

**CITY OF BELMONT  
MEMORANDUM**



**TO:** Planning Commission

**FROM:** Carlos de Melo, Community Development Director

**SUBJECT:** November 1, 2011 Planning Commission Meeting – Agenda Item 6A  
Discussion Regarding Belmont Zoning Code Section 15 - Appeals

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**SUMMARY**

As discussed at past Planning Commission meetings, staff is seizing upon an opportunity to assess and carry forward minor modifications to specific Belmont Zoning Ordinance (BZO) sections. Key objectives with this effort are to clarify standards/requirements, create internal consistency, and improve/streamline the use & application of the subject regulations.

As such, staff is transmitting this memo and BZO Section 15 – *Appeals* for review and Commission discussion – see Attachment I. All Staff and Planning Commission Development Review decisions are subject to the appeal process; in short, the Appeal regulations are routinely consulted, reviewed, and assessed in concert with the development process for the City.

At tonight’s meeting, staff will outline various potential minor text edits to this Section. Staff welcomes Commission feedback on potential Section 15 amendments as appropriate; such feedback may result in direction towards a future Zone Text Amendment (ZTA).

**PUBLIC CONTACT**

No other public contact beyond posting of the agenda was initiated by the City in preparation of tonight’s item.

**ATTACHMENTS**

- I. Current Belmont Zoning Code (BZO) Section 15 – Appeals

**ATTACHMENT I**

Current Belmont Zoning Code (BZO) Section 15 – Appeals

## SECTION 15 - APPEALS

- 15.1 PURPOSE - An Appeal may be made to the Commission by any city official or by any person aggrieved or affected by any decision of any city official in the enforcement of the provisions and regulations in this Ordinance. Such Appeal shall be made within 30 days from the date of such decision.
- 15.2 APPLICATION REQUIRED - Every person making such Appeal shall file with the Commission an application therefor.
- 15.3 FORM, SCOPE AND CONTENT - The Commission shall prescribe the form, scope and content of such application, and the data to be furnished in connection therewith and no application shall be accepted by the Commission unless it is complete and in compliance with all such requirements.
- \* 15.4 FEE - The application shall be accompanied by a receipt showing that an application fee in accordance with the fee schedule established by the Commission has been paid to the Secretary of the Planning Commission. No part of such fee shall be returnable.
- 15.5 ACTION BY COMMISSION - Upon acceptance of an application for an Appeal by the Commission the Zoning Administrator shall forthwith transmit to the Commission all papers constituting the record upon which the action appealed from was made.
- An Appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Commission, after the notice of Appeal shall have been filed with him, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property.
- In such case, proceedings shall be stayed only upon a restraining order granted by the Commission upon application or upon notice to the Zoning Administrator by the Chairman of the Commission or by a Court of Record.
- 15.6 HEARINGS, PUBLICATION AND NOTICE - The Commission shall fix a reasonable time for the public hearing of the Appeal, giving public notice thereof, by one publication in a newspaper of general circulation in the City at least 10 days prior to such hearing, as well as due notice to the parties in interest, and shall act upon the Appeal within a reasonable time. Any party desiring to be heard during the hearing may appear in person or be represented by agent or by attorney.
- \*\* 15.7 ACTION BY THE COMMISSION - At the time of the public hearing the Commission shall review all materials relating to said Appeal and hear all persons interested in the subject matter. The public hearing on the application may be continued to the next regular meeting of the Commission or from time to time without giving further notice.

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\* Amended by Ord. #502, 1/23/73

\*\* Amended by Ord. #470, 6/14/71

The Commission shall thereafter, upon due cause being shown, confirm wholly or partly, modify or reverse the decision from which Appeal is made, and a report of such action shall be duly recorded in the official minutes of the Commission.

- \* 15.8 APPEAL TO THE COUNCIL - An Appeal from any action, decision, ruling, judgement or order of the Commission as set forth in this Ordinance may be taken by any person or person aggrieved or affected, jointly or severally, or any taxpayer, or any officer, department, board or bureau of the City to the Council by filing notice of Appeal as specified herein. Within 10 days following the date of a decision of the Commission, the decision may be appealed to the Council by the applicant or by any other interested party. An Appeal shall be made on a form prescribed by the Commission and shall be filed with the City Clerk. The Appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record.

An Appeal to the Council from the Commission stays all proceedings in furtherance of the action appealed from unless the Chairman of the Commission certifies to the City Clerk, after notice of Appeal shall have been filed, that by reason of facts stated in the certificate a stay, in his opinion, would cause imminent peril to life or property. In such case, proceedings shall be stayed only upon a restraining order granted by the Commission upon application or upon notice to the Zoning Administrator by the Chairman of the Commission or by a Court of Record.

An application for an appeal filed by an interested person other than a City Official acting in an official capacity shall be accompanied by a receipt showing that an application fee in accordance with the fee schedule established by the Council has been paid to the City Clerk.

- \*\* Within 5 days following the Planning Commission meeting at which minutes pertaining to the appeal are approved by the Commission, the Zoning Administrator shall transmit to the City Clerk all data filed in connection with the case and the minutes of the public hearing, the findings of the Commission and its decision.

In addition, the Commission may transmit to the Council a report setting forth the facts and circumstances of the case.

The City Clerk shall give notice to the applicant and to the appellant (if the applicant is not the appellant) and may give notice to any other interested party of the time when the Appeal will be considered by the Council.

- \* 15.9 REVIEW BY COUNCIL - Within 10 days following the date of a decision of the Commission, on its own motion the Council may initiate proceedings to review the decision of the Commission.

- \*\* Within 5 days following the Planning Commission meeting at which minutes pertaining to the appeal are approved by the Commission, the Zoning Administrator shall transmit to the

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\* Amended by Ord. #512, 11/26/73

\*\* Amended by Ord. #624, 5/8/78

City Clerk all data filed in connection with the case, the minutes of the public hearing, the findings of the Commission and its decision on the case. In addition, the Commission may transmit to the Council a report setting forth the facts and circumstances of the case.

The City Clerk shall give notice to the applicant and may give notice to any other interested party of the time when the decision will be reviewed by the Council.

- \* 15.10 ACTION BY COUNCIL - The Council shall hold a public hearing on an Appeal from a decision of the Commission or a review of proceedings upon its own initiation after notice thereof shall have been given as prescribed herein.

All evidence submitted at such hearing, except original public records or certified copies thereof, may be given under oath administered by the Mayor or the Vice Mayor.

The Council may affirm, reverse or modify a decision of the Commission provided that if a decision for denial is reversed or a decision to grant is modified, the Council shall, on the basis of the record transmitted by the Zoning Administrator and such additional evidence as may be submitted, make the findings prerequisite to the granting prescribed in this Ordinance.

- \*\* 15.11 EFFECT - A Permit or Variance shall become effective ten days following the date on which the Permit or Variance is granted by the Commission unless subject to an Appeal or review as authorized herein.

A permit or Variance which has been the subject of an Appeal to the Council or review by the Council shall become effective three days following the date on which the Permit or Variance is granted by the Council.

No Building or Zoning Permit shall be issued in any case where a Permit or Variance is required by the terms of this Ordinance unless such Permit or Variance has been granted in the manner set forth herein.

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\* Amended by Ord. #624, 5/8/78

\*\* Amended by Ord. #512, 11/26/73 City of Belmont Zoning Ordinance