Ordinance No. 009-2013

AN ORDINANCE AMENDING PROVIDENCE CITY CODE TITLE 2 BOARDS AND COMMISSIONS CHAPTER 5 APPEAL AUTHORITY.

WHEREAS UCA § 10-9a-102.(2) states ". . . municipalities my enact all ordinances, resolutions, and rules and may enter into other forms of land use controls . . ." and

WHEREAS Providence City Council feels the City Council should be designated as the Appeal Authority.

- The City Council recognizes if the Council is designated as the Appeal Authority, the Council will not make administrative land use decisions. They will continue act in their legislative capacity when creating or amending land use ordinances.
- The City Council feels having a body that meets regularly, rather than a body that meet very infrequently would better serve the public.
- Given that a decision of the Appeal Authority is appealed to District Court, the City Council feels the elected officials should be the body to make that decision.

WHEREAS, the Providence City Planning Commission also studied the proposed amendment and held a public hearing prior to making a recommendation.

WHEREAS the Providence City Planning Commission took the following action on August 28, 2013

Action Item No. 3: The Providence City Planning Commission will consider recommending the Providence City Council approve amendments to Providence City Code Title 2 Boards and Commissions, Chapter 5 Appeal Authority as follows: including but not limited to considering designating the City Council as the Appeal Authority.

Motion to recommend City Council not be designated as the Appeal Authority: J Baldwin, Second – G Allred

Vote:	*Yea:*	*J Baldwin, G Allred, R Cecil*
	Nay:	*S Sanders*
	Excused:	*K Allen*
	Abstain:	*None*

Motion to correct typographical error changing 6-2-5 reference to 2-5-3.a: J Baldwin, second – G Allred

Vote:	*Yea:*	*R Cecil, G Allred, J Baldwin, S Sanders*
	Nay:	*None*
	Excused:	*K Allen*
	Abstain:	*None*

THEREFORE be it ordained by the Providence City Council:

- The attached code amendment shall be approved ~~based on the recommendation of the Providence City Planning Commission~~ as amended during the meeting.
- This ordinance shall become effective immediately upon passage and posting.

Passed by vote of the Providence City Council this 10 day of September 2013.

Council Vote:

Astle, Dale	(X)Yes	( )No	( )Excused	( )Abstained	( )Absent
Bagley, Bill	( )Yes	(X)No	( )Excused	( )Abstained	( )Absent

Calderwood, Don	(X)Yes ( )No	( )Excused	( )Abstained	( )Absent
Call, Ralph	( )Yes (X)No	( )Excused	( )Abstained	( )Absent
Russell, John	(X)Yes ( )No	( )Excused	( )Abstained	( )Absent

Signed by Mayor Ronald Liechty this 26 day of September 2013.

Providence City

Ronald Liechty, Mayor

Attest:

Skarlet Bankhead, Recorder

CORPORATE SEAL OF THE CITY OF PROVIDENCE

CHAPTER 5

APPEAL AUTHORITY

SECTION:

2-5-1: Appeal Authority
2-5-2: Appointment of Appeal Authority
2-5-3: Appealing Land Use Decision
2-5-4: Variances

2-5-1 **Appeal Authority:** The authority to hear requests for variances from the terms of the land use ordinances and appeals from decisions applying the land use ordinances shall be vested in the Providence City Appeal Authority.

2-5-2 **Appointment of Appeal Authority:** The mayor shall appoint ~~five (5)~~ three (3) members to the Appeal Authority; ~~four (4)~~ 2 being residents of Providence City, one (1) a professional that may or may not be a resident of Providence City and may be shared with other communities with the advice and consent of the City Council. The one professional shall act as chair of the Appeal Authority. The members of the Appeal Authority will serve until a replacement is appointed. ~~The Providence City Council shall serve as the Appeal Authority.~~

2-5-3 **Appealing Land Use Authority's Decision:** An applicant, a board or officer of the City, or any person adversely affected by the land use authority's decision applying a land use ordinance may, within the time period provided in subsection ~~6-2-5(C)(1)~~ 2-5-3:A. below, appeal that decision to the Appeal Authority by alleging there is error in any order, requirement decision, or determination made by the land use authority in the decision applying the land use ordinance.

A. Time to appeal. Any appeal, pursuant to Section 6-2-5(C) above, must be filed in writing with the City Recorder within fifteen (15) calendar days of the issuance of the written decision applying the land use ordinance.

B. Time for Hearing Appeal. The Appeal Authority shall hear the appeal within 15 to 30 days of the date the appeal was filed.

C. Written Statement Setting Forth Theories of Relief Required. The appellant shall deliver to the Appeal Authority and all other participants, five (5) business days prior to the hearing, a written statement setting forth each and every theory of relief he intends to raise at the hearing, along with a brief statement of facts in support thereof.

D. Condition Precedent to Judicial Review. No person, board, or officer of the City may seek judicial review of any decision applying the land use

ordinance until after challenging the land use authority's decision in accordance with this part. No theory of relief may be raised in the District Court unless it was timely and specifically presented to the Appeal Authority.

E. Standard of Review and Burden of Proof on Appeal. The Appeal Authority shall, on appeal, presume that the decision applying the land use ordinance is valid and determine only whether or not the decision is arbitrary, capricious, or illegal. The burden of proof on appeal is on the appellant.

F. Due Process Rights. The Appeal Authority shall respect the due process rights of each participant.

G. Direct Appeal to District Court. Notwithstanding the foregoing, decisions of the City Council relative to adopting or amending the general plan or any other land use ordinance may only be appealed directly to the district court.

2-5-4 **Variances:** Any person or entity desiring a waiver or modification of the requirements of a land use ordinance as applied to a parcel of property that he owns, leases, or in which he holds some other beneficial interest may apply to the Appeal Authority for a variance from the terms of the ordinance.

A. 1. The Appeal Authority may grant a variance only if:

a. Literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purposes of the land use ordinances;

b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;

c. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

d. The variance will not substantially affect the general plan and will not be contrary to the public interest; and

2. a. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (A)(1)(a), the Appeal Authority may not find an unreasonable hardship unless the alleged hardship:

i. Is located on or associated with the property for which the variance is sought; and

ii. Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

b. In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (A)(1)(a), the Appeal Authority may not find an unreasonable hardship or the hardship is self-imposed or economic.

3. In determining whether or not there are special circumstances attached to the property under Subsection (A)(1)(b), the Appeal Authority may find that special circumstances exist only if the special circumstances:

a. Relate to the hardship complained of; and

b. Deprive the property of privileges granted to other properties in the same zone.

B. The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met.

C. Variances run with the land.

D. The Appeal Authority may not grant a use variance.

E. In granting a variance, the Appeal Authority may impose additional requirements on the applicant that will:

1. Mitigate any harmful affects of the variance; or

2. Serve the purpose of the standard or requirement that is waived or modified.