

Nolan W. Wall, AICP
Planning/Community Development Director

651.204.6027 Phone
 651.204.6100 Fax
 nolan.wall@cityvadnaisheights.com



The City of Vadnais Heights
 800 East County Road E
 Vadnais Heights, MN 55127

Memorandum:

TO: Mayor Krachmer and City Council Members

FROM: Nolan Wall, Planning/Community Development Director

DATE: January 3, 2023

SUBJECT: Board of Adjustments and Appeals

Background

State law requires all cities with local zoning authority to provide for a board of appeals and adjustments; currently, the Planning Commission serves as such [Chapter 2, Article IV, Division 2, Section 2-85(8a)]:

- (8) Serve as the board of zoning adjustment and appeals, in the following capacities:*
- a. Hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of this division.*

The Board of Adjustments and Appeals only considers adjustments/appeals from administrative actions considering the regulations within the zoning ordinance. Examples of potential appeals are zoning map boundary line dispute, permitted use interpretations, definition interpretations, or zoning permit denials.

An appellant cannot challenge any recommendation by the Planning Commission or formal decision made by the City Council concerning a zoning or land use application. Many cities designate the Planning Commission to serve in this capacity due to their work with zoning ordinance and public hearing procedures already in-place for variances, etc. However, other cities designate the City Council or at least empower their review of any action taken by the Board.

The existing standards do not include any procedures for filing, noticing, or considering an appeal. Prior to preparing any DRAFT code amendment for Planning Commission review and City Council action, staff has the following clarifying questions for discussion and direction:

1. Should the Planning Commission continue to serve as the Board of Adjustments and Appeals?
 - a. Current practice and only “action” authority given to the Planning Commission.
 - b. Many cities use the City Council, as they are considered more accountable.
 - c. Planning Commission recommendations are focused on the zoning ordinance, while the City Council’s action authority is broad.
2. What is an appropriate timeline for filing and deciding an appeal after an order/decision has been issued?
 - a. Appeal should be filed within 30-90 days.
 - b. Board actions must comply with the 60-day rule.

3. What notice requirements be included?
 - a. Zoning applications require a public hearing notice of 350' to surrounding property owners and publication 10 days prior to the date of the hearing.

4. Should decisions by the Board reviewable by the City Council (assuming current structure)?
 - a. Some communities allow City Council review and/or revision of any decision.
 - b. Is review by the City Council warranted and fair to the appellant's due process?
 - c. Decisions can be explicitly "final" and only subject to judicial review.

Staff proposed to prepare a DRAFT ordinance amendment for consideration by the Planning Commission, including a public hearing, at the January 24 meeting.

Attachments:

- LMC Zoning Guide (excerpt)

RELEVANT LINKS:

Minn. Stat. § 463.355, Subd. 4.

Minn. Stat. § 462.354, subd. 2. Minn. Stat. § 462.357, subd. 6. Minn. Stat. § 462.359.

Minn. Stat. § 462.354, subd. 2.
Minn. Stat. § 15.99.

State, by Rochester Ass'n of Neighborhoods v. City of Rochester, 268 N.W.2d 885 (Minn. 1978).

Zweber v. Credit River Twp., 882 N.W.2d 605 (Minn. 2016).

The City Council cannot delegate its authority to grant rezoning applications and interim use permits.

5. Board of zoning adjustment and appeals

State law requires all cities that have adopted or have in effect a zoning ordinance or an official map to provide, by ordinance, a board of appeals and adjustments. The council may designate itself as the board of appeals and adjustments, or appoint a separate board or the planning commission to serve the city in this capacity. If the board is a separate body, the council can establish, in its ordinance, the effect of board decisions, including if those decisions are:

- Final, subject only to judicial review.
- Appealable to the council and then subject to judicial review.
- Only advisory to the council, who then will make the final determination.

The board hears requests for variances from the zoning code and makes the determination to grant or deny the variance. In addition, the Board of Appeals and Adjustment hears requests for reconsideration of zoning applications (usually denials), where an applicant has alleged an error in the administration of the zoning ordinance. Upon a denial of a land use or zoning permit or the denial of a request to build on land identified for public use on an official zoning map, the board of appeals and adjustments may, upon appeal filed with it by the landowner, grant the permit or approval for the building if the board finds that: (a) the entire property of the appellant cannot yield a reasonable return to the owner without the permit or approval is granted, and (b) after balancing the interests of the municipality against those of the owner of the property, the grant of such permit or approval is required to further justice and equity.

The ordinance establishing the board must provide notice and time requirements for hearings before the board. The board must issue its order within a reasonable time and requests before the board must comply with the 60-Day Rule.

C. Standards for reviewing zoning applications: limits on city discretion

When adopting a zoning ordinance, cities use their legislative (law-making) authority and have discretion in choosing their language and identifying uses as permitted, prohibited, or conditional in particular districts. In exercising their legislative authority, cities' zoning decisions must be constitutional, rational, and in some way related to protecting the health, safety, and welfare of the public.