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

Memorandum:

TO: Chair Jokinen and Planning Commission Members

FROM: Nolan Wall, Planning/Community Development Director

DATE: January 24, 2023

SUBJECT: Staff Report
 Case 22-018: City Code Amendments
 Board of Adjustments and Appeals

Description of the Request

The City is proposing amendments to City Code Chapters 2 and 38, respectively, concerning procedures for the Board of Adjustments and Appeals contained in the attached DRAFT Ordinance 763.

Discussion

The City is using its legislative authority when considering action on a City Code amendment request and has broad discretion; the only limitations are that actions must be constitutional, rational, and in some way related to protecting the health, safety and general welfare of the public.

Action Timeline

There is no applicable action timeline in this case due to the request being city-initiated.

Background

State law requires all cities with local zoning authority to provide for a board of appeals and adjustments, which is currently the Planning Commission. The Board only considers adjustments/appeals from administrative actions concerning the regulations and/or procedures 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 code does not include procedures for filing, noticing, or considering an appeal. The City Council discussed the matter at the January 3 workshop and directed staff to prepare an ordinance for review by the Planning Commission (see attached minutes).

Analysis

DRAFT Ordinance 763 includes the following proposed amendments:

- References the Board's authority/administrative procedures in the Planning Commission section.
- Removes duplicative/conflicting authority of the City Council to hear zoning appeals.
- New procedures for filing, noticing, and considering appeals to the Board.

Public Hearing Notice

According to City Code Chapter 38, Article II, Section 38-35(c), concerning code amendments, a public hearing notice must be published at least ten (10) days prior to the Planning Commission meeting. The required notice was published in the January 4 edition of the Vadnais Heights Press.

Recommended Commission Action

Staff recommends the Planning Commission review the proposed amendments contained in DRAFT Ordinance 763 and make a recommendation to the City Council.

Action Requested

Staff recommends approval of the City Code amendment request contained in DRAFT Ordinance 763.

Attachment(s):

- DRAFT Ordinance 763
- 01/03/23 City Council workshop minutes (excerpt)
- LMC Zoning Guide (excerpt)
- Application
- Public Hearing Notice

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**CITY OF VADNAIS HEIGHTS
ORDINANCE NO. 763**

**AN ORDINANCE AMENDING CITY CODE CHAPTER 2, ARTICLE IV, DIVISION 2
AND CHAPTER 38, ARTICLE II CONCERNING THE PLANNING COMMISSION,
CITY COUNCIL, AND BOARD OF ADJUSTMENTS AND APPEALS**

The City Council of the City of Vadnais Heights does hereby ordain:

I.

City Code Chapter 2, Article IV, Division 2 (Planning Commission) is hereby amended to read as follows (strikethrough indicates deletions; underline indicates additions):

Sec. 2-85. - Duties and authority.

(a) The planning commission shall have the following duties and authority:

...

(8) Serve as the board of zoning adjustments and appeals, in the following capacities: accordance with section 38-40.

~~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.~~

~~b. Hear requests for variances from the requirements of this division and make recommendations to the city council.~~

~~c. Advise the council on any and all matters referred to it by the council.~~

(9) Hear requests for variances from the applicable standards of chapters 32 and 38, respectively, and make recommendations to the city council, in accordance with section 38-38.

(10) Advise the council on any and all matters referred to it by the council.

(b) All actions of the planning commission, except under the authority granted in section 38-40, shall be in the nature of recommendations to the council, and the commission shall have no final authority with reference to any matters except as the council may delegate authority to it.

II.

City Code Chapter 38, Article II (Administration and procedure) is hereby amended to read as follows (strikethrough indicates deletions; underline indicates additions):

47 **Sec. 38-33. - Power of city council.**

48 The council may, on its own motion, on request of the planning commission, or on petition of
49 the affected property owners:

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51 ...

52
53 ~~(5) Hear and decide appeals by any person affected by any alleged error in any order,~~
54 ~~requirement, decision, or determination made by any administrative officer in the enforcement~~
55 ~~of this chapter.~~

56
57 (65) Consider requests for variances from the literal provisions of this chapter.

58
59 **III.**

60
61 City Code Chapter 38, Article II (Administration and procedure) is hereby amended to read as
62 follows (strikethrough indicates deletions; underline indicates additions):

63
64 **Sec. 38-40. - Board of adjustments and appeals.**

65
66 (a) Membership. The planning commission shall serve as the board of adjustments and
67 appeals.

68 (b) Applicability. The board shall hear and decide appeals where it is alleged that there is an
69 error in any order, requirement, decision, or determination made by an administrative
70 officer in the enforcement of this chapter.

71 (c) Filing. An appeal shall be filed at any time within 60 days after the order or decision being
72 appealed on forms made available by the city, including all required materials and fees.
73 New or additional information from the appellant may be considered at the board's sole
74 discretion, if that information serves to clarify information previously considered by the
75 board or administrative officer.

76 (d) Notice of hearing. No appeal shall be considered until a hearing has been held by the board
77 with notice provided to the appellant. Where a decision impacts surrounding properties,
78 as determined by the city, notices shall be provided in accordance with section 38-38(c).

79 (e) Decision by the board of adjustments and appeals. In its deliberations on the matter, the
80 board shall consider oral or written statements from the appellant, the public, city staff, and
81 its own members. The board may approve or deny the appeal to reverse an administrative
82 action within 60 days after the appeal is filed by majority vote by resolution with findings
83 and the appellant shall be notified in writing of such action.

84 (f) Judicial appeals. Action by the planning commission acting as the board of adjustments
85 and appeals shall be the final decision by the city, subject only to judicial review.

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93 **IV.**

94 This Ordinance shall take effect and be enforced from and after its passage and publication.

95 PASSED by the City Council of the City of Vadnais Heights, Minnesota, this _____ day of
96 _____, 2023.

99 _____
100 Mike Krachmer, Mayor

101 ATTEST:

102 _____
103 Kevin Watson, City Administrator
104

DRAFT

1 asked if there is an assessment of lost tree canopy as a result of the trail and any plans for
2 replacement. City Engineer/Public Works Director Farrell said a significant amount of
3 landscaping is designated for this project, which could include replacements and mitigating any
4 losses.

5
6 Council Member Doll Kanne asked if the trail that would continue north up Edgerton Street, was
7 part of the grant application but design would be needed to discuss how far north and crosswalk
8 treatment at Edgerton and Kohler. Council Member Doll Kanne asked if there was any
9 exploration of the trail going south to Carol Drive. City Engineer/Public Works Director Farrell
10 agreed that is a good idea, but that trail direction has not been considered at this point. Kevin
11 Watson mentioned scope creep.

12

13 **BOARD OF ADJUSTMENTS AND APPEALS**

14 Planning/Community Development Director Wall explained during his time working for the
15 City, this group has never met or there is not an electronic record of this group's meetings. Six
16 neighboring communities were surveyed, Planning Commission are the liaisons for four, City
17 Council for two. For the cities that the Planning Commission acts as this board, they are not
18 making recommendations; however they are making the decision on those who appeal about a
19 zoning grievance. City Attorney Beckman and Planning/Community Development Director Wall
20 reiterated this role empowers the Planning Commission while protecting the City Council by
21 formally giving this responsibility to the Planning Commission.

22

23 Council Member Goebel is in favor of having the Planning Commission carry out this duty, as
24 does Council Member Doll Kanne and Mayor Krachmer. Planning/Community Development
25 Director Wall suggested 30-90 days to bring up a grievance and asked what would Vadnais
26 Heights like to give as a deadline as we do not currently have one. Council Member Jozwowski
27 said to meet in the middle and say 60 days. All were in agreement. Notice requirements (or the
28 lack thereof) will also be explored and what (if any) City Council review authority should/should
29 not be implemented.

30

31 **COMMUNITY PARK PAVILION UPDATE**

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:

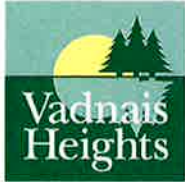
- Final, subject only to judicial review.
- Appealable to the council and then subject to judicial review.
- Only advisory to the council, who then will make the final determination.

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.



CITY CODE AMENDMENT APPLICATION

The City of Vadnais Heights
800 East County Road E • Vadnais Heights, MN 55127
Phone: 651.204.6015 • Fax: 651.204.6100
www.cityvadnaisheights.com

Applicant: City of Vadnais Heights

Address: 800 East County Road E

City: Vadnais Heights State: MN Zip: 55127

Phone: 651 _ 204 _ 6000 Cell: - - - E-mail: nolan.wall@cityvadnaisheights.com

Section of City Code requested to be amended: Ch. 2, Art. II, Div. 2 & Ch. 38, Art. II

Proposed language or text requested to be added/deleted (attach a separate sheet if necessary): _____

Board of Adjustments and Appeals procedures

Reasons(s) for amendment request: Establish procedures

How will the community's goals be furthered by the proposed amendment? _____

Clearly outlines the appeals process

Justify or explain how this proposed amendment will not be injurious to or is keeping with the spirit and intent of the City Code: Allows for appeals from administrative zoning actions



Applicant Signature

12/19/22

Date

Chairperson
Martin Jokinen

Planning Commission Members

Curt Cooper – Vice Chair
Terri Dresen
Jerry Moynagh
Joseph Stumph
Adam Schreiber – First Alternate
Steve Jorissen – Second Alternate



City of Vadnais Heights
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Phone: 651.204.6000
Fax: 651.204.6100

Kelly Jozwowski, City Council Liaison
Nolan Wall, Planning/Community Development Director
Kevin Watson, City Administrator

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Vadnais Heights Planning Commission will meet and conduct a public hearing on **Tuesday, January 24, 2023** at 7:00 p.m. at City Hall, 800 East County Road E, to consider city code amendments submitted by the City of Vadnais Heights concerning the Board of Adjustments and Appeals.

Anyone wishing to be heard in regard to this matter will be given an opportunity at this time. The application is available for public review at City Hall during normal business hours. Questions or comments should be directed to Nolan Wall, Planning and Community Development Director, at (651) 204-6027 or nolan.wall@cityvadnaisheights.com.

FOR THE PLANNING COMMISSION OF THE
CITY OF VADNAIS HEIGHTS

A handwritten signature in blue ink, appearing to read "KW".

Kevin P. Watson
City Administrator

Dated: January 4, 2023