



CITY OF PHILADELPHIA
CITY COUNCIL
OFFICE OF THE PRESIDENT

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COUNCILMAN - 5TH DISTRICT

MEMORANDUM

To: All Members of Council

From: Darrell L. Clarke, President 

Date: September 9, 2021

Re: Charter-change Legislation: ZBA

Please find attached, Charter-change legislation related to the Zoning Board of Adjustment (the “Board”), which I intend to introduce at our next session of Council on September 16th. The legislation would: increase the number of Board members from five to seven; require Council confirmation of Board appointments; and mandate professional qualifications and community representation by requiring the Board to include an urban planner, an architect, an attorney with zoning experience, an expert in real estate finance, and at least two recognized leaders from community organizations. These reforms are offered to create a Board which is accountable to the public, and whose decisions are guided by applicable law and professionalism.

Over recent years, and with alarming frequency, the Board has flagrantly violated the law by granting zoning variances without any demonstration of hardship by the developer. The Zoning Code specifically prohibits the Board from granting variances, **except** where denial of the variance will result in an unnecessary hardship, and the applicant has demonstrated that the unnecessary hardship was not created by the applicant. Under the Code, variances are supposed to be rare; but even when granted, they must be the least modification possible and

not substantially increase congestion or injure the conforming properties or threaten the general welfare of the impacted community. In more cases than we can count, the Board has steadfastly refused to comply with this legal standard.

An even greater concern is how the Board treats impacted communities and residents. Far too often, the Board is condescending to the community and dismissive of legitimate issues raised by neighbors who are directly impacted by development. Frequently they are even denied the opportunity to speak or are forced to return on another day, after waiting multiple hours, when cases are unexpectedly rescheduled.

The consequences of the Board's decisions have been loss of affordability, loss of neighborhood character, and projects that are significantly out of scale with properties in the neighborhood that conform to the zoning code. The current board-structure has led to a Board which is unaccountable to the public and above the law. We should carefully consider the attached legislation to change it.

Thank you and please call or write if you have any questions or would like to discuss.

Attachment

RESOLUTION

Proposing an amendment to the Philadelphia Home Rule Charter to revise the composition of the Zoning Board of Adjustment, by increasing the number of appointees, providing for confirmation by Council of appointees, and specifying qualifications that appointees must possess; and providing for the submission of the amendment to the electors of Philadelphia.

WHEREAS, The City's Zoning Code is of fundamental importance to all Philadelphians. It defines the physical backbone of the City by regulating how land may be used; by determining the size, height, and type of buildings; and by stating what activities are permitted within those buildings. It profoundly affects the well-being of all who live and work here, and it shapes the growth of our communities for decades to come; and

WHEREAS, the **Zoning Board of Adjustment (ZBA)** is a critical component of the City's Zoning Code, with the authority to grant "variances" -- exceptions to the requirements of the Zoning Code -- that can permanently change the character of a neighborhood; and

WHEREAS, It is essential to ensure that the ZBA execute its authority in as professional a manner as possible, with the on-board expertise and institutional support necessary to arrive at consistent, well-reasoned decisions when considering requests for variances; and

WHEREAS, The Administration has recommended administrative measures to further support the ZBA's capacity, including, for example, mandatory training, physical improvements to ZBA facilities, and additional administrative support from City Planning Commission staff; and

WHEREAS, As part of this essential reform, Council has concluded that the composition of the ZBA itself needs to be revised by (1) increasing the size of the board from five to seven members, all of whom would continue to be appointed by the Mayor; (2) providing for Council confirmation of these appointments; and (3) requiring that the ZBA include members who possess specified areas of expertise *and* members who are recognized leaders from community organizations; and

WHEREAS, Under Section 6 of the First Class City Home Rule Act (53 P.S. Section 13106), an amendment to the Philadelphia Home Rule Charter may be proposed by a resolution of the Council of the City of Philadelphia adopted with the concurrence of two-thirds of its elected members; now therefore

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That the following amendment to the Philadelphia Home Rule Charter is hereby proposed and shall be submitted to the electors of the City on an election date designated by ordinance:

~~Strikethrough~~ indicates matter deleted by these amendments.

Italics indicates matter added by these amendments.

ARTICLE III
EXECUTIVE AND ADMINISTRATIVE BRANCH – ORGANIZATION

* * *

CHAPTER 9
DEPARTMENTAL BOARDS AND COMMISSIONS

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§ 3-911. Zoning Board of Adjustment.

The Zoning Board of Adjustment shall be composed of ~~five appointed~~ *seven* members *appointed by the Mayor with the advice and consent of a majority of all the members of City Council. All members shall have a demonstrated sensitivity to community concerns regarding development and the protection of the character of Philadelphia's neighborhoods. The members shall include an urban planner, an architect, an attorney with zoning experience, an expert in real estate finance, and at least two recognized leaders from community organizations.* The Director of Planning and Development shall be an alternate member who may replace any absent or disqualified appointed member.

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