Council Communication

Department: City Legal Department Case #ZT-18-005 Applicant: Council Bluffs City Attorney's Office	Ordinance No.	City Council: 1/14/19 Planning Commission: 12/11/18

Subject/Title

CASE #ZT-18-005: Public hearing on the request of the Council Bluffs Community Development Department to amend Title 15: Zoning of the Municipal Code (Zoning Ordinance) by repealing Section 15.02.120, *Appeals*, in its entirety and replacing it with a new appeal procedure under the same code section and name.

Background

After discussion at an interdepartmental code enforcement meeting, it became evident to the Community Development Department that Chapter 15.02 *Administration and Enforcement* of the City's Municipal Code (Zoning Ordinance) lacks a comprehensive code enforcement section. Additionally, it was determined that the appeals section lacked specificity to adequately address the new enforcement section while also meeting the legal requirements of administrative appeals typical to municipal governments. Staff determined that it was best to have the Zoning Board of Adjustment remain as the governing body to hear such appeals.

In the process of drafting the proposed appeal section, Staff referenced the existing appeal process we currently have in place for decisions rendered by the building department, found in Section 13.01.204 of the Code. Procedurally, they are the same with respect to the process of appeal, but instead of calling for convening the board we plan to utilize the existing schedule of the board for efficiency purposes. One matter of significance worth pointing out here is that the zoning appeal process will contain the same "limitation of authority" for the board to render its decision. The purpose is to limit the appeal to review of the interpretation of the code made by City staff only. This limitation is designed to keep the appellant from turning an appeal into a variance request or other procedure specifically provided for elsewhere in the code. It also limits the ability of the board in this regard, also – it does not allow the board to waive any requirements of the code or otherwise add stipulations to any decision made by staff that are not in compliance with the code. The board's sole purpose is to determine, in effect, "did City staff interpret the code properly in making their decision." Lastly, it does provide for appeal to a court of competent jurisdiction as regularly provided by State of Iowa Administrative Procedure.

The proposed Section 15.02.120 *Appeals* is included as Attachment "A."

Comments

All City departments received a copy of the proposed text amendment. No comments were received from any departments.

Recommendation

The City Attorney's Office recommends approval of the following proposed text amendment:

- Amend Title 15: Zoning of the Municipal Code (Zoning Ordinance) by repealing Section 15.02.120, *Appeals,* and replacing it with the attached revised code.

Public Hearing

Speaker providing explanation:

1. Christopher Gibbons, Planning Coordinator, Community Development Department, City of Council Bluffs, 209 Pearl Street, Council Bluffs, IA 51503

Speakers against: None

Planning Commission Recommendation

The Planning Commission recommends approval of the following proposed text amendment:

- Amend Title 15: Zoning of the Municipal Code (Zoning Ordinance) by repealing Section 15.02.120, *Appeals,* and replacing it with the attached revised code.

VOTE: AYE 8 NAY 0 ABSTAIN 0 ABSENT 1 VACANT 2 Motion: Carried

Attachment(s)

Attachment A: Proposed text amendment §15.02.120 *Appeals,* of the Administration and Enforcement chapter of the City of Council Bluffs Municipal Code (Zoning Ordinance)

Prepared by: Graham C. Jura, Deputy City Attorney

~~**15.02.120 Appeals.**~~

~~A. Purpose~~

~~The zoning appeals process for review of decisions and determinations of the Zoning Administrator is intended to provide appropriate checks and balances on administrative authority.~~

~~B. Initiation~~

~~Applications for appeals may be filed by the owner of, or any person having a right of ownership in, any property in the City that is directly affected by a decision made under this Ordinance by the Zoning Administrator.~~

~~C. Authority~~

~~The Zoning Board of Adjustment shall take formal action on zoning appeals of Zoning Administrator decisions and determinations. Other duties, decisions and actions of the Zoning Administrator, which are not established by this Ordinance, cannot be appealed under this process.~~

~~D. Procedure~~

~~The Zoning Board of Adjustments shall hold a public hearing within a reasonable time and shall decide the appeal within a reasonable time. At the hearing of the appeal, any party may appear in person, or by agent or attorney. The Zoning Board of Adjustments may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination.~~

~~E. Limitations on Appeals~~

~~A decision may only be appealed if an application is filed within thirty (30) days of that decision.~~

15.02.120 Appeals.

Any person affected by a decision of the Community Development Director, or his or her designee, in the enforcement of this Ordinance may appeal said decision to the Board of Zoning Adjustment according to the procedures contained herein.

A. Scope of Appeals

An appeal may be taken to the Board of Zoning Adjustment by any person affected by any decision of the Community Development Director, or his or her designee, where it is alleged there is error in any order, requirement, decision, or determination made by any such administrative official in the enforcement of this Ordinance.

B. Filing of Appeals

The appeal shall be initiated by filing with the Community Development Department a written notice of appeal, the grounds for the appeal, and an administrative filing fee as found in the schedule of fees, within thirty (30) days of the decision rendered by the Community Development Director, or his or her designee. The Community Development Director, or his or her designee, shall promptly transmit to the Board of Zoning Adjustment all of the documents related to the decision or action being questioned.

C. Scheduling Appeal Hearing and Notice

A timely filed appeal shall be scheduled for hearing on the next agenda of the monthly meeting of the Board of Zoning Adjustment, unless such hearing would be less than seven (7) days after the timely filing of the appeal, in which case the appeal shall be scheduled for hearing on the agenda of the next Board of Zoning Adjustment meeting. Once scheduled, notice of the time and place of the hearing shall be given to each appellant by mailing a copy of such notice, postage prepaid, addressed to the appellant at his or her address as shown on the appeal.

D. Procedure for Appeal Hearing

Hearings shall be conducted in an informal manner; formal rules of evidence shall not apply. At the hearing, all parties shall have the opportunity to present evidence and cross-examine witnesses. The Board of Zoning Adjustment may establish additional written rules of procedure for the conduct of hearings and their business. The Board of Zoning Adjustment may continue the hearing to a specified time and date if it determines that additional evidence is necessary to decide the issue.

E. Conclusion of Hearing

At the conclusion of the hearing, or within ten (10) days after the hearing, the Board of Zoning Adjustment shall make written findings and either sustain, modify, or reverse the order of the Community Development Director, or his or her designee. The written findings and decision shall be mailed to the appellant, postage prepaid, at the appellant's address as shown on the appeal. The secretary of the Board of Zoning Adjustment shall maintain the written findings and decision as a public record.

F. Limitation of Authority

The Board of Zoning Adjustment shall have no authority to waive any mandatory requirements of the zoning code, or any other municipal code, as part of this appeal. The Board of Zoning Adjustment shall have the authority to hear and decide appeals of order, decision or determinations made by the Community Development Director, or his or her designee, relative to the application and interpretations of the zoning code only.

G. Review by Court

The City, or any person or persons, who have appealed to the Board of Zoning Adjustment and are aggrieved by its decision may appeal the decision to a court of competent jurisdiction pursuant to the provisions of Iowa law.