

FACTSHEET

TITLE: **TEXT AMENDMENT NO. 12031**, requested by the Director of Planning, to amend Chapter 27.75 of the Lincoln Municipal Code relating to the Board of Zoning Appeals, to simplify and clarify the Board of Zoning Appeals process and procedures.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 05/15/13
Administrative Action: 05/15/13

STAFF RECOMMENDATION: Approval

RECOMMENDATION: Approval (6-0: Gaylor Baird, Cornelius, Corr, Lust, Scheer and Weber voting 'yes'; Hove and Sunderman absent).

FINDINGS OF FACT:

1. This proposed text amendment to the City zoning ordinance was heard by the Planning Commission in conjunction with a similar Text Amendment No. 12034 to the Lancaster County Zoning Resolution relating to the City and County Board of Zoning Appeals.
2. The purpose of this proposed text amendment is to amend, reorganize and clarify the process for filing variances and exceptions; to revise the procedure for appeals; to distinguish between the Board's appellate and original jurisdictions; and to further define the jurisdiction of the Board of Zoning Appeals.
3. The staff recommendation of approval is based upon the "Analysis" as set forth on p.2-4, concluding that the proposed changes make Chapter 27.75 more consistent with the Nebraska Revised Statutes as it relates to the Board's authority to hear appeals and variances. It also simplifies the process for filing an application for consideration by the Board of Zoning Appeals by allowing applications to be submitted directly to the Planning Department without a prior denial from the Director of Building & Safety. If approved, this amendment should save time and money for applicants, and will make Chapter 27.75 more closely mirror the intent of the Nebraska Revised Statutes. The staff presentation is found on p.5.
4. There was no testimony in opposition.
5. On May 15, 2013, the Planning Commission agreed with the staff recommendation and voted 6-0 to recommend approval (Hove and Sunderman absent).
6. On May 15, 2013, the Planning Commission also voted 6-0 to recommend approval of similar amendments to Article 19 of the Lancaster County Zoning Resolution (Text Amendment No. 12034), which is scheduled for public hearing before the Lancaster County Board of Commissioners on June 4, 2013.

FACTSHEET PREPARED BY: Jean L. Preister

DATE: May 28, 2013

REVIEWED BY: Marvin Krout, Director of Planning

DATE: May 28, 2013

REFERENCE NUMBER: FS\CC\2013\TX12031 BZA



LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for May 15, 2013 PLANNING COMMISSION MEETING

- PROJECT #:** Text Amendment No. 12031
- PROPOSAL:** Amend Chapter 27.75 relating to the Board of Zoning Appeals
- CONCLUSION:** These changes make Chapter 27.75 more consistent with State Statutes as it relates to the Board's authority to hearing appeals and variances. It also simplifies the process of getting applications to the BZA for their consideration by allowing them to be submitted directly to the Planning Department without a prior denial from the Director of Building and Safety. If approved, this amendment should save time and money for applicants, and make Chapter 27.75 more closely mirror the intent of State Statutes.

RECOMMENDATION:

Approval

ASSOCIATED APPLICATIONS:

TX#12034 - A similar text amendment to revise the Section 19 of the County Zoning Regulations as they relate to the County Board of Zoning Appeals.

ANALYSIS:

1. The Board of Zoning Appeals (BZA) is an appointed, five-member body authorized by State Statutes and granted the power to act on petitions for variances and appeals under Title 27 Zoning of Lincoln Municipal Code (LMC). The actions of the BZA are governed by Chapter 27.75 of LMC, where their jurisdiction is specifically limited to Title 27 Zoning. They may not vary subdivision regulations or other parts of LMC. Additionally, the BZA has adopted their own by-laws which establish rules for how the board functions and conducts meetings.
2. This amendment proposes two major changes to Chapter 27.75. The first affects the way that applications are brought to the BZA for their consideration. The second redefines the types of applications the BZA is authorized to hear, and makes the description of the BZA's authority more consistent with State Statutes.
3. Clarification regarding terminology is needed. The BZA has four main powers: 1 - Errors; 2 - Variances; 3 - Exceptions; and, 4 - Airport Zoning. Today, all matters considered by the BZA are considered appeals. However, to more accurately reflect State Statutes, the power relative to errors is being separated out, and the term 'appeal' will now only apply to that single power.

The remainder of the BZA's jurisdiction (variances, exceptions, and airport zoning) are now categorized as 'petitions'. Together, they are addressed under 'original jurisdiction', a term used to describe a section which covers three of the four original powers.

4. A. Changes relative to process - Currently, a decision by the Director of Building and Safety is required before an appeal can be brought before the BZA for their consideration. The decision must be in writing, and the appellant has sixty days to file an appeal to the decision. The most common form is the denial of a building permit application due to non-compliance with one or more requirements of the Zoning Ordinance. The other is an appeal to a decision of the Director of Building and Safety where it is alleged that some sort of error has been made.

Procedurally, the building permit application process includes submitting a completed building permit application, a site plan, an application fee, and any other necessary documentation. After review and typically within 10 days, the permit is either approved or denied. If denied, that serves as the basis for making application to the BZA for an appeal to the applicable provision of the Zoning Ordinance.

In many cases, applicants are aware of areas of noncompliance associated with their project, but would simply like to know whether a variance would be approved before going spending time and money applying for a building permit. The changes proposed in this process eliminate the need to submit an application to the Department of Building and Safety. Instead, an application can be submitted directly to the Planning Department without a written denial from the Director of Building and Safety. This simplifies the application process, and is more similar to other processes associated with other boards such as the Planning Commission.

B. The second set of changes makes a distinction between appeals, and petitions for variances and exceptions, and establishes a slightly modified procedural requirement for appeals. This is necessary due to the language in State Statutes which grant the BZA the following: 1 - The power to hear and decide appeals from any decision or order of the building inspector; 2 - The power to decide upon petitions for variances, and other duties as the mayor and council may assign.

In this case, those other duties include three exceptions and one additional power. The exceptions are: 1 - Reconstruct a nonconforming building; 2 - Interpret the provisions of Title 27 where street layout varies; 3 - To reduce parking requirements. The other power is relative to airport zoning as defined in Chapter 27.59.

To be more consistent with State Statutes, LMC Section 27.75.040 Jurisdiction, is now being renumbered as 27.75.020 and creates two categories of BZA jurisdiction. The first is Appellate Jurisdiction, and the second is Original Jurisdiction. Appellate jurisdiction specifies the BZA's authority to hear and decide appeals where an error is alleged, and deals with that power only.

The Original Jurisdiction covers the BZA's authority relative to variances, exceptions, and airport zoning. Such requests will be submitted as petitions.

5. On April 12, 2013, a joint meeting of the City and County Boards of Zoning Appeals was held in order to review these proposed changes with the Board members. City and County Attorney staff were on hand to review the relationship to the State Statutes and to explain difference between the appellate and original jurisdictions. Both Boards approved of the changes and felt they would provide better service for the public and more clarity for the

Board members. Following approval of these text changes, each Board will develop appropriate changes to their individual by-laws to reflect the changes in the text and to better outline procedures followed for appeals and variances.

6. These changes are being proposed for two reasons. First, staff finds little is gained by requiring applicants to submit an application for building permits, only to have it denied so they can apply to the BZA. Second, a recent appeal to the BZA regarding the approval of a building permit for the new Walmart at South 27th Street and Jamie Lane by the Director of Building and Safety highlighted the difference between appeals and petitions. The proposed amendments are intended to simplify the process, and create the proper procedures for appeals and petitions consistent with State law.

Prepared by:

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May 1, 2013

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**CITY TEXT AMENDMENT NO. 12031
AND
COUNTY TEXT AMENDMENT NO. 12034**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 15, 2013

Members present: Gaylor Baird, Cornelius, Corr, Lust, Scheer and Weber; Hove and Sunderman absent.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

Staff presentation: **Brian Will of Planning staff** stated that this application may sound like a lot, but really it is just a couple of changes. There are two boards, one for the City and one for the County. Both function pretty much alike and regulations that govern them are pretty much alike, but they are two separate boards. There have been a few concerns or issues over time that staff is trying to address today. He would characterize the changes as two things. One is procedurally relating to how an individual gets their application to the Board of Zoning Appeals, and the types of applications that are received. Today, in order for an application to get to the board, you need a denial from the Director of Building and Safety. That denial serves as the basis for applying for a variance. The first significant change is that process will be modified. You won't need a formal denial. You can apply directly to the Planning Dept. and the application will be forwarded to the Board of Zoning Appeals. Staff believes this makes better sense. The second set of changes relate to terminology. Everything that goes to the board is considered an appeal. The statutes also talk about variances for exceptions. Beyond that, there are no real changes. The exception is that for appeals, the intent for making the distinction is the nature of the two is different. There are changes that include a slightly different notice process. In the end, the changes aren't going to be noticed by the average person. He believes the process will be simpler.

Sara Hartzell of Planning staff explained that another thing that this does is align the language between the City and County Board of Zoning Appeals. It helps to have things more coordinated. There are some slight differences for a city of primary class and the county.

Cornelius is interested in the distinction between an appeal and a variance.

Tim Sieh from City Attorney explained the distinction. A variance is some type of relief that is being requested from the strict application of the zoning ordinance; height, area, etc. With regard to an appeal, you would appeal a decision of an official in the City or County. For example, an official would inspect a property and find that a use doesn't conform with the zoning of the area. A property might appeal to have their use approved and say the official was wrong.

There was no testimony in support or opposition.

TEXT AMENDMENT NO. 12031
ACTION BY PLANNING COMMISSION:

May 15, 2013

Lust moved approval, seconded by Scheer.

Corr believes it is a good idea to make the City and County similar.

Gaylor Baird stated that it is nice to see the timeline reduced, and make the process more streamlined and customer friendly.

Motion carried 6-0: Gaylor Baird, Cornelius, Corr, Lust, Scheer and Weber voting 'yes'; Hove and Sunderman absent. This is a recommendation to the City Council.

TEXT AMENDMENT NO. 12034
ACTION BY PLANNING COMMISSION:

May 15, 2013

Lust moved approval, seconded by Corr.

Lust has been very pleased by the number of times staff has come forward with proposals to make things easier for the public and this is another great example of the hard work they do to continually make things better and easier for an applicant and she appreciates it.

Gaylor Baird and Cornelius agreed .

Motion for approval carried 6-0: Gaylor Baird, Cornelius, Corr, Lust, Scheer and Weber voting 'yes'; Hove and Sunderman absent. This is a recommendation to the Lancaster County Board.