

Providence City Plan Commission

July 23, 2013



AGENDA ITEM 2 ■ ZONING BOARD CONTINUANCES

OVERVIEW

PROPONENT:	Councilman Samuel Zurier	PROJECT DESCRIPTION:	Amendment of article IX of the zoning ordinance pertaining to continuances made by the Zoning Board of review.
CASE NO./ PROJECT TYPE:	Referral 3367– Amendment of the zoning ordinance pertaining to continuance of items by the Zoning Board of Review	RECOMMENDATION:	Recommend that the council not adopt the proposed ordinance

Proposal

The sponsor is proposing that article IX of the zoning ordinance be amended to include a section pertaining to continuances of matters before the Zoning Board of Review. The changes would require that continuances be requested in person by the applicant or a representative and that public testimony be taken prior to granting a continuance.

Analysis

Currently the board has no written policy regarding honoring requests for continuing a hearing. In practice, applicants or their representatives typically appear in person at the time of the hearing to present a reason for the request. Occasionally the board will accept the request in writing. There have been occasions when members of the public have appeared at the hearing prepared to testify, and have been sent home to come back another day.

It is the DPDs opinion that while the proposed changes are well-intended, they would limit the discretion of the ZBR to decide whether to continue an item. Further, the changes may be counterproductive for the following reasons:

- The provisions do not take into account that it may not be possible for an applicant or his/her representative to request a continuance in person due to circumstances like an illness or an accident.
- Public testimony customarily follows testimony by an applicant for a good reason. Public comment is routinely based on testimony presented at the hearing. If no testimony is provided by the applicant, the public cannot support, rebut or oppose the application based on the totality of the evidence.
- If a continuance is being requested in order for the applicant to change or alter an item, public testimony on the original proposal could be rendered moot. Further, even if public testimony is required in the absence of the applicant testifying, since the applicant's case has not been fully presented, the case will be continued anyway. This will not necessarily eliminate a return trip to the board for opponents.
- If an applicant requests a continuance because his/her attorney cannot attend the hearing, he/she may not have the capacity to record or interpret the testimony of the public. This could deny the applicant the ability to be adequately represented.
- Section 903.6 of the Zoning Ordinance states that no members of the zoning board may vote on an issue unless they have at-

tended all the hearings pertaining to the issue. If public testimony were to be taken prior to issuing a continuance, the same membership composition that votes to continue an item would have to hear the item at subsequent hearings. A member present at one hearing may not be present for the next meeting. This could result in wasted time for the public and the board if testimony has to be repeated.

Recommendation

Instead of amending the zoning ordinance, it may be appropriate for the ZBR to adopt operating procedures for issuing continuances. They might include provisions for notifying the public when requests for continuances are made.

Based on the foregoing discussion, CPC should advise the City Council not to adopt the proposed amendment.