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MEMORANDUM

TO: Kevin Murphy, City Manager
Diane Tradd, DPD Director

FROM: R. Eric Slagle, Director of Development Services

RE: **MOTION BY COUNCILOR ELLIOTT - REQ. CITY MGR. REPORT ON THE PROCEDURE FOR ADMINISTRATIVE REVIEW FOR ZONING BOARD OF APPEALS.**

This memorandum addresses the request from Councilor Elliott regarding the procedure for administrative review for the Zoning Board of Appeals.

Administrative review is a process by which additions, clarifications or changes are made to a plan or decision before one of the City's land use boards (Zoning Board of Appeals, Planning Board, and Conservation Commission) without reopening the public hearing on the matter. Such review typically involves one of the following two instances:

1. Administrative review specifically contemplated in the initial public hearing, where the outcome has already been fully vetted during the public hearing process.
2. Proposed amendments presented to the board subsequent to the public hearing where the board makes a determination that the amendment does not constitute a substantial change to the approved plan.

Review Contemplated in Decision

The most common types of administrative review used by the land use boards is the staff level administrative review. This case involves a condition in a board decision that puts the final approval of specific, discreet items on City staff. Two times these types of review are used for final landscaping plans being reviewed and approved by Planning staff, and final stormwater plans being reviewed and approved by the City Engineer. In each of these cases, applicants generally have no means of having such plans finalized at the time of the public hearings, they fall within the areas of expertise of City staff, and the boards are comfortable with the staff having final approval. These items do not usually require a subsequent appearance before the board.

A less common use of administrative review contemplated in a decision is the making of a temporary condition permanent, or the removal of a condition subject to specific standards being met. For instance, a board may have concerns about how a traffic flow plan will work for a project, and approve such plan, but require the applicant to return to the board in one year to discuss how the traffic flow is working with input from staff prior to final approval. Alternatively, the board may require some sort of traffic mitigation (such as a detail officer) that may be removed if the Superintendent of Police or the Traffic Engineer finds that it is no longer necessary. In such cases, the item will appear on the board agenda, but will not be subject to a public hearing.

In both of the types listed above, there is not an issue with the 'substantial change' standard, as the changes were specifically contemplated in the original decision.

Amendments Proposed by Applicant

The other method by which items are reviewed by a board outside of a public hearing is at the request of an applicant. In this process, an applicant would request to appear before one of the boards regarding an existing decision as an agenda item. Staff members may opine to applicants whether they believe an item is a substantial change or not, but applicants may petition the board regardless of staff opinion, as the decision is ultimately in the hands of the board. Our boards, like the City Council, have a procedure for petitions to be placed on an agenda. Once the item is in front of the board, the applicant typically makes the case that the amendment they are seeking does not constitute a substantial change. The board then makes a determination whether the proposed change needs a public hearing or not.

It is important to note that, since stamped, dated plans are referred to and incorporated into board decisions, any change to those plans, however small, requires approval of the board. So the majority of requests for board administrative review are the result of very small changes to plans, sometimes as a result of further engineering, stormwater retention, or soil issues. Typical cases of this type would be the reconfiguration of a parking lot that did not reduce the number of parking spaces, or a minor change in the location of a structure on a lot that did not require separate relief in the form of a variance. If the board determines that an amendment constitutes a substantial change, then the applicant is referred back to staff to follow the proper process for arranging another public hearing.

As with other submissions, staff provides comments to the boards on these issues, but the ultimate determination of whether administrative approval is appropriate is within the purview of the boards.

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