

CITY OF KINGSTON
Comprehensive Plan
planning@kingston-ny.gov

Suzanne Cahill, Planning Director



Steven T. Noble, Mayor

April 27, 2017

Mr. James Noble, President
City of Kingston Common Council
City Hall – 420 Broadway
Kingston, New York, 12401

Re: Updates to the Zoning Ordinance per Comprehensive Plan Sub Committee

Dear Pres. Noble:

As per our meeting of April 19, 2017 of the Comprehensive Plan Zoning Sub-Committee, I am herewith submitting the DRAFT portion of the Zoning Code being recommended by the Committee to update Article VII of the Zoning Ordinance which specifically deals with the Zoning Board of Appeals. This section has been reviewed and considered to provide consistency between the Zoning Ordinance and the Section 81 of the New York State General City Law.

Please see attached document, meeting notes and drafted Committee report. If there are any questions do not hesitate to contact our office.

Sincerely,


Suzanne Cahill
Planning Director

Cc: S. Noble, Mayor
D. Gartenstein, Assist. Corp. Counsel
Ald. L. Eckert, Chair Laws and Rules
D. Shuster, Shuster Associates

MINUTES
Zoning Sub-Committee
City of Kingston
April 19, 2017

Present: Dan Shuster, James Noble, Sue Cahill, Kyla Haber, Hayes Clement, T. Argulewicz, Lee Molyneaux, Wayne Platte, Pat Murphy, Joe Safford, Julie Smith, Dan Gartenstein, Bernie Matthews, Cassandra Burke, Mark Grunblatte, Clark Richters (video), Tanya Garment

A. Discussion on proposed combination of Landmarks Preservation and Heritage Area Commission and reorganization and clarification of functions and responsibilities.

- A memo was circulated to the committee prior to the meeting titled "Combined Historic Preservation/Landmarks Commission" dated April 10, 2017. The committee agrees that combination of the commissions is a positive change. D. Shuster explained that the number of members on the committee is proposed to be 9 with 3 alternates. Committee members felt that the new commission should be required to follow the same requirements as the Planning and Zoning Boards which include 4 training hours per year and attendance at a minimum number of meetings. H. Clement asked if S. Cahill had spoken to the Department of State to confirm that there were no issues in combining the Boards. This was already confirmed with the State Office of Parks, Recreation, and Historic Preservation. S. Cahill said that she did speak with DOS and that there were no issues. M. Grunblatt added that if the Boards are combined, the Certified Local Government requirements would still apply.
- Discussion took place on whether there should be an appealing body to deal with appeals of the new HLPC/HAC commission. D. Shuster said that the NYS Model law includes an appeal to the local governing body rather than an Article 78. M. Grunblatt and H. Clement felt that there should not be an appealing body and that the code should remain with the only appeal being an Article 78. They felt that the only way to appeal a Planning Board and Zoning Board decision would be an Article 78 and that this commission should not be different. D. Gartenstein said that he would have an issue defending decisions in an Article 78 proceeding that was allowed under building code and the zoning code but that the HLPC/HAC voted against. He felt that there should be an inclusion of an appeal and that the appeal should be to the Mayor. Members of the committee felt that it is important for the Board to remain unpolitical and that if the Mayor were the appeal route, everyone who received an unfavorable decision would go to him to get it overturned. It was suggested that the appeal board be a combination of members of the Planning, Zoning, and the new HLPC/HAC commission. It was brought up that the HLPC/HAC member would have to recuse themselves because they would have been part of the decision. T. Argulewicz said that he would be concerned with a combination board because members of Zoning and Planning might not have expertise in historic preservation. It was ultimately decided that an appeals board should be included but that the Mayor should not be the sole person.

- B. Further discussion of options for affordable housing regulations
1. Elaborate on Specific Intent of Regs
 2. More options to meet affordable housing goals

- a. Require payment in lieu for 5-10 unit developments – D. Shuster asked if the group that there should be a provision for payment before a developer hit the 10 unit threshold. H. Clement felt that the threshold should stay to 10 units. D. Shuster said that he offered this as an option because others may feel that a developer would stop at 9 units and not build the 10th.
- b. Increase percentage of units eligible for payment in lieu – D. Shuster said that K. Haber had emailed about this after the last meeting. The current language allows someone to offer payment in lieu of 25% of the units. He suggested that this could be raised to 50%. K. Haber also asked how these percentage numbers would work when a person only had 10 units, 1 of which was affordable, the payment of lieu would only be for a ¼ of the unit. T. Argulewicz suggested a table (i.e. 10-15 units requires x number of affordable units with x% of a buyout, 16-20 units requires....). C. Burke suggested raising the required percentage to 20% of the units saying that this could help create affordable housing and could also make the percentages work better.
- c. Allow for construction of units off site to satisfy requirements for affordable housing – the committee agreed that this would be difficult to administer and keep track of and that it could create a situation where affordable units were not built in equal geographic areas. It was decided not to include this provision.
- d. Allow a combination of techniques to satisfy the requirement.

C. Discussion of comments re: environmental and natural resource regs. – this agenda item was not discussed.

D. Discussion of proposed “zoning primer” to be completed after zoning amendments are completed – D. Shuster explained that this would be a less detailed, easy to understand handout with photos and sketches to **highlight** the requirements.

E. Set date for meeting to afford interest groups to speak – Sue will look at the municipal calendar and send out a poll to pick a date.

F. Referral of the updated Section for the Zoning Board of Appeals to the Common Council based on requirements of General City Law. This update has been discussed and it was decided that the current version is important enough to be referred at this time. The Committee agreed and voted unanimously to forward as a separate document.

G. Question/Answer – T. Garment asked if the zoning code would continue to change after adoption. She feels that the code should be a form based code. She reference the code adopted in Buffalo. D. Shuster said that the only place where form based code is being proposed is in midtown. T. Garment feels that this is not a true form based code and that it should be expanded. She does not feel that the zoning code is changing enough from the current version. T. Argulewicz said that he feels that a lot of significant changes have been made.

Adjourn.

ARTICLE VII
Board of Appeals

§405-53. Purpose.

A Zoning Board of Appeals shall be maintained and operate in accordance with Article 5-A of the New York State General City Law, Sections 81, 81-a, and 81-b. The Zoning Board of Appeals shall have all of the authority, jurisdiction and duties granted to such Board by Sections 81, 81-a, 81-b and any other applicable State law, and shall fulfill its duties in accordance with those grants of authority and in accordance this Zoning Law.

§405-53.1. Establishment and Membership.

Pursuant to Section 81 of the New York State General City Law there is hereby established a Zoning Board of Appeals consisting of five (5) members appointed by the Mayor. The members of the Board serving at the time this chapter is passed shall continue in office as members of the Board hereby established.

- A. The Mayor shall choose two (2) of these members to serve one-year terms; two (2) of these members to serve two-year terms; and one (1) member to serve three-year term.
- B. The Mayor shall designate one of the Zoning Board of Appeals members as chairperson to preside at all meetings and hearings and to fulfill the authorized duties of that office. In the absence of the chairperson, the Zoning Board of Appeals may designate another member of the Zoning Board of Appeals to serve as acting chairperson. All meetings of the Zoning Board of Appeals shall be held at call of the chairperson and at such time as the Zoning Board of Appeals may determine. Such chairperson, or in his or her absence, the acting chairperson, may

administer oaths and compel the attendance of witnesses.

C. Pursuant to Section 81(11)(a) of the New York General City Law, alternate Zoning Board of Appeals member positions for the City of Kingston Zoning Board of Appeals are hereby established for use when a regular member cannot participate due to a conflict of interest. Under New York Municipal Home Rule Law, alternate Zoning Board of Appeals members may also serve in place of a regular member who is absent. Alternate members shall be appointed by the Mayor.

(1) The Mayor may appoint up to three (3) alternate Zoning Board of Appeals members.

(a) The first appointment shall be for a period of three years.

(b) The second appointment shall be for a period of two years.

(c) The third appointment shall be for a period of one year.

(d) Thereafter, all appointments shall be for a period of three years.

(2) The Chairperson may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board, or by absence. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Zoning Board of Appeals. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.

(3) All provisions relating to Zoning Board of Appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, compatibility of office and service of other boards, shall also apply to alternate members.

D. No person who is a member of the Common Council shall be eligible for membership on the Zoning Board of Appeals.

§405-53.2. Terms of members now in office.

Members now holding office for terms which do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the Board.

§405-53.3. Training and attendance requirements.

- A. Each member of the Zoning Board of Appeals and each Alternate Member shall complete a minimum of four (4) hours of training each year, designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four (4) hours in any one (1) year may be carried over into succeeding years in order to meet this requirement. Such training shall be approved by the Common Council and may include, but is not limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to electronic media, video, distance learning and traditional classroom training.
- B. To be eligible for reappointment, a member or alternate member must have completed the training approved by the city.
- C. The training requirement may be waived or modified by resolution of the Common Council, when, in the Council's judgment, it is in the best interest of the City to do so.
- D. No decision shall be voided or declared invalid because of a failure to comply with this requirement.

§405-53.4 Vacancies.

Members of the Zoning Board of Appeals shall continue to serve until a successor is appointed. In the event a vacancy occurs, other than by the expiration of a term, the Mayor shall appoint a new member for the remainder of the unexpired term.

§405-53.5. Removal of Members.

The Mayor shall have the power to remove, after public hearing, any member or alternate member of the Zoning Board of Appeals for cause. Cause for removal of a member or alternate member may include one of more the following:

- A. Failure to complete mandatory training requirement;
- B. Failure to attend a minimum of ten meeting during the course of one calendar year.

§405-54. Zoning Board of Appeals Procedure

- A. Meeting, minutes, records. All Zoning Board of Appeals meetings shall be open to the public except for records exempted from disclosure under Article 7 of the New York State Public Officers Law (Freedom of Information Law) or documents which are protected by attorney-client privilege. The Zoning Board of Appeals shall keep the minutes of its proceedings, showing the vote of each member upon every question, including those absent and those abstained, indicating such fact, and shall also keep records of its examinations and other official actions.
- B. Quorum. A quorum shall be established by a simple majority of all members of the Zoning Board of Appeals. The presence of three (3) members of the Zoning Board of Appeals shall constitute a quorum. The concurring vote of three members shall be required to carry out any action of the Zoning Board of Appeals, except as may be statutorily required.

- C. Filing Requirement. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision, or determination of the Zoning Board of Appeals shall be filed in the office of the city clerk within five (5) business days and shall be a public record.
- D. Assistance to the Zoning Board of Appeals. The Zoning Board of Appeals shall have the authority to call upon any department, agency or employee of the City of Kingston for such assistance as shall be deemed necessary and as shall be authorized by the Common Council. Such department, agency, or employee may be reimbursed for any expenses incurred as a result of such assistance.
- E. Hearing appeals. Unless otherwise provided in this Zoning Law, the jurisdiction of the Zoning Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination, made by the administrative official charged with the enforcement of any ordinance or local law. For the purposes of this law, the administrative official charged with enforcement shall include the Zoning Enforcement Officer, the Building Inspector and/or the Code Enforcement Officer as applicable pursuant to the provisions of this law and those officers shall be referred collectively in this Article of Law as "Enforcement Officer." Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the City of Kingston. The Zoning Board of Appeals shall have the power, upon appeal from a decision or determination of the Enforcement Officer, to grant use and area variances.
- F. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Enforcement Officer certifies to the Zoning Board of Appeals that, by reason of facts stated in the certificate, in his or her opinion, a stay would cause imminent peril to life or property. In such case, the proceedings shall not be stayed unless a restraining order is issued by the Ulster

County Supreme Court or the Zoning Board of Appeals, issued on notice to the Enforcement Officer and on due cause being shown.

G. Filing of administrative decision and time of appeal.

- (1) Each order, requirement, decision, interpretation or determination of the Enforcement Officer charged with the enforcement of the Zoning Law shall be filed in the office of such Enforcement Officer within five (5) business days from the day it is rendered and shall be public record.
- (2) All appeals must be taken within sixty (60) days after filing of any order, requirement, decision, interpretation or determination of the Enforcement Officer by filing with the Enforcement Officer and with the Zoning Board of Appeals a notice of appeal. The notice of appeal shall:
 - (a) specify the property involved;
 - (b) specify the grounds for such appeal;
 - (c) specify the relief sought;
 - (d) identify the specific section of the Zoning Law or other code or law involved.
 - (e) describe precisely and in detail either the interpretation claimed or the variance or other relief that is sought; and
 - (f) state the grounds upon which it is claimed the relief should be granted.
- (3) The Enforcement Officer from whom the appeal is taken shall immediately transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
- (4) The applicant is responsible for any filing fees at the time of the filing of the appeal in an amount in accordance with the fee schedule, which may be updated from time to time.

H. Public Hearing. The Zoning Board of Appeals shall fix a reasonable time for hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the City of Kingston at least five (5) days prior to the date of the hearing. The cost of sending or publishing

the notice shall be borne by the appealing party and shall be paid to the Zoning Board of Appeals before the public hearing occurs. Any party may appear in person, or by agent or attorney at the hearing.

- (1) The Zoning Board of Appeals shall give notice to the Ulster County Planning Board as required by section 239-m of the New York State General Municipal Law. Such notice shall be in writing sent at least five (5) days prior to such public hearing.
- (2) If the land affected by the appeal lies within five hundred (500) feet of the boundary of any other municipality, the Clerk of the Zoning Board of Appeals shall also submit at least five (5) days prior to the public hearing to the municipal clerk of such other municipality or municipalities a copy of the notice of the substance of every appeal, together with a copy of the official notice of such public hearing.
- (3) In any application or appeal for a variance, the Clerk of the Zoning Board of Appeals shall provide written notice of the public hearing, along with the substance of the variance appeal or application, to: the owners of all property abutting, or directly opposite, that of the property affected by the appeal; and to all other owners of property within one hundred (100) feet of the property which is subject of the appeal. Such notice shall be provided by certified mail at least five (5) days prior to the date of the hearing.

I. Compliance with the State Environmental Quality Review Act. The Zoning Board of Appeals shall comply with the provisions of the New York State Environmental Quality Review Act ("SEQRA") under Article 8 of the Environmental Conservation Law and its implementing regulations.

J. Time to Render Decision. The Zoning Board of Appeals shall make its decision on the appeal within sixty-two (62) days after the close of the public hearing. The time in which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Zoning Board of Appeals.

K. Voting Requirements.

- (1) Decision of the Board. Except as in the case of a Rehearing as set forth in §405-55.1 of this Law, every motion or resolution of the Zoning Board of Appeals shall require for its adoption the affirmative vote of a majority of all the members of the Zoning Board of Appeals as fully constituted regardless of vacancies or absences. Where an action is subject to referral to the County Planning Board , the voting provisions of Section 239-m of the New York State General Municipal Law shall apply.

- (2) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the Zoning Board of Appeals is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the Enforcement Officer within the time allowed under §405- ____ of this Law, the appeal is denied. The Zoning Board of Appeals may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed being subject to the rehearing process, as set forth in §405-55.1 of this Law.

L. Filing of Decision. The decision shall be filed in the office of the city clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

§405-55 Powers and duties.

The Zoning Board of Appeals shall have all the powers and duties prescribed by Section 81-b of Article 5-A of the New York State General City Law and by this chapter, which are more particularly specified as follows:

A. Orders, requirements, decisions, interpretations and determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its

opinion ought to have been made in the matter by the Enforcement Officer. To that end, the Zoning Board of Appeals shall have all the powers of the Enforcement Officer from whose order, requirement, decision, interpretation or determination the appeal is taken.

B. Use Variances. The Zoning Board of Appeals, upon appeal from the decision or determination of the Enforcement Officer shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by the terms of this chapter.

(1) No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary, hardship the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under this Zoning Law for the particular district where the property is located:

- (a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
- (b) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.
- (c) The requested use variance, if granted will not alter the essential character of the neighborhood; and
- (d) The alleged hardship has not been self-created.

(2) The Zoning Board of Appeals, in granting the use variance, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

C. Area Variances. The Zoning Board of Appeals, upon appeal from the decision or determination of the Enforcement Officer, shall have the power to grant area variances.

- (1) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Zoning Board of Appeals shall also consider:
 - (a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - (b) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
 - (c) Whether the requested area variance is substantial;
 - (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
and
 - (e) Whether the alleged difficulty was self-created. This consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- (2) The Zoning Board of Appeals, in the granting of the area variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (3) The Zoning Board of Appeals shall, in granting both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Zoning Law and Comprehensive Plan for the City of Kingston, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

§405-55.1 Rehearing.

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination not previously reheard may be made by any member of the Zoning Board of Appeals. A unanimous vote of all members of the Zoning Board of Appeals then-present at the meeting is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original public hearing. Upon such rehearing, the Zoning Board of Appeals may reverse, modify or annul its original order, decision or determination. The vote must be unanimous of all the members of the Zoning Board of Appeals that are present at the meeting, provided the Zoning Board of Appeals finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

§405-55.2 Relief from Decisions.

Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals or any officer, department, board or bureau of this City may apply to the Ulster County Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision of the Zoning Board of Appeals in the office of the city clerk.

§405-55.3 Strict Construction.

All provisions of this Article pertaining to the Zoning Board of Appeals shall be strictly construed. The Zoning Board of Appeals shall act in strict conformity with all provisions of law and of this Article and in strict compliance with all limitations contained therein, provided however, that if the procedural requirements set forth in this Article have been substantially observed, no applicant or appellant shall be deemed deprived of the right of application or appeal.

§405-55.4 Other Provisions of General City Law Section 81.

All other provisions of Section 81-a of the New York State General City Law with regard to Zoning Board of Appeals procedures, not set forth herein, are incorporated herein by reference and shall apply to the Zoning Board of Appeals.

THE CITY OF KINGSTON COMMON COUNCIL

**LAWS & RULES
COMMITTEE REPORT**

DEPARTMENT PLANNING DATE 4/27/17

Description _____

- Review of change to zoning Ordinance for ZBA per recommendation of Zoning Sub-Committee. 4-19-17
- Set public hearing for June Mtg (6-20-17?)
- SEQRA - Neg Dec. - Type II §17.5 (c) (20) E(27)

Signature _____

Motion by _____

Seconded by _____

Action Required: _____

SEQRA Decision:
 Type I Action _____
 Type II Action _____
 Unlisted Action _____

Negative Declaration of Environmental Significance: _____

Conditioned Negative Declaration: _____

Seek Lead Agency Status: _____

Positive Declaration of Environmental Significance: _____

<u>Committee Vote</u>	<u>YES</u>	<u>NO</u>
Lynn Eckert, Chairman		
Reynolds Scott-Childress, Ward 3		
Bill Carey, Ward 5		
Maryann Mills, Ward 7		
Deborah Brown, Ward 9		