



CITY COUNCIL AGENDA ITEM

To: Mayor Graham and City Council
Thru: Ted Shekell, Planning Director
Walter Denton, City Administrator
Date: For October 17, 2005
Subject: Ordinance No.____: An Ordinance approving Text Amendments to the Zoning Code **(1st READING)**

List of committees that have reviewed: At the CD Meeting on October 10, 2005, staff presented to the Committee the first 3 chapters of the revised zoning code for review. The Planning Commission voted unanimously on September 27, 2005, to recommend the changes with certain amendments which were discussed with the Committee.

The CD Committee voted 3-1 to recommend the three chapters as amended by the PC, with minor amendments. Most discussion focused on two aspects of the proposed zoning changes. First, the ordinance recommends creating a Hearing Officer to hear variances and appeals rather than using a Zoning Board of Appeals to do this. Second, there was considerable discussion regarding whether the vote of either the ZBA or Hearing Officer should be final, appealable only to court, or should the City Council be the final body to vote on variances. Currently, the ZBA makes the final decision, which then can be appealed only to court – the proposed ordinance is drafted to keep it that way. However, there was some interest expressed in having the Council be the final decision-making body on variances. **Please see Dan Vogel's attached "confidential – attorney client privilege" memo regarding these two options.** The ordinance can be quickly amended prior to Second Reading to have the language changed giving the Council final decision making authority on variances.

Background: Attached to this memo are a) table showing the proposed chapters in the overall zoning code revision; b) the cover ordinance adopting the three new chapters; c) the new Article 7 "Special Uses"; d) Article 8 "Amendments, Hearings, and Applications"; and e) Article 15 "Variances and Appeals".

It should be noted that the Planning Commission held a public hearing on these three chapters at its September 27 meeting and unanimously recommended all three chapters be forward to the City Council with a positive recommendation. There were a few changes recommended by the Commission and those are highlighted in the attached copies.

These three attached articles are the beginning of the City's revisions to its zoning code. They clarify the duties and processes for the interim Planning Commission and Zoning Board of Appeals as they relate to review of special uses, variances, and rezonings. The changes are important to get in place soon so that the PC and ZBA can function with clear authority in each of these three matters.

The City's Zoning Code of Ordinances were first adopted in 1970, with the ordinance being based on planning and zoning principles from the 1950's and 60's. While the ordinance has served the City well for 35 years, it has become increasingly clear it is inadequate in addressing modern development practices in the community and in accommodating the rapid pace of development in O'Fallon. That is why the ordinance needs to be revised. This memo will highlight the basic changes in each of the three new articles.

Article 7 – Special Uses

- 1) Special uses are now given to the PC for review and permitting (they used to go to PC for report then to ZBA for hearing).
- 2) The Council has a 21 day right of review over PC special use decisions (the Council had this authority over ZBA special use decisions)
- 3) Site plan submission requirements are clarified in Section 7.030.
- 4) Section 7.040 clarifies the standards of review and findings of fact for special uses
- 5) Section 7.050 outlines the rights of the applicant and the City.
- 6) Most public buildings and public facilities are authorized as permitted, by right uses in all zoning districts, however, there may be a use or facility that is currently unknown or hasn't been thought of yet, and in those cases those presently undefined uses could still be permitted in the future as special uses.
- 7) In Section 7.070, the duration of validity, process of revocation, and transferability of special use permits is outlined.

Article 8 - Amendments, Hearings, and Applications

- 1) Neighbor protest procedures are now clarified to be consistent with state law, as outlined in Section 8.040.
- 2) Clearly outlines the standards for reviewing a zoning application in Section 8.040. These are not as clear in our current code.
- 3) Applicants whose petitions are turned down may not reapply for 1 year with a similar application in Section 8.050.
- 4) Hearing and surrounding property notices are basically the same.
- 5) Pre-application conferences are required with the City prior to formal submission.
- 6) The ordinance also outlines more clearly the process of review by the City.

Article 15 – Variances and Appeals

- 1) This creates a Hearing Officer in the place of the Zoning Board of Appeals. The basic review standards generally remain as in the current code. The hearing officer will most likely be an attorney familiar with zoning and land use cases or a retired judge.
- 2) The ordinance outlines the parameters for appeals of administrative officer's decisions, variances, and use variances.
- 3) Administrative appeals and variances can only be appealed from the hearing officer to court (which is the way it is now)
- 4) Use variances are to be heard by the hearing officer but only the Council can vote on them. These are very rare – in eight years, the City has received NO applications for use variance.
- 5) It clarifies the procedures and the findings of fact necessary to for the hearing officer to make decisions.

Legal Considerations, if any: None

Budget Impact: None

Staff recommendation: Staff recommends approving the text amendments as shown.