board within a period not to exceed forty five (45) days from the date of the contested action. (1986 Code)

16.04.060: STAY OF PROCEEDINGS PENDING APPEAL⁶:

An appeal stays all proceedings in furtherance of the action appealed from, unless the planning and zoning director certifies to the board of adjustment 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 eminent peril of life or property. In such case proceedings shall not be stayed otherwise than by restraining order which may be granted by the board of adjustment or by the district court on application and notice and on due cause shown. (1986 Code)

16.04.070: NOTICE OF HEARING OF APPEAL; RIGHT OF APPEARANCE⁷:

The board of adjustment shall fix a reasonable time for the hearing of the appeal or request, give public notice thereof as well as due notice to the parties in interest, and shall decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. (1986 Code)

16.04.080: DECISION ON APPEAL⁸:

In exercising the above mentioned powers such board may, in conformity with the provisions of the zoning regulations, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the planning and zoning director and such other powers as herein provided. (1986 Code)

16.04.090: VOTE NECESSARY FOR REVERSAL⁹:

The concurring vote of three (3) members of the board shall be necessary to reverse any order, requirement, or determination of any such administrative official, or to decide in favor of the appellant on any matter upon which it is required to pass under any such ordinance, or to affect any variation in the provision of such regulations. (1986 Code)

16.04.100: JUDICIAL REVIEW OF BOARD'S DECISION¹⁰:

The city or any person aggrieved by any decision of the board of adjustment may have and maintain a plenary action for relief therefrom in any court of competent jurisdiction; provided petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the board.