



Board of Adjustment Modernization
LUTI Committee – January 2022



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



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



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



Council Authority in the Charter

Charter § 3.2.9 - Zoning.

(H) Board of Adjustment; *creation by Council*. The Council may provide for the appointment of a Board of Adjustment, and in the regulations and restrictions adopted pursuant to the authority of this amendment may provide that the said Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

(K) Board of Adjustment; *procedures*. The Board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this Section....

The charter contains extraordinarily detailed and specific language regarding functions and substantive powers of the Board – substantive changes require a charter change.



Best Practices Nationally



As zoning codes have become more complex, the trend is away from "citizen boards" and toward trained professionals who hear most routine requests for flexibility.

Emerging Trends:

- **Professional hearing examiners and/or staff level decision-making**
- **Fewer boards, those that exist much smaller scope**
- **Professional qualifications --> goal of more consistency in decisions**
- **Modernized or more flexible standards for "hardship" or exceptions**
- **Moving toward code vs. charter language for ease of updating over time**

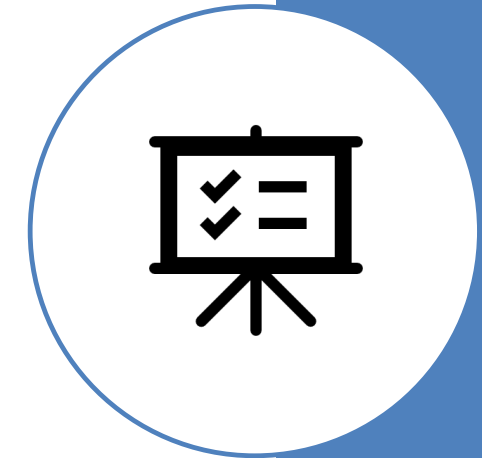
Proposal: Modernization in Two Phases

Phase 1: Re-establish Board Structure

- *Board composition and training requirements*

Phase 2: Propose Removal from Charter (leaving identical detailed ordinance in place) & Re-examine Board Functions for Possible Ordinance Changes

- *Board's substantive duties vs. staff or other professionals*
- *Modernization of criteria, standards, and process for variances and exceptions*



Goals of Phase 1 Modernization of Board Structure



Professional
Preparation for Role



Well-trained



Legally prepared



Consistency for
community

Gratitude for the current citizen-board members who serve on a demanding board and perform a critical public service.

Better for both Board members and applicants to have a stronger foundation and be better prepared for interpreting code and deciding cases going forward.



Phase 1 Details

Re-establish Board

- Professional qualifications
- Appointment by Council & Mayor
- Training requirements

Other boards Denver has recently retired/re-established with different qualifications:

- HOST Advisors
- Sustainability Council



Appointments

Current:

All made by Mayor's office

Proposal – Appointing Authority:

- Two by City Council
- Two by Mayor
- One joint

Proposal - Alternates:

- One each by Mayor/Council

Rationale: Council passes zoning, administration makes implementation decisions & has access to large pool of applicants from other boards (planning etc)



Denver Precedent:

- Board of Ethics Nominating
- Civil Service Commission
- Citizen Oversight Board

(at least 13 have split appointments)

Elsewhere:

- Of 10 peer cities with boards, 6 Mayoral/4 Council

Qualifications

Current:

None

Proposal, at least one member with expertise in each:

- Architect
- Urban planning, construction, engineering or development
- Attorney (admin preferred)
- Any remaining – demonstrated interest in land use/zoning

Rationale: Professional backgrounds better prepared for complex code work required.

Denver Precedent:

- Audit Committee
- Building Code Board of Appeals
- Landmark
- Downtown Design District
- Community Corrections

Elsewhere:

- Boston
- Portland
- Philadelphia in process
- Ft. Lauderdale & Oklahoma City require current/former planning



Training

Current:

None

Proposal:

- Zoning code
- Legal procedure
- Adopted plans
- Diversity, equity, inclusion
- ADA, Civil Rights, Fair Housing

Rationale: Critical to set strong foundation, helps protect the city legally.

Denver Precedent:

- Citizen Oversight Board mentions "appropriate training"

Elsewhere:

- Austin (required for all boards)
- Miami (planning/zoning seminars)
- NY (4 hours annually)



Why Interim Changes to the Board?

- ❑ If Council refers charter amendment to remove & pave the way for substantive changes --> charter change subject to voter approval & timeline for passage of substantive ordinance changes & effective date of changes could lag by additional months
- ❑ The current functions will continue to be performed by a BOA under the current charter structure for an extended time --> we want that board to be as prepared and effective as possible for as long as it lasts
- ❑ Complexity of code & cases justifies more professional foundation today



Other Changes

Best practice to examine an area of code for any other clean up that can be done at the same time.

Clean-ups Proposed:

- ❑ Clarifying definition of an error: "clear and convincing evidence" (which has been defined to mean "highly probable and has no substantial doubts that the administrative official erred in its order or decision")
- ❑ Cleaning up the definition of "unusual conditions" - supposed to be focused on physical characteristics of property/site, but financial language in the same section confuses the analysis of the physical conditions, so separating that out and clarifying
- ❑ Setting a fixed term of 3 years for alternates, removal "for cause" like most other boards, rather than the unusual standards applied to the primary Board in the Charter
- ❑ Changing the attendance criteria justifying removal from 1/3 of the meetings in a year to 3 meetings in a row unless excused by the chair to be more consistent with other boards (absent charter change, removal for attendance would still require "written charges and a public hearing")



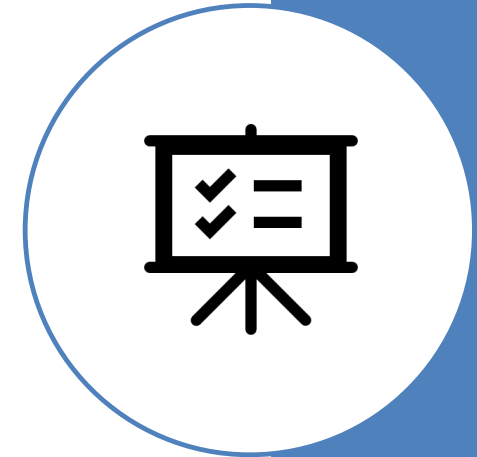
Phase 2 Details

A) Proposal to remove BOA Section from Charter

- ordinance contains same details & remains in code as-is until any changes adopted
- Referral by January 18 for April 2023 Ballot

B) Zoning Admin team leads re-examination of substantive roles, process

- Starting point is best practice research
- Stakeholder input periodically throughout process
from: council, those with Board experience, community stakeholders, land use experts
- May propose any changes as stand-alone or as part of periodic text bundle to change *ordinance*



Ordinance Timeline

January 18 – LUTI Committee

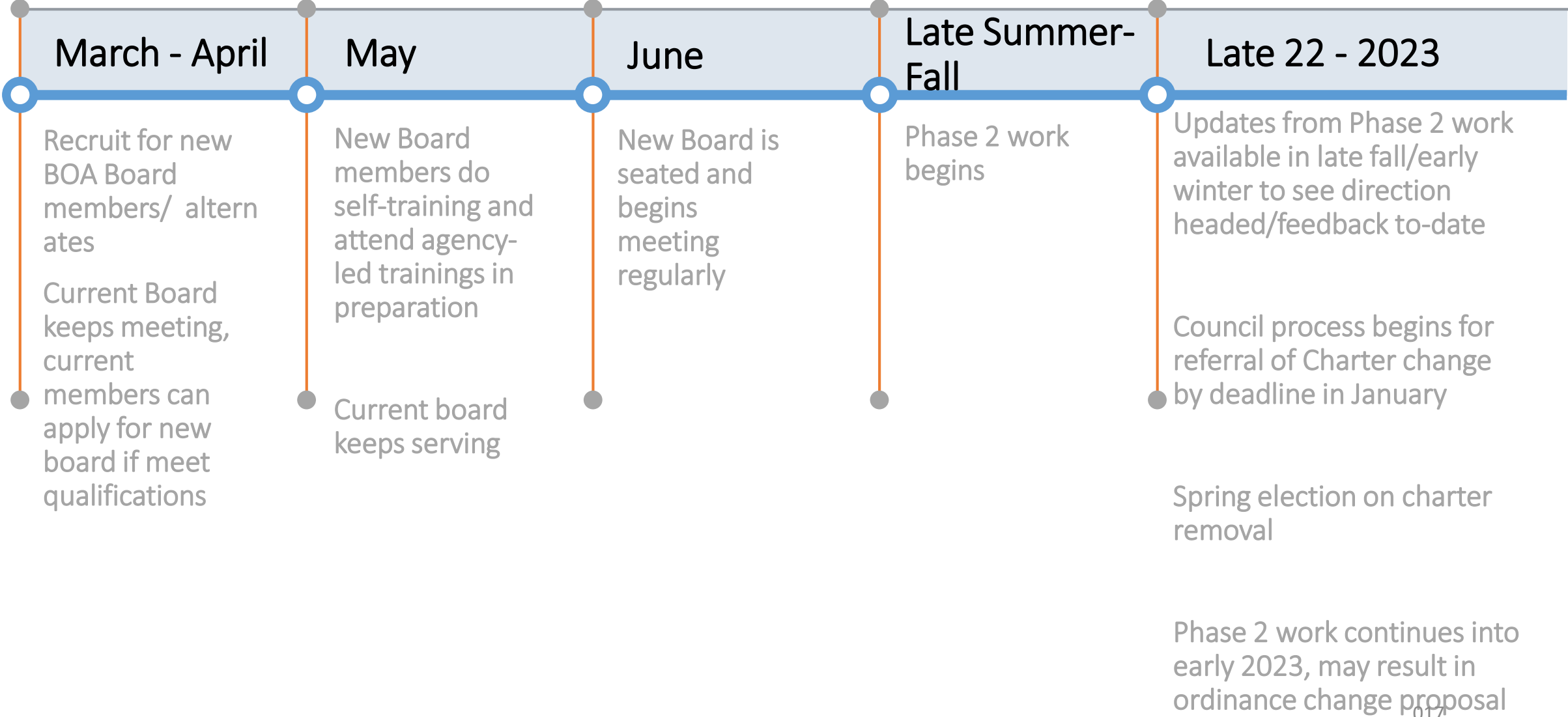
January 19 – Courtesy Briefing to Planning Board

January 31 – First Reading

February 22 – Second Reading/Public Hearing



Implementation Timeline – 2022 - 2023





Questions?

