

FROM	NAME & TITLE	CHRIS RYER, DIRECTOR 	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #20-0522 / BOARD OF MUNICIPAL AND ZONING APPEALS – REPEAL OF “PHYSICALLY PRESENT” REQUIREMENTS		

DATE:

TO

The Honorable President and
 Members of the City Council
 City Hall, Room 400
 100 North Holliday Street

May 7, 2020

At its regular meeting of May 7, 2020, the Planning Commission considered City Council Bill #20-0522, for the purpose of repealing certain provisions of the Zoning Code regarding the Board of Municipal and Zoning Appeals that require members of the Board to be “physically present” during a hearing and for voting.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended amendment and approval of City Council Bill #20-0522 and adopted the following resolution nine members being present (five in favor and four opposed):

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, and recommends that City Council Bill #20-0522 be amended and passed by the City Council.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

CR/ewt

attachment

- cc: Mr. Nicholas Blendy, Mayor’s Office
 Mr. Matthew Stegman, Mayor’s Office
 Ms. Nina Themelis, Mayor’s Office
 The Honorable Edward Reisinger, Council Rep. to Planning Commission
 Mr. Colin Tarbert, BDC
 Mr. Derek Baumgardner, BMZA
 Mr. Geoffrey Veale, Zoning Administration
 Ms. Stephanie Murdock, DHCD
 Ms. Elena DiPietro, Law Dept.
 Mr. Francis Burnszynski, PABC
 Mr. Liam Davis, DOT
 Ms. Natawna Austin, Council Services
 Mr. Dominic McAlily, Council Services



Bernard C. "Jack" Young
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



Chris Ryer
Director

May 7, 2020

REQUEST: City Council Bill #20-0522/ Board of Municipal and Zoning Appeals – Repeal of “Physically Present” Requirements:

For the purpose of repealing certain provisions of the Zoning Code regarding the Board of Municipal and Zoning Appeals that require members of the Board to be “physically present” during a hearing and for voting; and providing for a special effective date.

RECOMMENDATION: Amendment and Approval

STAFF: Eric Tiso

INTRODUCED BY: Councilmember Schleifer, President Scott, Councilmembers Henry, Cohen, Burnett, and Costello

HISTORY

- Ordinance #11-574, dated December 5, 2011, amended the prior Zoning Code to affect several requirements related to the Board of Municipal and Zoning Appeals (BMZA). Requirements enacted from this amendment were carried forward into the present Zoning Code that is today adopted as Article 32 – *Zoning*.

ANALYSIS

Background: Ord. #11-574 made changes to the prior zoning code which included extending the duration of required posting on a property from 10 to 21 days, requiring additional information on the posting sign, requiring certain meetings to be held after 5pm, and most importantly it required that Board members be physically present to participate in a hearing or to vote on an appeal. Of the three main changes brought by that bill, namely evening meetings, posting duration, and members being required to be physically present, staff notes the following results over the intervening years: The requirements for evening hearings have been removed, as they proved impractical for agency implementation, and they were unpopular with the public for several reasons. The longer posting duration has indeed slowed and lengthened the time required for an appeal to be resolved. Finally, the requirement for members to be physically present hasn’t materially improved the process, since Board members are normally physically present, but in any case, the BMZA’s comment letter of November 23, 2011 indicated that there was only one case in particular that triggered inclusion of that “physically present” requirement, which wasn’t actually legally necessary as the Board’s actions in that case were determined by the Court to comply with open meetings requirements.

Effects of the bill: This bill will remove the requirement for the members of the BMZA to physically present in order to participate in a hearing and to deliberate and vote, by deleting §3-202, paras. (j) and (m) in their entirety. We note that the BMZA is the only agency that has this in-person requirement.

These changes to the Zoning Code are desirable, in that they will allow for more flexibility in the BMZA's operations. That form of flexibility has proven to be necessary during the ongoing COVID-19 epidemic, where continuity of government operations is important. Lacking this authority or any other alternative, one hearing in March has been postponed which caused needless delay in resolving all of those cases, and two expected April hearings were cancelled. The filing of new cases was also suspended until a solution could be found.

The BMZA is capable of adopting rules that govern its own operations, and those rules may be changed from time to time as needed, without requiring the time and cost of a legislative amendment. The five BMZA members routinely appear in person, which meets the intent behind the original legislative mandate. In certain cases, it may actually be a benefit to provide virtual participation options. Given that there are only five members appointed to the BMZA, in the case where two members are not available (leaving only three), a unanimous vote is required for a case to be approved. This typically results in most of any given docket requesting postponements until more members are available. If they had the option of allowing for remote participation, some of those postponements might be avoided where a Board member might have the time available to serve, but is required to be physically elsewhere due to other obligations. This option would allow our Government to be more agile and make better use of public time and effort.

Staff notes that Section 3 of the bill provides a sunset date that will undo this helpful amendment on August 31, 2020. We see no benefit to providing such a short duration, and we therefore recommend that the bill be adopted with one amendment - that Section 3 be struck from the bill.

Notification: Notice of this bill has been sent to over 17,800 unique subscribers of the GovDelivery system (approximately 96% delivery rate of the 18,552 e-mail addresses).



Chris Ryer
Director