



Board of Adjustment Modernization

Phase 2 – Charter Amendment

October - November '22 Outreach Summary



Zoning Code Then

Zoning Code
When BOA
Was
Created
(1923, about
15 pages)

Height,
Setbacks, Lot
Coverage only

Permitted Uses

Zoning Code Now

Neigh Contexts

Building Forms

Alternative
Standards

Housing
Incentives
(coming soon)

The
Denver
Zoning
Code
(2022, about
1,500 pages)

Modernized
Community
Objectives

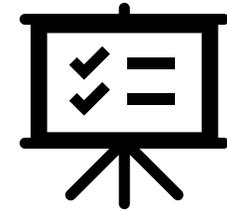
Expanded
State/Federal
Regulation



BOA Modernization in Two Phases

Phase 1: Re-establish Board Structure **Completed Feb 2022**

Phase 2: Propose Removal from Charter (leaving overlapping detailed ordinance in place) & Re-examine Board Functions for Possible Ordinance Changes **Here Today to Provide Update**



Phase 1 Ordinance Adopted: Board Structure Only



Professional
Qualifications



Training Required



Appointments Split



Minor Cleanups

A new, diverse Board was seated in June, has completed most phases of required training, and has been hearing cases.

But they are still hearing variances under the original “hardship” standard established in 1923.



Phase 2 Steps

1. Refresh and expand Peer City Best Practice research (CPD)
2. Analyze BOA case data and trends from recent years (CPD)
3. Building off feedback gathered during Phase I, survey BOA Stakeholders on current BOA system vs. alternative systems (CPD)
4. Confirm whether recommended modernizations are allowed under current charter – Answer: NO (CPD, Council Sponsors, Legal)
5. Charter Amendment that paves the way for modernization via code/ordinance (Council Sponsors & Legal in consultation with CPD)
6. Develop Draft Text Amendment to transparently preview what modernization will look like if made possible by Charter Change (CPD)
7. If Charter amendment adopted, vote on modernization ordinance (CPD)



Charter Extraordinarily Detailed (But Duplicated In Zoning Code)

Charter § 3.2.9 - Zoning

Sections (H) – (I), (K)

- Creates the Board of Adjustment
- Dictates precise size of five members
- Sets rigid 5-year terms with antiquated standards for removal only by “public hearing”
- Sets Board procedures

Section (J)

- Gives the BOA the power to hear appeals, decide variances and special exceptions
- Sets a super-majority vote requirement
- Establishes this standard for variances:
”where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship...”

(L)-(O)

- Governs case procedures



Charter Change Approach

Require that Council Provide for by Ordinance:

- Appeals of errors
- Variances to code
- Procedures and criteria

Remove:

- Requirement that BOA perform those functions*
- Specifics governing the BOA
- Specific “hardship” criteria for variance

* While the plan is to **keep the BOA** in ordinance, this change makes it possible to modify structure or roles in the future as the city evolves.



Denver Precedent:

- Denver Zoning Code all other rules/regs
- Council power to hire consultants
- Citizen Oversight Board

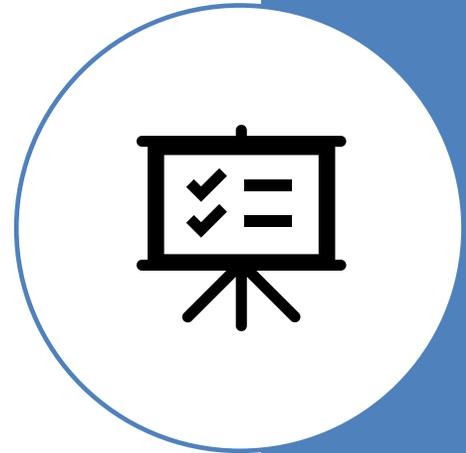
Elsewhere:

- Kansas City, MO
- Philadelphia, PA
- Seattle, WA

Simplifying Charter & Updating Code

Allows:

- ❑ Common sense changes like length of BOA terms, staggering of expirations etc.
- ❑ Expanding upon 100 year old “hardship” standard to allow consideration of reasonable requests that promote preservation of existing buildings, sustainability, affordability or other city-adopted plans/values
- ❑ Greater efficiency by managing most common, non-controversial minor requests as administrative while prioritizing BOA review for complex, more nuanced or larger variances



Text Amendments In Development: Administrative Adjustments (AA) - by CPD Staff

- **Allow administrative (staff) approval of more types of exceptions**
 - Exceptions for zone lot amendments where no physical changes to an existing structure are proposed
 - Exceptions for siting necessary utility infrastructure (e.g., Xcel distribution/control equipment, EV chargers)
 - All exceptions to comply with federal law (RLUIPA/FHA and disability-based requests)
 - Exceptions when a project is providing qualified affordable housing or preserving/reusing an existing structure (e.g., adaptive reuse)
 - Exceptions when Landmark Preservation Commission makes special findings in support of zoning exception to maintain historic character
- **Modify approval criteria for certain AA requests**
 - Remove reference to variance approval criteria – create tailored approval criteria for specific types of adjustments wherever possible
 - Increase how much of an adjustment is allowed in cases where variances are typically granted – e.g., increase % amount of certain setback standard adjustments from current level



Text Amendments In Development: Variances – by the Board of Adjustment

- Modify general review/approval criteria to allow consideration of “reasonableness” in making final decision, assuming no adverse impacts on neighbors
- Create tailored approval criteria when an exception results in preservation of existing structures or provision of qualified affordable housing
- Keep “traditional” variance based on unique physical circumstances or characteristics of an existing lot or building
- Allow variances when BOA finds the city issued a zoning permit in error and the applicant has substantially relied to their detriment on the error
- Allow variances for minor zoning violations created during construction activities, assuming no adverse impact on neighbors



Website for Text Amendment

[Text Amendments to the Zoning Code - City and County of Denver \(denvergov.org\)](#)

(then scroll down until you see "Modernizing Zoning Variances")

*At the bottom of the section is link to background report or go directly to:

[Modernizing Zoning Variances Background Report \(denvergov.org\)](#)



Tentative Schedule on Charter Amendment

Outreach

Emails to stakeholders now-October 31

Scheduled for INC ZAP on November 19

Council

11/29 = LUTI

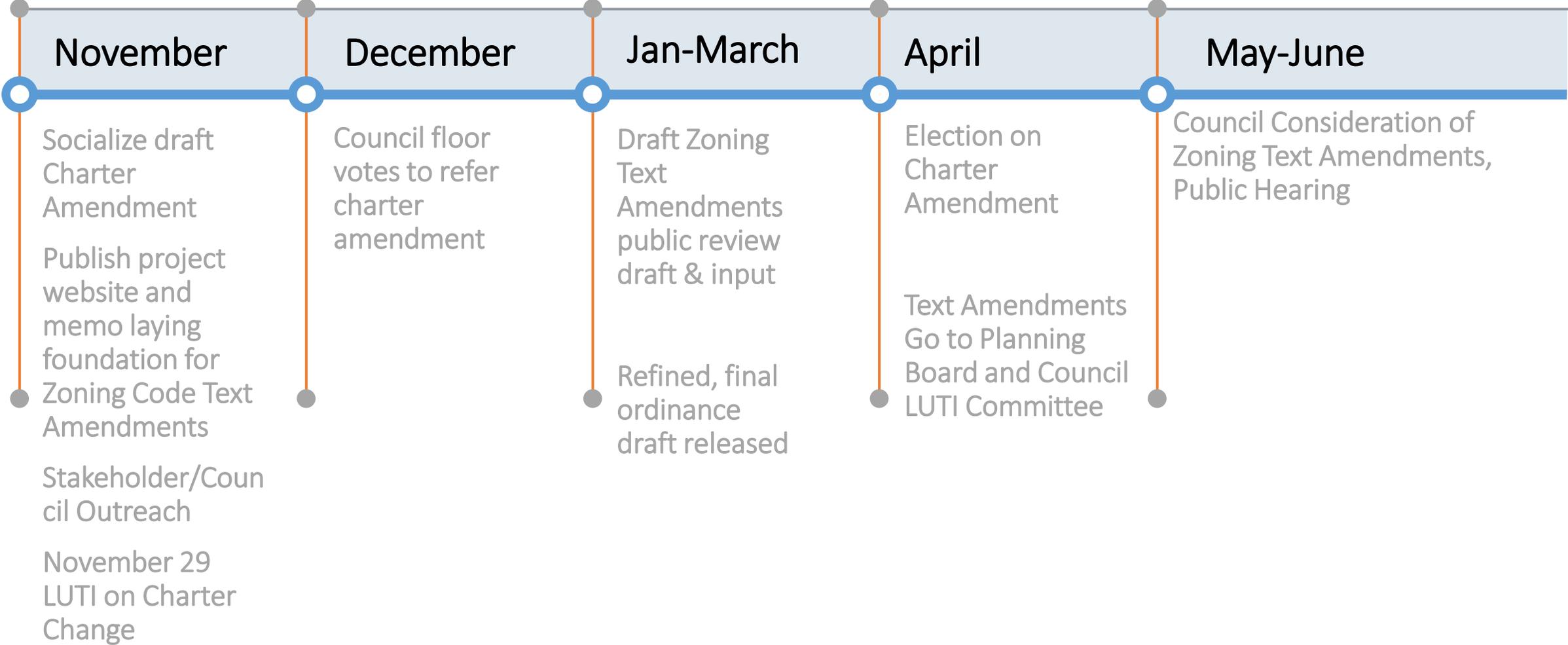
12/06 = Mayor-Council

12/12 = City Council First Reading

12/19 = City Council Second Reading/Vote



Phase 2 Combined Timeline for City Charter + DZC Changes





Appendix



Board of Adjustment Charter Provisions and the Denver Zoning Code

Charter Provision	Addressed in DZC	Differences or Future Changes?
3.2.9 (H) Board of Adjustment; creation by Council.	12.2.6.2 Creation; Alternates; Required Training	Updated in February 2022 (Ph. 1) /no future change proposed
3.2.9 (I) Board of adjustment; appointments.	12.2.6.2 Creation; Alternates; Required Training	Updated in February 2022 (Ph. 1) /no future change proposed
3.2.9 (J) Board of Adjustment; powers.	12.2.6.1 Authority for Final Action 12.2.6.9 Limitations on Powers	No difference/no future change proposed
3.2.9 (K) Board of Adjustment; procedures.	12.2.6.4 Rules for Proceedings Before Board	No difference/no future change proposed
3.2.9 (L) Board of Adjustment; appeals to Board.	12.4.8 Appeal of Administrative Decision	DZC specifies that appeals are limited to decisions or determinations made by officials <i>in CPD</i> , rather than the full municipality.
3.2.9 (M) Board of Adjustment; effect of appeal.	12.4.8.1.C Effect of Appeal – Stay of Enforcement Proceedings	Difference: Instead of ‘all proceedings,’ this provision focuses on appeals of cease-and-desist enforcement orders. Future proposed change: The DZC text amendments will propose moving this provision into Division 12.11 (Enforcement & Penalties) and adding a new provision that an appeal stays all proceedings (not just enforcement) with an exception for emergencies.
3.2.9 (N) – Notice and hearing of appeals	Variance: 12.4.7.4.C. Public Hearing and Decision by Board of Adjustment Appeal of Administrative Decision: 12.4.8.1.E. Public Hearing and Decision by Board of Adjustment Zoning Permit with Special Exception Review: 12.4.9.2.D Public Notice Requirements	Difference: DZC provides reference to Board of Adjustment’s rules in each procedure
3.2.9 (O) – Appeals to Court	12.2.6.10 Appeals to District Court	Difference: DZC discussion leaves out specifics about what would be required by the court in an appeal (what materials must be transmitted, time limits, possible penalties for an appeal), which are currently in charter.

History of the Board of Adjustment

Denver Charter

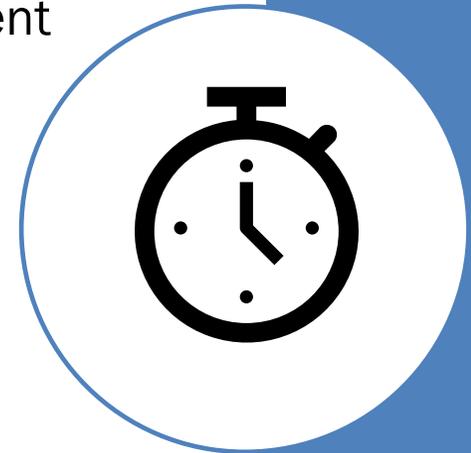
- Based on the 1924 Standard State Zoning Enabling Act
- Created at the exact time our first zoning code was adopted
- Only CO city w/ details in charter (growing rarer in country)
- Until 1955 - Board staff approved all zoning permits, zoning enforcement performed by the Building Department

1956: Zoning Overhaul

- Specified powers narrowed to appeals
- Zoning Administrator created for day-to-day admin/enforcement
- Board has not been overhauled since

1980s: Board appointment changed from Council to Mayor

2010: Brought into the New Denver Zoning Code with no real changes



CPD's Parallel Text Amendment Process: “Modernizing Zoning Variances”

With an eye toward encouraging preservation of existing buildings, promoting sustainability, advancing housing affordability, and offering a better customer experience, we are sponsoring, and CPD staff is drafting DZC text amendments to modernize the eligibility and approval criteria for administrative adjustments and variances.

The tools we have for allowing exceptions to zoning requirements – administrative adjustments and variances – currently rely on a finding of an “**unnecessary hardship**” for approval of most requests.

The current categories of hardship are difficult to meet when strictly applied and don't allow for flexibility to grant reasonable requests consistent with city adopted land use policies and objectives.

This project will update these procedures so that CPD and the Board of Adjustment can better meet the challenges of development in Denver today.

Will also do final clean up on shorter, staggered terms for BOA and modernizing removal.



Powers of the Board of Adjustment

The Board hears and decides cases regarding the Denver Zoning Code and Former Chapter 59.

It is quasi-judicial, responsible for conducting formal legal proceedings, subject to legal standards and court review.

1) Administrative Review

- May reverse a decision where Zoning Administrator has "erred"

2) Granting Variances

- Allow a deviation from the code where a hardship is demonstrated
- Most common case coming before the BOA

3) Stay or Delay of Enforcement Action

