



MEMORANDUM

TO: Planning Commission Members

FROM: Gregg Guetschow, City Manager

SUBJECT: Ordinance Amendment regarding Zoning Board of Appeals

DATE: August 28, 2014

You will find in the agenda packet an amendment to the zoning ordinance that, if adopted by the City Council, would have the City Council act as Zoning Board of Appeals. This matter has been referred to the Planning Commission by the Council for a public hearing and recommendation.

To provide you additional information regarding the rationale for this action, I quote below from my August 20 report to the City Council on this matter:

The Zoning Board of Appeals (ZBA) is established under the zoning ordinance for the purpose of hearing cases in which a property owner has been denied permission to do something as a result of the enforcement of the provisions of the zoning ordinance. In the past two years, the ZBA has met only once and that was for the purpose of acting as a building board of appeals to consider a dangerous building situation.

Michigan's Zoning Enabling Act provides for the City Council to act as a ZBA or to appoint members to a separate ZBA to hear appeals. The current structure of a separate ZBA was established in 1998. I presume that prior to that date the Council acted as ZBA.

There are currently several vacancies on the ZBA and additional terms are set to expire in early September. We have recently received an application for a variance request so it is essential that

we have a body constituted to hear the case. I have several concerns about appointing new members to the ZBA including the historical difficulty in attracting citizen interest in this body and the challenge in keeping up members' skill sets when the body meets so seldom.

My solution to these concerns is to amend the zoning ordinance to return the responsibility for hearing appeals to the City Council. I have spoken to Mayor Burch and Planning Commission chairman Lyle Robinette and both support the idea of having Council act as ZBA.

As I noted, the case load of the ZBA has dropped to zero over the last several years. Should the demand for variances increase in the future to the extent that a separate body is warranted, the zoning ordinance can be amended once again to remove the City Council from this role.

I believe this to be unlikely, however, as the Zoning Board of Appeals and staff members charged with administration of the zoning ordinance have moved away from using the ZBA as a means of improperly building flexibility into the ordinance's provisions. In the past, the ZBA considered and took actions that failed to comply with the standards for ZBA action set within the zoning ordinance. Such an approach can have the effect of creating winners and losers through unequal application of ordinance standards.

Our current approach is to address the limitations imposed by the zoning ordinance through the ordinance amendment process. (You have seen this most recently in the discussions of lot coverage and accessory building height restrictions.) Through this process, the Planning Commission evaluates the standards of the ordinance to determine whether they are fair and reasonable when applied to the majority of property owners in the community and can make adjustments that would apply to every similarly situated property.

If the Planning Commission continues to function in this way, then variances requested of the Zoning Board of Appeals will be as rare as the ordinance intends them to be.