

Land Use Series

APPEALS & VARIANCES

August 2003

How to Participate in the Zoning Process

Bringing
Knowledge
to Life!

This flyer is to help you to be effective in making your views known on an appeal or variance request. You may have received this flyer because you are considered an “interested party” near the appeal location. You can be involved in the review of the appeal or variance. This flyer is to help you prepare for a hearing or meeting on the proposed appeal/variance at your Zoning Board of Appeals.

Material you present should focus on “standards.” There are different standards used, depending on the type of appeal being requested. If the issue is the Appeals Board deciding where a zoning boundary is, often there are standards on zoning map interpretation in the zoning ordinance. Often there are not any standards for zoning ordinance text interpretation. If the issue is for a use variance or dimensional variance, the standards are established by several court cases listed below.

*“Thirty seven million
acres is all the Michigan
we will ever have.”*

Former Governor
William G. Milliken

Educate Yourself on the Proposed Appeal/Variance.

Before the public hearing/meeting on the appeal, request a full copy of the demand for appeal, or variance application and a copy of all the zoning ordinance to see what would normally be required.

Next review the appeal against the standards. The standards for map interpretation are found in the zoning ordinance. Standards for dimensional variance are to show that a “practical difficulty” exists. A dimensional variance is when one is seeking exception to a zoning regulation that is measured (setback, building height, parcel size, etc.). The practical difficulty standards are:

- *Will strict compliance with the dimensional requirements of the zoning ordinance prevent the applicant from using the property for the permitted purpose?*
- *Will granting the variance be fair to the applicant or would a lesser variance work just as well?*
- *Is the need for the variance due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district?*
- *If granted, will the variance uphold the spirit and intent of the ordinance and be fair to neighboring properties?*
- *Has the need for the variance been created by some action of the applicant?*

Standards for use variances are to show that an “unnecessary hardship” exists. A use variance is when one wants a land use that is not normally permitted in the zoning district.

Michigan State University
Extension Land Use Team

<http://ntweb11a.ais.msu.edu/luaoe/index.asp>

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Some communities do not issue use variances, but rather handle such requests as a zoning amendment. The standards for unnecessary hardship are:

- *The property owner must show credible proof their property will not yield a reasonable return if used only for a purpose allowed by the ordinance.*
- *The property owner must show the zoning ordinance gives rise to hardship amounting to confiscation or the disadvantage must be so great as to deprive the owner of all reasonable use of the property.*
- *The need for the variance is not created by some action of the applicant.*
- *The need for the variance is due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district.*

Then prepare a submission for the hearing/meeting. This can be oral or written. In the submission you should focus on facts, and focus on the standards. In your testimony answer the questions “Does the proposed zoning appeal meet the standards?” and “Does the proposed zoning appeal fail to meet one or more standards?” Be sure you only use the standards for the particular type of appeal: map boundary, text interpretation, dimension variance, or use variance.

Protect your Credibility

Your credibility is your most important commodity. Make sure statements made are true and can be verified. Do not be emotional, but focus on the facts. Cite your sources (use footnotes or attach a copy or summary).

When doing research do not use just any “study.” There are good and bad research/studies. It is important to know the four standards of good research:

- Was the data “double blind?” (The subject of the study did not know which side of the question they represented.)
- Was the study peer-reviewed? (Published in a research journal, at a university.)
- Can the study be repeated and get similar results? (Is there multiple studies with similar results)
- The researcher does not have a stake in the outcome.

Finally, remember that planning staff working for government should remain “professional.” That means it is okay to seek help from the zoning administrator and/or staff planner and/or consulting planner. But remember what these people say or do should reflect their legal obligation or the views and wishes of who they work for. It does not necessarily reflect their personal view. You should not criticize staff at a personal level. Focus your comments on the issue, not the person.

Attend the Public Hearing/Meeting

Provide each member of the Appeals Board, recording secretary, and planning staff, a copy of your submission in writing. Everyone who wishes to speak will be given a chance to do so. When at the hearing/meeting always wait for the chair of the meeting to acknowledge you before speaking. Always speak to, or address, the chair. Begin by stating your name and where you live, if pertinent. Orally summarize the major points in your written submission. In order that everyone has a chance to be heard, there may be a time limit for each person and other rules. Be sure to stay within the time limit (if any).

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Zoning is and is not

Zoning is supposed to be about the use of land, the impact on land and adjacent land uses.

Zoning is not:

- to promote/oppose economic, racial, or religious views.
- enforcement of private deed restrictions.
- a solution for neighborhood feuds or personal quarrels.
- a promoter of development (it merely permits it).
- a tool for the political arena (to reward/punish others).
- a public popularity contest – zoning decisions are to be based on facts, not majority of votes.

Zoning cannot regulate

As a general rule zoning cannot totally prohibit anything. (Must have a place for it somewhere when a need is demonstrated...); must allow continued use of nonconforming (grandfathered) land uses. Zoning can not regulate hazardous waste; solid waste facilities (landfills); utility lines; certain pipelines; prisons; oil and gas wells; surface coal mining; water pollution; non-point source pollution; fertilizer; Mackinac Island Park Authority activity; certain trails; State Police radio communication system; armories; nuclear power facilities; military facilities; Native American (Indian) tribe activity on tribal land/in “Indian country”; public schools; certain colleges and universities; county buildings; the municipality which adopted the zoning ordinance. There is limited zoning jurisdiction for interior design of mobile home parks; United States Government; “open space”/“cluster” development; mobile homes; “state licensed residential facilities”; craft/fine art home occupations; day-care in a county or township; manure, pesticide nutrient, care of farm animals, cranberry production, site selection and odor control of livestock production on a farm; and billboards under county zoning. Zoning can regulate, but not prohibit religious activities/land uses; adult entertainment/sexually oriented businesses; satellite dishes; cellular telephone towers; shooting ranges.