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CORRECTED

TO: City Planning Commission

FROM: Timarie Szwed, Staff
M. Rory Bolger, Staff

RE: **Zoning Ordinance text amendment, Chapter 50 of the 2019 Detroit City Code – to bring the Code into alignment with the State of Michigan’s Cemetery Regulation Act (1968 PA 251), to reconcile the provision related to membership on the Board of Zoning Appeals with the same provision in the Detroit City Charter, and to remove provisions related to demolitions that are being newly added to Chapter 8, Article II of the 2019 Detroit City Code.**

DATE: May 17, 2023

On May 18, 2023, the City Planning Commission (CPC) will hold a 5:15 pm public hearing to consider revisions to Chapter 50, *Zoning*, of the 2019 Detroit City Code, regarding crematories, the Board of Zoning Appeals (BZA), and demolitions.

BACKGROUND

This proposed amendment revises regulations, procedures, and definitions in the Zoning Ordinance related to three matters: crematories, the Board of Zoning Appeals, and demolitions.

- The revisions with respect to crematories respond to recent mortuary science graduates (Breonna Ray and Aletia Holloway, Petition 1099), who alerted CPC staff just before the pandemic that our zoning provisions from 2014 related to funeral homes and crematories were inconsistent with state law.
- The BZA provisions are prompted by City Council’s intention to expand the BZA from seven to nine members, symmetrical to Council’s seven districts and two at-large members.
- The Law Department and the Buildings, Safety Engineering and Environmental Department (BSEED) have recommended that the “demolition” review provisions related to the Planning and Development Department and BSEED be removed from Chapter 50, *Zoning*, and moved to Chapter 8, *Building Construction and Property Maintenance*.

Each issue is described below.

Crematories

The state of Michigan is one of two states in the country that have “anti-combo” laws which prohibit funeral home owners from owning crematoriums. State law also prohibits the co-locating of funeral homes and crematories. The Michigan Cemetery Regulation Act (1968 PA 251) states that a crematory falls within the definition of “cemetery,” and the Michigan Occupational Code regulates the ownership and locating of crematories.

Pertinent excerpts of the Cemetery Regulation Act (1968 PA 251) are provided below:

456.522 Definitions, Section 2

- (a) “Cemetery” means 1 or a combination of more than 1 of the following:
 - (i) A burial ground for earth interments.
 - (ii) A mausoleum for crypt entombments.
 - (iii) A crematory for the cremation for human remains.
 - (iv) A columbarium for the interment of cremated remains.
- ...
- (i) “Crematory” means a building or structure, within which the remains of deceased persons are or are intended to be cremated.
- (j) “Cremation” means the incineration of the body of the deceased person.
- ...
- (r) “Cemetery owner” means a person who has title to the cemetery.

Pertinent excerpts from the Michigan Occupational Code (1980 PA 299) are listed below:

339.1812 Owning and conducting cemetery or burial ground and owning or maintaining funeral establishment prohibited; exception; owning or conducting funeral establishment on property owned or leased by cemetery prohibited; owner of private burial ground owning or maintaining funeral establishment.

Sec. 1812. (1) An individual, partnership, association, municipal corporation, body politic, or corporation which owns or conducts, either directly or indirectly, a cemetery or burial ground in this state shall not own, manage, supervise, operate, or maintain, either directly or indirectly, a funeral establishment, or permit an officer, agent, or employee to own or maintain a funeral establishment. This subsection shall not apply to an elected official of a city, village, township, or county who serves as an ex officio member of a local cemetery board as a result of holding that office.

(2) An individual, partnership, association, municipal corporation, body politic, or corporation which owns or conducts a cemetery in this state shall not allow a funeral establishment to be owned or conducted on property owned or leased by the cemetery and used for cemetery purposes or designated as a cemetery.

(3) This section shall not prohibit the owner of a private burial ground used for the interment of the owner’s family or the owner’s descendents [*sic*] to own or maintain a funeral establishment under this article.

...

As part of the 2014 Zoning Ordinance Text Amendment, crematory regulations and procedures were changed. A report submitted to the City Planning Commission contained the following information:

In recent years, permit applicants have noted that crematories are prohibited except where they are accessory to cemeteries. Cemeteries are only permitted on

land zoned R1, R2, and R3. CPC staff understands that current technology is such that crematories can operate off-site without off-site impacts. Many more people are opting for cremation for cultural, religious, and economic reasons...

With the passage of the 2014 Zoning Ordinance Text Amendment, the fourteen instances where the land use “Mortuary or Funeral home” was mentioned, were amended to read: “Mortuary or funeral home, including those containing a crematory.” Crematories were then allowed as accessory uses to both cemeteries and mortuaries/funeral homes, however they remained prohibited as stand-alone, principal uses of the land. This created a discrepancy between state and city regulations, which the proposed text amendment aims to correct.

To bring the 2019 Detroit City Code into alignment with state law, while allowing the development of more crematories in the city, the text amendment proposes to:

- Remove “crematories” as an allowed accessory use to mortuary and funeral homes, by amending all instances where the land use, “Mortuary or funeral home, including those containing a crematory,” is mentioned, to read “Mortuary or funeral home.” (*Secs. 50-9-52, 50-9-82, 50-9-106, 50-9-136, 50-9-166, 50-10-16, 50-10-46, 50-10-76, 50-10-106, 50-11-116, 50-11-266, 50-12-70, Appendix A, Divisions 3 and 13*)
- Amend the specific use standard for “Mortuary or funeral home,” which currently reads, “Mortuaries and funeral homes may contain a crematory on the premises as an accessory use,” to read, “Mortuaries and funeral homes may not contain a crematory on the premises.” (*Sec. 50-12-234*)
- Create a new principal land use, “Crematory or pet crematory,” which will allow for stand-alone crematories by right in the following zoning districts: M1 (Limited Industrial), M2 (Restricted Industrial), M3 (General Industrial), and M4 (Intensive Industrial). (*Secs. 50-10-17, 50-10-47, 50-10-77, 50-10-107, 50-10-137, 50-12-81, Appendix A, Divisions 3 and 16*)
- Adding the following definitions
 - *Crematory*: A building or structure, within which the remains of deceased persons are or are intended to be cremated, whether as a stand-alone facility as a principal use, or within a cemetery as an accessory use. (*Sec. 50-16-153*)
 - *Pet Crematory*: Any land, place, structure, or facility used or intended to be used for the cremation of pets. (*Sec. 50-16-341*)
- Adding a specific use standard for crematories, “Crematories, whether as a principal use, or accessory to a cemetery, shall be located not less than 150 feet from the nearest residential property line.” (*Sec. 50-12-234*)

The proposed amendment will not impact the current provision that allows crematories as an accessory use to cemeteries. In Detroit cemeteries are permitted only on land zoned R1, R2, and R3. Similarly, state law allows any or all of the four features that fall under the definition of cemetery (burial ground, mausoleum, crematory, columbarium), to collocate on the same land.

BOARD OF ZONING APPEALS

The Michigan Zoning Enabling Act (MCL 125.3601) states that a municipality's Board of Zoning Appeals must have at least five members where the population exceeds 5,000 people. It also requires the Zoning Ordinance to specify the number of members.

As recently modified, the Detroit City Charter (Sec. 4-201) says that "The Board of Zoning Appeals shall be composed of at least seven members, one each from the non at-large districts." No maximum number of BZA members is mentioned.

The Zoning Ordinance, however, perhaps unintentionally, caps the number of BZA members at seven where it states, "...the membership of the Board shall consist of one member from each non-at-large district. (*Sec. 50-2-63(b)*).

Given City Council's intent to expand the size of the BZA from seven to nine members, the eighth and the ninth members would necessarily violate the one-member-per-district rule. The proposed remedy is to amend this section to say, "...the membership of the Board shall consist of at least one member from each non-at-large district." The resulting BZA membership would then be comparable to that of the City Planning Commission, which includes a commissioner for each district and two commissioners "at large."

DEMOLITIONS

Two Zoning Ordinance amendments since 2005 have aspired, where possible, to protect buildings from demolition in certain situations:

- **Traditional Main Street Overlay (TMSO)** areas have been identified and specially regulated because of their long-standing character as walkable retail corridors. TMSOs have been a part of the Zoning Ordinance since 2005. In hopes of retaining existing commercial buildings built at the sidewalk's edge over their replacement by strip malls, the TMSO regs have required demolition permits for buildings along a designated Traditional Main Street to be referred to P&DD for review in hopes that new development might be facilitated without removal of existing structures. Since 2020, there are 12 designated TMSOs (*Sec. 50-11-382*):

(1) **West Seven Mile.** All zoning lots abutting West Seven Mile Road between the zoning lots at the four corners of John R Avenue and the center line of Woodward Avenue.

(2) **Grand River/Lasher Road.** All zoning lots abutting Grand River Avenue between the center line of Greenfield Road and the zoning lots at the four corners of Lahser Road and all zoning lots abutting Lahser Road between West McNichols Road and Santa Clara Avenue.

(3) **Bagley/Vernor.** All zoning lots abutting Bagley Avenue between the center line of 16th Street and the center line of 24th Street; and all zoning lots abutting West Vernor Highway between the center line of Newark Avenue and the center line of Clark Street.

- (4) **Livernois/West McNichols.** All zoning lots abutting Livernois Avenue between the center line of the John C. Lodge Freeway and the center line of West Eight Mile Road; and all zoning lots abutting West McNichols Road between the center line of Lawton Avenue and the zoning lots at the four corners of Wyoming Avenue.
- (5) **East Jefferson.** All zoning lots abutting East Jefferson Avenue between the center lines of Dickerson Avenue/Gray Avenue and the city limits of Grosse Pointe Park.
- (6) **Woodward.** All zoning lots abutting Woodward Avenue between the center line of Temple Avenue/Alfred Street and the city limits of Highland Park.
- (7) **Grand Boulevard.** All zoning lots abutting West Grand Boulevard/East Grand Boulevard between the John C. Lodge Freeway (M-10) and the eastern edge of Cameron Street (extended).
- (8) **Michigan Avenue.** All zoning lots abutting Michigan Avenue between the John C. Lodge Freeway (M-10) and the zoning lots at the four corners of Vinewood Avenue.
- (9) **Vernor/Springwells.** All zoning lots abutting West Vernor Highway between the center line of Clark Street and the zoning lots at the four corners of Woodmere Avenue; and all zoning lots abutting Springwells Avenue between the four corners of West Vernor Highway and the four corners of the Fisher Freeway (I-75) service drives.
- (10) **East Warren Avenue.** All zoning lots abutting East Warren Avenue between Audubon Avenue and the four corners of Radnor Street.
- (11) **West Warren Avenue.** All zoning lots abutting West Warren Avenue between the Southfield Freeway and Greenfield Road.
- (12) **Van Dyke Street.** All zoning lots abutting Van Dyke Street between East Seven Mile and East Eight Mile Roads.

- The **School Building Adaptive Re-use (SBAR)** text amendment, adopted in 2012, aimed at preserving and reviving buildings that were originally built as schools but subsequently have gone vacant by allowing certain uses to be permitted within their confines on a conditional basis even where the zoning district regulations would ordinarily prohibit such uses and where redevelopment would be prevented without a rezoning. The SBAR amendment required additional, separate review of a proposed re-use where demolition was proposed as part of the adaptive re-use. (*Sec. 50-12-138(b)(3)*)

This proposed text amendment would remove the TMSO demolition provision from Sec. 50-11-385(b) in Chapter 50, *Zoning*, and move it to the Property Maintenance Code

within Chapter 8 of the 2019 Detroit City Code, *Building Construction and Property Maintenance*. This amendment would also remove the SBAR demolition provision from Sec. 50-12-138(b)(3) in Chapter 50 and move it to Chapter 8.

The Law Department and BSEED advise that by reciting these demolition review provisions in Chapter 8, staff that receive and review demolition permit applications and work with the Building Code every day are more likely to note the need for special review than if the provisions remain in Zoning. A separate amendment to the City Code for these proposed Chapter 8 provisions is being prepared for consideration by City Council. (Unlike Chapter 50 amendments, City Council can proceed with an amendment to Chapter 8 without review and recommendation by the CPC.)

CONCLUSION

The various provisions of this proposed text amendment were the subject of a CPC staff presentation at the Commission's meeting of May 4, 2023. It is hoped that the Commission's consideration can proceed expeditiously. CPC and Administration staff will be pleased to address any questions related to these matters.