

Mapleton City Planning Commission Staff Report

Meeting Date: February 13, 2013

Item: 5

Applicant: Mapleton City

Location: City wide

Prepared by: Sean Conroy, Community Development Director

Public Hearing Item: Yes

Zone: All

REQUEST

Consideration of recommendations to the City Council regarding an ordinance to dissolve the Board of Adjustment (BOA) and to transfer of the Board's responsibilities to the Planning Commission and to revise the appeals process.

BACKGROUND AND PROJECT DESCRIPTION

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

- To review variance and special exception requests;
- To hear appeals of staff decisions; and
- To hear appeals of Planning Commission decisions related to conditional use permits and the development code.

On January 10, 2013 staff discussed with the Planning Commission the possibility of dissolving the BOA and transferring the majority of its authority to the Planning Commission. The Commission expressed support for this proposal. Staff is recommending this approach for the following reasons:

- For the past several years, the BOA 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 authority for the City and has a broad understanding of land use issues. 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 request, 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 handle both responsibilities makes sense administratively.

The proposed ordinance eliminates all code references to the BOA, transfers the majority of the BOA's authority to the Commission, outlines some new powers and duties of the City Council and establishes an appeal process. Below is a summary of some of the more significant changes associated with this proposal.

- 1) The Planning Commission would handle all requests for variances and special exceptions.
- 2) Staff decisions could be appealed to the Planning Commission if an appeal is filed within 15 business days of the decision.

- 3) Planning Commission decisions could be appealed to the City Council within 10 business days of a decision.
- 4) The City Council has the right to call up a Commission decision for review if at least three Council members make a request within 10 business days of the decision.

These changes will establish clear appeal procedures, provide sufficient due process rights for applicants and affected parties, ensure staff and Commission accountability, and allow the City Council the ability to participate in all decisions of significant community importance.

ALTERNATIVE OPTIONS

1. *Maintain the BOA:* Staff has outlined the reasons for not supporting this option.
2. *Hearing Officer:* Some communities contract with a third-party to act as a hearing officer. This individual is given the authority to act on variances, special exceptions and appeals. Staff's concern with this option is that it takes the decision authority out of the hands of the appointed and elected officials. Appeals and variances have the potential of having significant community impacts. It is staff's position that these decisions should be made ultimately by the elected officials.

STAFF RECCOMENDATION

Recommend that the City Council adopt the attached ordinance.

ATTACHMENTS

1. Draft ordinance amendments.

Attachment "1" (changes shown in strikeout and underline)

City Council

2.08.015: POWERS AND DUTIES:

D. Shall hear and render decisions on appeals of decisions of the Planning Commission.

E. Council Right of Review.

1. Upon the written request of three members of the City Council or two members of the City Council and the Mayor, as individuals, the City Council shall review any final decision of the Planning Commission. Requests made pursuant to this section must be filed with the City Clerk within 10 business days following the date of final action by the Commission.

2. After three members of the City Council or two members of the City Council and the Mayor each file a written request for Council review of a decision of the Planning Commission, the City Clerk, after considering whether sufficient time remains to notice the review for public hearing before a forthcoming Council meeting, shall set the date on which the Council will hold a hearing. At the time of City Council review of the matter, the Council may uphold the decision of the Commission amend the decision and/or conditions attached to the decision, overturn the decision, or remand the matter back to Commission for further consideration.

City Administrator

2.14.130: PLANNING AND ZONING:

Notwithstanding the foregoing, the city administrator shall exercise no authority over the planning commission ~~or the board of adjustment of the city.~~ (Ord. 99-07)

Recorder

2.16.050: RECORDING OF ORDINANCES:

The recorder shall keep and file a copy of each ordinance hereafter passed by order of the council, and shall maintain seven (7) copies of city ordinances showing all amendments and additions, and those ordinances repealed; and place a copy of each such amendment addition or ordinance repealed in the proper section of each of the council member's copy of city ordinances. It shall be the duty of the recorder to send a copy of all ordinances, amendments, additions and repeals to the chairman of each of the following permanent committees: the planning and zoning department, ~~the board of adjustment~~, the city attorney, city engineer, and to each of the heads of the following city departments: the public works department, the public safety department and any and all department heads affected by the action of the council.

2.54.010: CONFLICT OF INTEREST; RULES FOR ABSTAINING FROM A VOTE:

B. Definitions: As used in this chapter:

CITY BODY: The Mapleton City council (including the mayor), the planning commission, ~~board of adjustment~~, and each commission, board, committee, or other similar body of the city organized to make public policy decisions or to advise persons who make public policy decisions including governing boards of any local district, special district or improvement district controlled by the city.

12.08.030: PERMIT APPLICATION REQUIREMENTS:

F. The disapproval or denial of an application by the superintendent of streets may be appealed by the applicant to the ~~board of adjustment~~ planning commission by filing a written notice of appeal within ten (10) days of the action of the superintendent of streets. They shall hear such an appeal, if written request therefor be timely filed as soon as practicable, and render his/her decision within two (2) weeks following notice of such appeal.

16.02.010: APPOINTMENTS:

~~B. Board of Adjustment: The mayor, with the advice and consent of the council shall appoint a board of adjustment, the number of members, terms of office, and other details relating to powers and duties of said board shall be the same as set forth under chapter 16.04 of this title. The city council may also fix per diem compensation for members of the board of adjustment based on necessary and reasonable expenses and meetings actually attended.~~

Planning Commission

16.03.050: DUTIES AND POWERS:

The city planning commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning as follows:

K. 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 community development director or other official responsible for the enforcement of the zoning regulations.

L. Special Exception: To hear and decide applications for approval of special exceptions to the terms of the zoning regulations. The commission shall not authorize a special exception unless specifically granted authority to do so under the terms of the zoning regulations and state law.

M. Variances: To authorize upon application 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.

N. 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.

O. Approval Of Building Permit Within Proposed Street On Official Map: 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 commission, 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 commission 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.

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

~~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. ~~Variance: 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)~~
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16.04.060: STAY OF PROCEEDINGS PENDING APPEAL:

~~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)~~

16.04.100: JUDICIAL REVIEW OF BOARD'S DECISION:

~~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. (1986 Code)~~

16.05.020: POWERS AND DUTIES OF THE DIRECTOR:

The community development director shall have the following powers and duties and may assign these powers and duties:

~~C. Act as the ex officio executive secretary to the board of adjustment and maintain a record of all action of the board for a period of not less than five (5) years from the final date of any action;~~

~~C~~D. Keep the official zoning map current;

~~D~~E. Perform research, preparation and presentation to the planning commission, citizen advisory commissions, and city council ~~and board of adjustment~~ on land use issues as needed;

~~E~~F. Meet with developers on project proposals;

~~F~~G. Receive and investigate ordinance violation complaints, contact violators and enforce the city zoning code, and issue orders to comply with the zoning code so as to uniformly, tactfully and impartially enforce city ordinances and resolve disputes and misunderstandings; and

~~G~~H. Perform other related work as needed.

18.08.100: CONDITIONAL USE:

"Conditional use" means a use which requires approval of the city council, and planning commissioner ~~board of adjustment~~ before the planning and zoning director may issue a permit therefor; generally, those uses which require individual consideration of surrounding conditions

and circumstances to carry out the intent and purpose of the zoning plan; a use for which a conditional permit is required by this title.

18.08.194: LAND USE DECISION:

"Land use decision" means any final decision of the city council, planning commission ~~board of adjustment~~, or final administrative decision of the community development director or other official responsible for the enforcement of development code regulations.

18.12.065: FINDINGS WHICH ARE A PREREQUISITE FOR PERMITS TO CONSTRUCT, RECONSTRUCT, ALTER, OR MOVE IN A DWELLING:

Before a building permit can be issued to construct, reconstruct, alter, or move in a dwelling, the planning and zoning director must have the following findings:

- C. All zoning requirements for the zone are being complied with; or variance to the zoning requirements have been granted for this lot by the planning commission ~~board of adjustment~~.
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18.20.100: DETERMINATION OF NONCONFORMING STATUS; EFFECT OF DETERMINATION:

4. If no new information is received by the planning director within fourteen (14) days after notice of a preliminary determination is mailed, the preliminary determination shall become final. The notice shall include a statement that the final determination may be appealed to the planning commission ~~board of adjustment~~ as provided in chapter 18.84.460 ~~16.04~~ of this code, and shall state the date by which the appeal must be filed.

18.20.110: APPEALS:

Any person aggrieved by a decision of the planning director, Planning Commission, City Council or other official enforcing the provisions of this chapter may appeal for relief therefrom ~~to the board of adjustment as provided in chapter 18.84.460 of this code. Any person aggrieved by a decision of the board of adjustment enforcing the provisions of this chapter may appeal to the district court as provided in chapter 16.04 of this code.~~

18.24.030: BOUNDARIES OF ZONES:

Where uncertainty exists with respect to the boundaries of various zones, the following rules shall apply:

- D. Where other uncertainty exists, the planning commission ~~board of adjustment~~ shall interpret the map.
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18.32.050: LOTS, BUILDINGS, YARDS, AND OPEN SPACES:

H. Standard Setbacks Based On Geotechnical Information:

2. ~~In lieu of title 16, chapter 16.04, "Board of Adjustment", of this code, a~~Any person adversely affected by the city council's decision administering or establishing the setbacks based on geotechnical information, may within thirty (30) days of the city council's decision, appeal that decision to the appeal authority as outlined in Utah code section 10-9a-703.

18.84.270: OFF STREET PARKING AND UNLOADING FACILITIES:

B. Change Of Use: Whenever the existing use of a structure or the existing use of land is changed to another use or another occupancy, parking and loading facilities shall be provided as required by this title, except that the planning commission ~~board of adjustment~~ may reduce this requirement in cases of hardship and practical difficulty covering the land on which the building is located.

18.84.300: RELOCATED BUILDINGS:

C. ~~Board of Adjustment~~ Planning Commission To Approve: The application shall then be submitted to the planning commission ~~board of adjustment~~ for approval. Exempt from this provision is any newly constructed building that has met all provisions of chapter 15.04 of this code including plan approval, plot plan approval, inspection procedure and all other provisions of the building code.

D. ~~Board of Adjustment~~ Planning Commission Findings: Before the planning commission ~~board of adjustment~~ may approve the application for the moving of a building it must find:

1. That the building will have no appreciable detrimental effect on the living environment and property values in the area into which the structure is to be moved;
 2. That the building is in conformity with the type and quality of buildings existing in the area into which it is proposed to be moved;
 3. That the building and the lot on which the building is to be located conforms to the requirements of this title and the building code;
 4. That its location on the lot does not in any substantial way adversely affect buildings or uses in abutting properties;
 5. That all dedications and improvements as required by the city for streets and facilities and buildings shall be provided in conformity with the standards of the city.
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18.84.360: GRANTING OF SPECIAL EXCEPTIONS, VARIANCES, NONCONFORMING USES, AND INTERPRETATION OF THE ZONING ORDINANCES:

The planning commission ~~board of adjustment~~ shall hear and decide requests for special exceptions, variances, nonconforming uses, interpretation of the zoning ordinances, and appeals for conditional use permits as specifically set forth in this section as follows:

- A. Where a zone boundary line divides a lot in single ownership at the time of the passage of the ordinance codified in this title, the planning commission ~~board of adjustment~~ may grant a use which is permitted on either portion of such lot to extend to the entire lot, but not more than one hundred feet (100') beyond the boundary line of such zone in which such use is permitted. Before such a permit therefor may be granted, however, it must be shown that the comprehensive plan of zoning will be maintained.
 - ~~B. The Board of Adjustment may consider the division of a large lot into two (2) lots where a parcel of land, at the time of the passage of the ordinance codified in this title, is at least one and three-fourths (1³/₄) times as large in area as required for one lot, provided it will not cause undue concentration of population and the characteristics of the zone in which the lot is located will be maintained.~~
 - ~~CB.~~ The ~~Board of Adjustment~~ planning commission may grant a permit to move buildings subject to standards and requirements set forth in section 18.84.300 of this chapter.
 - ~~DC.~~ The ~~Board of Adjustment~~ planning commission may permit the expansion of a nonconforming building or use thereof subject to standards and requirements set forth in chapter 18.20 of this title.
 - ~~ED.~~ The ~~Board of Adjustment~~ planning commission may permit a public utility building or other structure where it can be shown that such structure is necessary for the convenience or welfare of the public.
 - ~~FE.~~ The ~~Board of Adjustment~~ planning commission may grant other special exceptions when specifically authorized to do so under the terms of this title or as it may be amended. (Ord. 2002-05, 3-20-2002)
 - ~~EF.~~ Standards Required Before Occupancy: The building and grounds shall be brought up to the standards required of a new building before it is occupied.
 - ~~FG.~~ Bond Required: Before a permit to move a building may be granted, the applicant shall post a bond or other assurance as determined by the ~~Board of Adjustment~~ planning commission to cover costs of bringing the buildings and grounds up to standard. In the event of failure to comply with the conditions required by the ~~Board of Adjustment~~ planning commission, the city may declare the bond or other assurance forfeited.
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18.84.460: Appeals

A. Appeals to the Planning Commission. Decisions made by the Community Development Director or other official enforcing the provisions of this chapter may be appealed to the Planning Commission by filing a written notice of appeal in writing with the Planning Commission Secretary. All valid appeals shall be filed within 10 business days of the date of action and shall include payment of the required filing fees as established by City Council resolution.

1. Such notice of appeal shall set forth specifically the ground or grounds upon which such appeal is taken, and the name, address and signature of the appellant.
2. Within 10 business days after receipt of a valid appeal the Commission Secretary shall set a date for public hearing at which at which the appeal shall be considered by the Planning Commission. All appeals shall be set for the next regular Planning Commission meeting, unless insufficient time exists for public notice as established by state code.

B. Appeals to the City Council. Decisions to approve or deny projects and or appeals made by the Planning Commission, may be appealed to the City Council by filing a notice of appeal in writing in the office of the City Clerk within 10 business days following the date of action by the planning commission and shall include payment of the required filing fee as established by City Council resolution.

1. Such notice of appeal shall set forth specifically the ground or grounds upon which such appeal is taken, and the signature of the appellant.
2. Within 10 business days after receipt of an appeal the City Clerk shall set a date for public hearing at which the appeal shall be considered by the City Council. All appeals shall be set for the next regular City Council meeting, unless insufficient time exists for public notice as established by state code.

C. Stay of Proceedings Pending Appeal. 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

D. Judicial Review of City Council's Decision: Any person aggrieved by any decision of the City Council 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 final decision by the City Council.