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City and Village Zoning: A Basic Guide For Citizens And Local Officials, 2nd Edition
Michigan State University Extension Service
Mark Wyckoff, editor; Michigan Society of Planning Officials
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FORWARD

This is the second edition of **City and Village Zoning: A Basic Guide for Citizens and Local Officials**. It is updated by Mark A. Wyckoff based on statutory and case law changes since the first edition prepared in 1983.

As with the first edition, this second edition is published by the MSU Cooperative Extension Service as a joint publication with the Michigan Society of Planning Officials.

The first edition was written by Tom Smith and Mark Wyckoff and was modelled after **Administering Township Zoning: A Basic Guide for Citizens and Local Officials**, September 1979, originally published jointly by the Division of Land Resource Programs, DNR and the West Michigan Regional Planning Commission in Grand Rapids. **Administering Township Zoning** was edited and supplemented by Mark Wyckoff from a text originally prepared by Ronald Lee, then of the West Michigan Regional Planning Commission (and who at this writing is City Manager of Grand Ledge). Since 1980 it has been available from the MSU Cooperative Extension Bulletin Office.

This edition, as did the first, borrows thoughts, ideas, phrases and graphics liberally from other similar documents prepared by public planners in many other states over the past thirty years. Any errors of fact or misinterpretation remain my responsibility. It contains information through the December 1988 legislative session. I hope you find it helpful.

Mark A. Wyckoff, AICP.

**CITY & VILLAGE ZONING:
A BASIC GUIDE FOR
CITIZENS AND LOCAL OFFICIALS**
2nd Edition

Prepared for the
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DEDICATION

This guide is dedicated to the countless citizens and local officials of Michigan's cities and villages who constructively seek to understand and apply zoning to implement local community plans. May this guide further enhance your abilities to *effectively use zoning as a tool to manage the growth and redevelopment of your communities.*

MICHIGAN ENABLING STATUTES REFERRED TO IN THIS GUIDE

STATUTE	ACT NUMBERS <i>as amended thru 1988</i>	MICHIGAN COMPILED LAW NUMBER
City-Village Zoning Act	P.A. 207 of 1921	MCLA 125.581-125.592
Municipal Planning Act	P.A. 285 of 1931	MCLA 125.31-125.45



INTRODUCTION

It is very easy for people who encounter zoning for the first time, to get confused by the unique terms and procedures involved. This is true for both new city or village officials, as well as for property owners who become involved in zoning processes regarding the use of land. If you are a recently appointed member of a zoning commission, planning commission, plan board, or zoning board of appeals or are a citizen with concern about zoning, this guide is designed to help you.

While zoning is only one "tool" for carrying out a community's comprehensive land use plan, it is a very important one and a rather complex one. This report identifies *who does what* in city and village zoning matters and *how they do it*. This guide discusses the basic responsibilities of each body or official exercising common zoning tasks as well as the basic procedures associated with these tasks. This guide is not a substitute for a zoning ordinance. It is limited to questions that commonly arise in the administration of city or village zoning and does not address other related matters or procedures such as those involved in city or village planning programs, capital improvement projects or subdivision regulation. It is a companion publication to the **Community Planning Process: A Guide for Planning Commissioners in Michigan**.

This guide assumes that your municipal zoning ordinance is consistent with the City-Village Zoning Act, P.A. 207 of 1921, as amended thru 1988 (MCLA 125.581-125.590). A city or village charter may impose additional requirements. It assumes your ordinance has been properly adopted and is consistent with the land use plan and studies used to develop the ordinance. Consequently, this guide is not designed to resolve problems associated with antiquated zoning regulations, poorly drafted provisions, or an improperly adopted zoning ordinance. It can, however, help quickly orient you to city or village zoning and if you are a city or village official, to aid you in getting a firm grasp on how the growth and land resource management tool known as zoning, is designed to work.

If you find after reading this guide that there are procedures, roles or responsibilities described within that differ from those contained in your city or village zoning ordinance, or which differ with the way zoning is practiced within your community, then you should bring the inconsistency to the attention of the planning commission, or to the city or village governing body for their study. It may be necessary to seek technical assistance from qualified planners and legal counsel in preparing any proposed changes to the ordinance to insure it remains in conformance with state law.

A glossary of terms and bibliography of other reference materials are provided in the Appendix. Further questions can be directed to the Michigan Society of Planning Officials at the address on the title page.

Planning Commission is Assumed

Most Michigan cities or villages with an adopted zoning ordinance have a planning commission with zoning responsibilities. This guide assumes that if there is a city or village planning commission, it has been established under the authority of the Municipal Planning Act, P.A. 285 of 1931, as amended. By virtue of Section 4(2) of the City-Village Zoning Act, the planning commission must carry out certain zoning responsibilities. If your city or village has no planning commission, but does have a body acting as one, then the references to the planning commission in this guide should be interpreted as a zoning commission established under authority of the City-Village Zoning Act, P.A. 207 of 1921 as amended.

Legislative Body = Governing Body = Council

In many Michigan cities and villages, the legislative body is referred to as the city council, village board of trustees, the common council, the board of alderman and/or other appropriate names. For the sake of simplicity, this guide refers to the city or village legislative body (i.e. the elected governing body) as the city or village council.

The objectives of zoning are principally achieved by controlling land uses, density, building height and bulk, lot sizes, yards and open spaces, setbacks, accessory uses, parking, loading and signs. Different regulations may be established to carry out specific purposes stated for each zone, although within each zone similar properties must be treated similarly. Typically, the ordinance establishes "uses by right," "special land uses," (conditional uses), and perhaps "prohibited uses," in each zone.

Protecting the Public Health, Safety & General Welfare

Zoning is considered a *police power* regulation. That means it is one of a number of laws (such as building and health codes) which are adopted to protect the public health, safety and general welfare. A zoning ordinance consists of two distinct parts--the district or zone *map* and a written *text*. The text sets out the purposes, uses and district regulations for each zone, the standards for special land uses and for administration of the ordinance.

Typically an ordinance is structured so as to group compatible uses within a district and also separate incompatible districts. Uses of land are typically considered incompatible if the characteristics of one land use could create negative consequences on adjacent uses in the normal course of operation. These "*negative consequences*," are usually nuisance-like in character. For example, noise, dust, odors, excessive traffic, or smoke are typical nuisance-like impacts that zoning tries to prevent. Decisions on land use compatibility requires careful planning.

Section 1(2) of the City-Village Zoning Act requires that:

"The land development regulations and districts authorized by this Act shall be made in accordance with a plan designed to promote and accomplish the objectives of this Act."

Typically, this plan is called the Master Plan or Comprehensive Plan. It is usually prepared and periodically updated by the Planning Commission. The master plan typically serves as the legal foundation for all development regulations and infrastructure decisions in a community and not merely those regulated by the zoning ordinance. It is important that zoning decisions be consistent with the plan to insure the legal integrity of each.

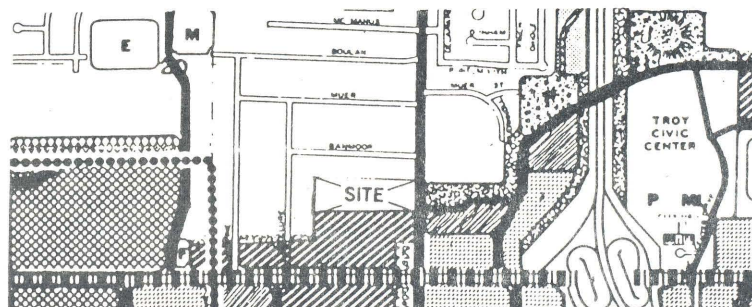
Zoning Must be Based on a Plan

- Absence of a legally adopted plan puts zoning decisions at *risk of invalidation* if challenged.
- Once a Master Plan and Zoning Ordinance are adopted, all future rezoning decisions and changes to district language should be *consistent* with the Plan.

Together, community plans and zoning should establish an orderly land use pattern related to the provision of adequate transportation facilities, utilities, and other public facilities and services; land is typically zoned based on the natural suitability of the land for the intended purposes and compatibility with adjacent uses of land. An appropriate balance of various land uses within the community is also

MASTER LAND USE PLAN

-  Low Density Residential
-  Non Center
-  Office Low Rise
-  Office Mid Rise
-  Office High Rise
-  Greenbelt Buffer



typically sought. Likewise, grouping land uses with similar needs or direct relationships one to the other, helps maximize efficiency and minimize friction, while protecting land values, amenities and reducing public service costs. For example, schools and parks may be good neighbors for residential areas; while intensive commercial or industrial developments may not be.

Zoning regulations do constrain the uses to which a property owner may put land and the arrangement of those uses on a single parcel. However, at the same time, zoning protects each property owner from the uncontrolled actions of others. Without zoning, uses of land such as junkyards and asphalt batching plants could be developed adjacent to nearly anyone's home. While these land uses provide valuable services to the community, their appropriate location is not adjacent to residential areas. Yet, zoning is not merely a *negative* act--aimed at keeping certain land uses out of a community--but also is a *positive* one--creating desirable and harmonious places for people to live, work and play. It is based upon local goals and helps insure the future embodied in community plans is built, piece by piece. Thus, zoning controls are a *means to an end* and not an end in themselves.

Two Common Misconceptions

There are two common misconceptions about zoning. The first is that zoning is an authorization that is given to a person to do something on a property and that when they stop the activity or sell the land the zoning approval stops. On the contrary, all zoning restrictions run with the land, not with the owner.

WHAT ZONING CAN DO

Zoning can:







- Help stabilize and preserve property values by controlling or separating incompatible land uses;
- Control development densities so that areas considered appropriate for development or a change in density can be economically serviced when necessary with roads, sewer, water, electricity, fire and police protection, schools and recreation;
- Stabilize and protect existing neighborhoods and developed areas from losing their identity or character;
- Help conserve energy with compact land use patterns; and
- Help promote appropriate redevelopment in transitional areas of the community.
- Help control the rate, location and timing of new development.

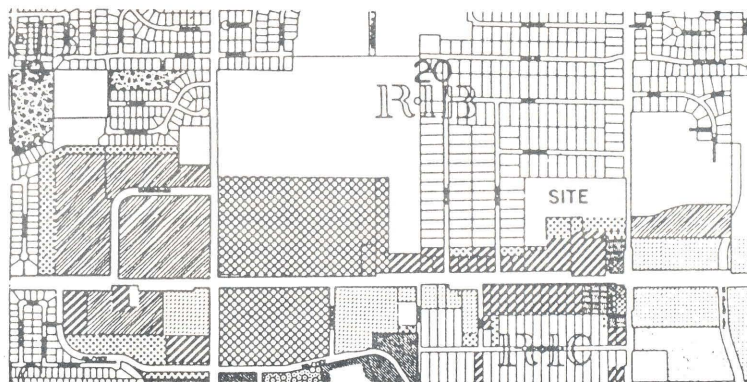
HOW CAN ZONING DO THIS?

A zoning ordinance is a legal document which prescribes and controls the...

- use of buildings, land and natural resources for trade, industry, residence and conservation;
- location, height and bulk (yards and setbacks) of uses, buildings and other structures;
- area or size of a lot (and that portion of the lot which may be occupied or left for open space); and the
- density of population and intensity of development.

ZONING DISTRICT MAP

-  R-1B One Family Residential
-  R-2 Two Family Residential
-  B-3 General Business
-  O-1 Office Building
-  O-M Office Mid-Rise
-  O-S-C Office Service Commerical



- If a property changes hands, the current zoning approvals go with the transfer; however
- The new owner must use the property within the scope of the original zoning approval; and
- Any conditions previously in effect still apply.

All zoning restrictions run with the land, not with the owner.

The second misconception is that zoning can be approved for a temporary period and then at the discretion of the municipality either extended or terminated. On the contrary, Courts have approved temporary approvals only when the use itself is temporary. For example, Christmas tree sales are a temporary use and could be authorized for a temporary period, but most uses are established for an assumed permanent period. It is acceptable to condition authorization of a permanent activity on its being initiated within a specified time period, say within 6-12 months. Once initiated however, that land use is authorized to continue as long as it remains in conformance with the terms of the permit.

Zoning is Constitutional

Zoning has been the subject of a great volume of litigation, but courts long ago upheld the constitutionality of the valid exercise of zoning in a community. This includes both the U.S. Supreme Court in 1926 in the case of **Euclid v. Ambler Realty Co.**, 272 US 365 and the Michigan Supreme Court in 1928 in the case of **Dawley v. Ingham Circuit Judge**, 242 Mich 247. In the celebrated case of **Padover v. Township of Farmington**, 374 Mich 622 (1965), two Justices of the Michigan Supreme Court had the following to say about zoning:

"Surely the function of zoning is to plan a modern day community for continuance and growth over a period of years. The growth cannot possibly come at once any more than a seed can spring into a tree overnight. Unless the pattern is set and followed, proper growth can never materialize. The alternative is to pay the price in crime, juvenile delinquency, inadequate sewers, inadequate roads, inadequate schools, inadequate parks, and worst of all, inadequate human beings--a pattern that has been all too clearly evident upon the American scene. A city, village, or township is entitled to work

out a better destiny for itself under such statutory authority."

Statutory Authority

A city or village is authorized to adopt zoning by state statute. The City-Village Zoning Act, Public act 207 of 1921, as amended, permits, but does not require a city or village to zone. However, if a zoning ordinance is adopted it must be adopted consistent with the procedures, and administered consistent with the authority specified in the Act. There is no authority for a city or village to utilize zoning except that granted in the City-Village Zoning Act. Zoning is not retroactive and does not prevent use of lands which existed prior to the adoption of zoning regulations and which do not conform with the regulations of the district in which they are located (these are called nonconforming uses). Zoning must provide for reasonable use of land and cannot be arbitrary or confiscatory.

Once enacted, a zoning ordinance is not static. Changes can be obtained in several ways. An amendment to the text of the ordinance or a rezoning of the map can be adopted by the city or village council (legislative body). If the ordinance so provides, permission to establish a special land use may be obtained after a review of a proposed site plan by the planning commission to insure conformance to the standards stated in the ordinance. Appeal of a zoning administrator's decision or a request for a variance due to a practical difficulty or unnecessary hardship can be sought from the board of appeals. These various actions can be confusing. Which is the appropriate action in a particular situation? This and other questions will be addressed in the following sections of this guide.

EXCLUSIONARY ZONING PROHIBITED

The City-Village Zoning Act provides that:

"A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a city or village in the presence of a demonstrated need for that land use within either the city or village or surrounding area within the state, unless a location within the city or village does not exist where the use may be appropriately located, or the use is unlawful." (Sec. 12, P.A. 207 of 1921, as amended).

Chapter Two

WHO DOES WHAT IN CITY OR VILLAGE ZONING

Different bodies and officials carry out a variety of zoning responsibilities and it is important to understand *who does what* and *what it is they do*. Unfortunately, if the wrong body takes action on a matter which properly is in the realm of another body, the legal status of that decision is in jeopardy if challenged in court. Public confidence in the local zoning program may also be eroded.

Three Basic Zoning Functions

There are three basic functions inherent in the operation of every zoning ordinance. They are commonly called *legislative*, *administrative* and *quasi-judicial*. These terms are descriptive of the principal character of each of the zoning activities which make up a particular function.

The *legislative* function of zoning includes adoption of the original zoning ordinance as well as any subsequent amendments to the text or zoning map. These actions can only be taken by

the elected city or village council. The legislative body is the policy making body for the community and with regard to zoning matters, acts after receiving the recommendation of the planning commission.

The *administrative* function of zoning relates to the day-to-day activities involving administration of the various procedures and requirements of the zoning ordinance. The zoning administrator (often the building inspector) and planning commission frequently share in the administrative tasks. The administrative function includes the principal zoning activities with which property owners get involved when seeking zoning approval.

Lastly, the *quasi-judicial* function refers to procedures regarding appeals, interpretation and variation of individual provisions of a zoning ordinance. Although this function is not purely judicial and is not conducted in a court of law, it is established in order to ensure equal justice without having to enter into the formal court system. A variance process is necessary because occasions or situations will arise when the strict enforcement of the zoning ordinance may present *practical difficulties or unnecessary hardships* on an individual property owner. The board of appeals is created to consider variance requests. If the property owner sufficiently demonstrates a problem worthy of relief, the zoning board of appeals can grant a variance. Improperly granted variances can quickly undermine the integrity of the entire ordinance. An appeal of a decision of a board of appeals is taken directly to Circuit Court. These three basic functions are summarized on the following page in Chart One. The chart refers to the appropriate sections of this guide which present the procedures used to process each of these types of zoning activities.

RELATIONSHIP TO OTHER LAND REGULATIONS

A zoning ordinance is not a...

- *Building Code*. Zoning is not meant to be the main device to control the internal materials and manner of constructing a building.
- *Land Subdivision Control Ordinance*. While zoning regulates the size of lots and uses of land, it does not directly regulate the design and layout of land subdivided into lots, streets, etc.
- *Health Code*. Zoning cannot directly regulate the design and layout of sanitary sewer or septic systems other than to require locational standards and compliance with local health codes.

Zoning regulations should be coordinated with building, health, subdivision and other local land regulations. This helps insure that public policy is consistently implemented and prevents unnecessary delays and additional development costs which a land developer can easily incur from uncoordinated development review procedures.

The Public Officials Who Carry Out Zoning Functions

The public officials most clearly responsible for advising on, or deciding various zoning requests, are described in the following three sections.

Chart One

Principal Zoning Functions

<u>WHO</u>	<u>DOES WHAT</u>	<u>HOW</u>
Zoning Bodies & Officials	Zoning Functions/Activities <i>(statute reference)</i>	General Procedures. See following pages of this Guide.
LEGISLATIVE		
City-village legislative body after reviewing recommendations of planning/zoning commission ¹	Zoning ordinance adoption and amendments (Section 4)	14
ADMINISTRATIVE		
Zoning Administrator	Zoning permits (Sec. 7) Certificates of Occupancy (Sec. 7) Zoning Violations (Sec. 7)	18 20 30
Varies - typically zoning administrator and planning or zoning commission	Site plan (Section 4d)	22
Varies - may be administrative official, planning, zoning commission, city-village council	Special land uses (Section 4a)	24
Varies - may be administrative official, planning or zoning commission, city-village council	Planned unit developments (Section 4b) ²	27
QUASI-JUDICIAL		
Board of appeals	Appeals ³ -ordinance interpretation-variances (Sec. 5)	32
An administrative official, planning commission, zoning commission, legislative body	Conducts public hearings	38

1. Planning/zoning commission - means planning commission if there is no zoning commission or if the legislative body is not acting as a zoning commission.

2. Planned unit developments may also be handled as amendments requiring legislative action by the city-village council.

3. Appeals of decisions on special land uses or planned unit developments may be taken to the board of appeals only if so specified in the ordinance.

Legislative Body

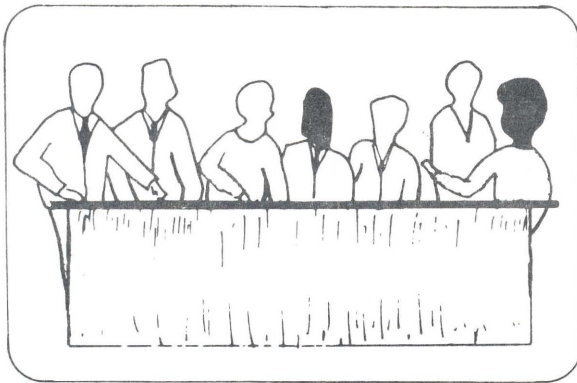
CITY OR VILLAGE COUNCIL

The city or village council is the elected governing body of the community. As the local legislative body, only the city or village council has the authority to formally adopt a zoning ordinance and amendments to the text and zoning map.

Responsibilities

When municipal zoning is first contemplated, the legislative body under Act 207 of 1921, as amended, may create a city or village zoning commission pursuant to Section 4(2) of the City-Village Zoning Act, or if a planning commission already exists, they must be appointed to fulfill this responsibility. The statute also authorizes the legislative body to act as a zoning commission if no planning commission exists. However, the city or village charter may specify that only a planning commission may carry out these responsibilities. The planning/zoning commission researches, studies, and proposes a draft ordinance according to a plan (usually a master plan or comprehensive plan), for consideration by the city or village council. The process of developing the ordinance, holding the required public hearing, and resolving initial public concerns is carried out by the planning commission before the city or village council formally receives the proposed ordinance.

The council then reviews and considers the proposed text, map and all public comments. It looks to see how public comments were addressed. At its discretion, or as may be required by charter, the city or village council may hold



Legislative Body

additional public hearings and may also refer suggested ordinance changes back to the planning commission for a further report. Thereafter, the city or village may adopt the ordinance. A majority vote of the entire membership of the legislative body is required. A notice of ordinance adoption must be published in a newspaper of general circulation within 15 days after adoption.

The role of the legislative body in district boundary map changes (rezonings) or text changes is the same as in adoption of the original ordinance. The zoning ordinance and zoning map can only be changed by official action of the legislative body of the municipality. No other municipal official or body has this authority.

In addition to the city or village council's legislative role described above, the city or village council is also permitted by state statute to perform administrative and appellate roles under certain circumstances, providing the local zoning ordinance so specifies. For example, an administrative role could involve approval of certain special land uses and planned unit developments.

If (as is the case in some very small villages) the village council is acting as a board of appeals pursuant to Section 5 of the Act, it may also hear appeals of an administrative zoning decision. However, if there is a separate board of appeals (by far the best alternative), the city or village council may not overrule a decision on an issue properly brought before a board of appeals. Nor for that matter, may the board of appeals review a decision by the city or village council denying or approving a rezoning or text amendment. An appeal of a decision by the city or village council regarding an amendment to the ordinance goes directly to Circuit Court.

Administrative Bodies and Officials

Administrative zoning responsibilities are generally shared between the zoning administrator and the planning commission. Typical responsibilities of the zoning administrator and the planning commission are described in the following pages. These duties generally include review and approval or disapproval of requested zoning permits, site plans, special land uses and planned unit developments.

WHAT ZONING IS NOT OR SHOULD NOT BE

Zoning is not a medium or cure for all urban and rural ills; it is not intended to lend public support to economic, racial and religious sanctions; it is not an enforcer of private deed restrictions; nor is it a device for intervention in neighborhood feuds or personal quarrels. It does not guarantee an Eden untouched by machines, wandering dogs, or other noisy participants of the urban scene.

Zoning is not a magic potion to stir in with the tax base to cure past fiscal mistakes. It is not designed to suppress individuality, or to increase tax revenues by making construction of housing as expensive as possible. It should not be used as a device for enforcing narrowly parochial views on style, color, texture, or shape.

Zoning does not assure development. It merely permits it. Thus, excessive commercial zoning does not mean that commercial development will take place. It merely removes the land from categories from which it might more logically be used.

Zoning is not a means for artificially reducing the value of land so that it can be acquired for public use at reduced price.

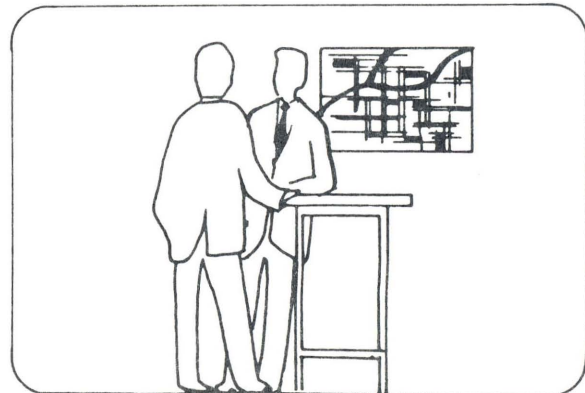
Zoning is not a weapon to be used in the political arena to assist supporters or punish opponents. Neither is it a scale on which the thumb rests in favor of friends and to the detriment of strangers.

Zoning is not a popularity contest. Where well-considered planning requires an action, it should be taken even in the face of anguished outcries at public hearings. Head counts don't help; reasonable debate does. In such cases, the answer should be conversion where possible. It should never be capitulation. *Adapted from "ZONING: A Special Report to Appointed Local Planning and Zoning Officials" by the Florida Planning and Zoning Association, Inc., Tallahassee, Florida.*

ZONING ADMINISTRATOR

The zoning administrator is typically either a separate municipal official or is also the building inspector. Many communities combine the jobs for the sake of local coordination of zoning with building approvals. Other titles for the office are sometimes used, such as zoning inspector or zoning enforcement officer. The zoning administrator has the responsibility for administering most of the provisions of the zoning ordinance. Some rural cities and villages use a part-time zoning administrator or may share the services of one with neighboring communities.

Normally, when applying for zoning approval, the zoning administrator is the municipal official with whom an applicant would first make contact. The zoning administrator is specifically assigned the task of reviewing applications and inspecting sites for zoning compliance. This task is carried out **before** a zoning and/or building permit is granted and the process is usually specified in the zoning ordinance.



Zoning Administrator

Depending on how a particular zoning ordinance is written, the zoning administrator may also carry out directives of the board of appeals and the planning commission. If there is a question regarding the meaning of the zoning ordinance, then the zoning administrator would obtain an interpretation of the ordinance from the board of appeals. A common situation arises when a person applies for a land use not clearly provided for in the ordinance. The zoning administrator asks the board of appeals to interpret the ordinance and to determine whether

the ordinance can be read to permit the use in a particular district or subject to the same regulations as a similar class of use. When the board of appeals rules on matters under their jurisdiction, the decision is usually carried out by the zoning administrator.

The zoning administrator may also seek out the planning commission for advisory comments and recommendations in the processing of individual zoning applications. This is done when the ordinance so requires or where questions of community planning, land use impacts and site conditions arise which may be of broad concern to the public health, safety and general welfare.

Responsibilities

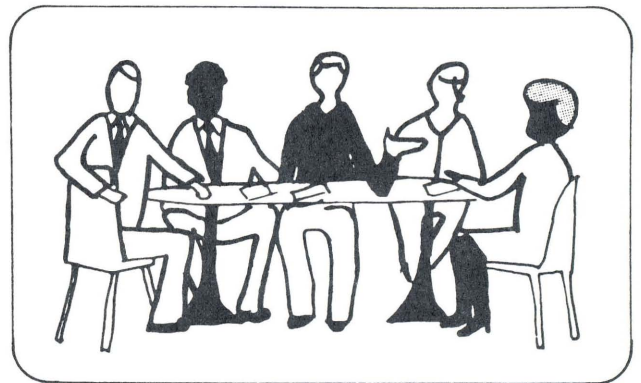
The principal duties and responsibilities of the zoning administrator should be clearly specified in the zoning ordinance. The most important of these is to **administer the ordinance precisely as it is written**. There is no authority to deviate from the ordinance, or to modify its requirements. In general, the principal duties of the zoning administrator are comprised of the following:

- Assist citizens in determining what zoning forms and procedures apply to proposed zoning requests and land use changes.
- Assist citizens in the completion of required permit application forms.
- Review and investigate permit applications to determine compliance with the provisions of the zoning ordinance.
- Issue the appropriate permit when all provisions of the ordinance have been complied with. If the proposal use is not in compliance with the ordinance, the applicant is notified and assisted with an appropriate alternative zoning procedure when possible, or with an appeal procedure if the applicant so chooses.
- Perform inspection duties to insure proposed land use changes are and will remain in compliance with the ordinance.
- Identify, monitor and control nonconforming uses.
- Investigate alleged violations of the ordinance and enforce corrective measures when required.
- Keep the zoning map, text and office records up to date by recording all amendments, and retaining a copy of pertinent official documents.

- Periodically report to the planning commission and city or village council on the status of municipal zoning operations.
- Propose solutions to any problems encountered in administering the zoning ordinance.
- Establish and administer rules of procedure within the office.
- Provide information on zoning to citizens and public agencies upon request.
- Perform other duties as specified by local ordinance.
- Help develop and conduct in conjunction with the planning commission, a continuing program of public education on zoning matters.

PLANNING COMMISSION

For most municipalities, the planning commission also serves as the zoning commission. The authority for the planning commission to engage in zoning matters comes from both the Municipal Planning Act and the City-Village Zoning Act. By carrying out zoning responsibilities in addition to preparing plans, the zoning ordinance can be monitored to insure it continues to help guide community development consistent with the city or village plans. This is especially true when the zoning ordinance is based upon an up-to-date land use plan and appropriate physical development policies.



Planning Commission

Once a zoning ordinance is adopted by a city or village council, the planning commission typically has both advisory and administrative responsibilities. It advises the legislative body on amendments to the ordinance text or zoning map. It also assists in those aspects of ordinance

administration specified by the ordinance itself. These responsibilities often include review and approval of proposed site plans, special land uses and planned unit developments.

Responsibilities

(Section 4(2) of P.A. 207 of 1921, as amended and Section 12 of P.A. 285 of 1931, as amended)

The statutory authority and requirements for the planning commission in terms of zoning administration are highlighted below.

1. The planning commission must prepare and adopt a master plan to guide development in the city or village. A zoning plan is typically one element of the master plan.
2. The planning commission prepares the original zoning ordinance including both text and map showing proposed zoning district boundaries. After a public hearing on the ordinance, the planning commission transmits it and a summary of the public hearing comments to the city or village council for adoption.
3. The planning commission also advises the city or village council concerning future amendments, changes, additions or departures from the ordinance.
4. The planning commission, if so specified in the ordinance, reviews proposed site plans, special land use requests and planned unit developments for compliance with standards stated in the ordinance and in accord with procedures contained in both the ordinance and the City-Village Zoning Act.
5. A minimum of one regular public meeting must be held each month.

Membership & Guidelines

(P.A. 285 of 1931, Sections 2 & 3)

Membership requirements for the planning commission and some of its operating guidelines are identified in the Municipal Planning Act and may be supplemented by charter or other local ordinances. Statute requirements include three membership options for cities and villages of all sizes (Section 3) and 3 additional options for cities and villages of less than 5,000 population (Section 2).

Option 1

1. The planning commission has nine members who are representative of different professions or occupations.
2. Members of the planning commission are appointed by the mayor, if the mayor is an elected officer in the city or village. All appointments are subject to a majority vote of the total membership of the legislative body.
3. One member of the planning commission may also be a member of the board of appeals.
4. The term of office for each member is three years, except that three members of the first commission serve for one year, three for a term of two years, and three for a term of three years.

Option 2

1. The planning commission has up to nine members which may consist of the mayor, one administrative official of the city or village selected by the mayor, one member of the legislative body selected by its members ex officio, and six other members appointed by the mayor.
2. One of the appointed members may also be a member of the board of appeals but no other appointed members may hold other municipal offices.
3. The term of each appointed member, where six are appointed is three years or until his/her successor takes office except that the respective terms of two of the members first appointed are for one year and two for two years. The terms of ex officio members correspond to their respective official tenures, except that the term of the administrative official selected by the mayor terminates with the mayor's term of office.

Option 3

1. The planning commission may consist of 8 members appointed by a mayor and 1 member by the city council (which could be a council person).
2. One of the appointed members may also be a member of the board of appeals but no other appointed members may hold other municipal offices.
3. The term of each appointed member, where six are appointed is three years or until

his/her successor takes office except that the respective terms of two of the members first appointed are for one year and two for two years. The terms of ex officio members correspond to their respective official tenures, except that the term of the administrative official selected by the mayor terminates with the mayor's term of office.

The planning commission must elect its chairperson from amongst the appointed members and create and fill such other of its offices as it may determine. The chairperson's term is one year with eligibility for re-election.

Options 4, 5 & 6 for cities and villages of less than 5,000 population

For cities and villages smaller than 5,000 population and which do not already have a planning commission established by charter, one of the following boards may be appointed to serve as its planning commission.

- (a) The board of directors of the economic development corporation of the city or village created under the Economic Development Corporations Act, Act No. 338 of the Public Acts of 1974, being sections 125.1601 to 125.1636 of the Michigan Compiled Laws.
- (b) The board of a downtown development authority created under Act No. 197 of the Public Acts of 1975, being sections 125.1651 to 125.1680 of the Michigan Compiled Laws, if the border of the downtown development authority is the same as the border of the city or village.
- (c) A board created under the tax increment finance authority act, Act No. 450 of the Public Acts of 1980, being sections 125.1801 to 125.1829 of the Michigan Compiled Laws, if the border of the tax increment finance authority is the same as the border of the city or village.

The requirements of these options apply except where conflicting local charter requirements are in place. The planning commission must adopt rules for the transaction of business (bylaws) and must keep a public record of its resolutions, transactions, findings and determinations.

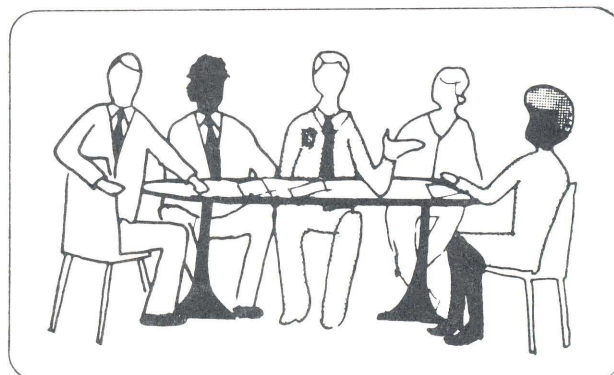
The planning commission may employ staff and contract for consultant services within the amounts appropriated by the city or village

council for their work and in keeping with the requirements of the municipality for such actions.

Members of the planning commission may be compensated at a rate determined by the appointing or legislative body. Modest per diem or per meeting compensation is common.

ZONING COMMISSION

If no planning commission has been established in the city or village, the zoning ordinance is to be prepared by a zoning commission appointed by the city or village council, or the council may act as the zoning commission. After ordinance adoption, the principal functions of the zoning commission are primarily advisory and administrative just as with a planning commission.



ZONING COMMISSION

Responsibilities

(P.A. 207 of 1921, as amended, Section 4)

The statutory responsibilities of the zoning commission are outlined below:

1. The zoning commission must prepare a zoning ordinance having a text of regulations and a map showing proposed zoning district boundaries. After a public hearing, its recommendation and a summary of the public comments received at the hearing it conducts are transmitted to the city or village council.
2. The zoning commission must also advise and make recommendations to the city or village council concerning amendments, changes, additions to or departures from the ordinance.

3. The zoning commission, if so specified in the zoning ordinance, reviews proposed site plans, special land use requests and planned unit developments for compliance with standards stated in the ordinance and in accord with procedures contained in both the ordinance and the City-Village Zoning Act.

The statute prescribes no membership requirements for a zoning commission. Where one is created, it usually is a temporary body that exists only until a planning commission is formed.

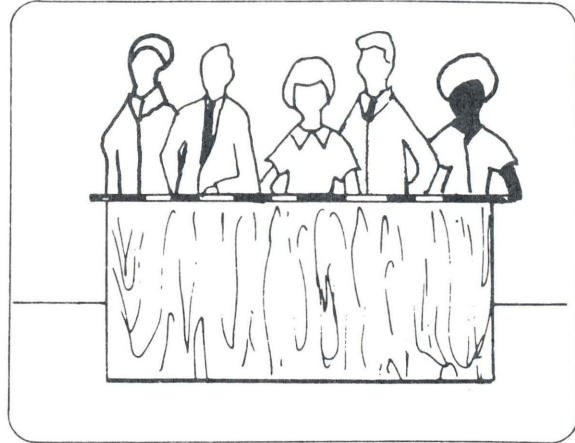
Quasi-Judicial Body
BOARD OF APPEALS

The board of appeals is the only body at the municipal level to hear appeals on various zoning matters. When decisions are made in connection with administering the ordinance, it is possible that they will be appealed. The most common reasons for requests for action by the board of appeals are:

- Compliance with the required yard and setbacks or other dimensional standards on a particular parcel create a practical difficulty in using the property.
- A strict application of zoning regulations to a particular property creates a situation where an applicant claims no reasonable use of the property remains.
- There is a need to interpret or clarify a zoning regulation in order to apply the ordinance.
- A decision or requirement of the zoning administrator has been made which a property owner feels is inconsistent with the ordinance requirements.
- A use is not specifically provided for in the ordinance and ordinance interpretation is necessary to determine which use stated in the ordinance is most similar in character to the proposed use, and in which districts it is located.
- If permitted by the ordinance, to review a decision made by an administrative body or official on a special land use or planned unit development.

The zoning board of appeals, therefore, serves as the first level or step for an individual to appeal a decision, seek a variance from an ordinance standard as applied to his/her property or to request an interpretation of the ordinance. When a point of controversy cannot be resolved at this level, the next step is to proceed through the state court system, beginning with Circuit

Court. No local body, including the city or village legislative body, can override a decision of the board of appeals, as long as it concerns an action within their authority.



Board Of Appeals

Responsibilities

(P.A. 207 of 1921, as amended, Section 5)

The Legislative body of a city or village may act as the board of appeals or as is most commonly the case, may appoint one. The statutory responsibilities of the board of appeals as stated in the City-Village Zoning Act appear below in summary form. The board of appeals:

1. Adopts rules of procedure (bylaws) to govern its actions as an appeals board.
2. Hears and acts upon questions referred to it that may arise from the administration of the zoning ordinance, including ordinance interpretation, review of standards, and the zoning map.
3. Hears and acts upon appeals made from a review, order, requirement, decision or determination made by a body or official administering the zoning ordinance.
4. Hears and acts upon requests for variances, keeping in mind the spirit of the ordinance, public safety and justice.
5. May hear appeals with regard to special land uses and planned unit developments only if expressly authorized in the local ordinance.
6. May impose reasonable conditions upon an affirmative decision.
7. Must state the basis or grounds for its decision. It must identify the facts which

support the conclusions reached on the cases before it.

8. Conducts all meetings in public. Formal hearing of any appeal must be set within a reasonable time and conducted as a public hearing with due notice given to property owners and occupants of single and two-family dwellings within 300 feet of the premises of the property in question. Specific requirements of the local ordinance must also be adhered to. A decision must be made within a reasonable time.
9. Has all the powers of the (administrative) officer or body from whom the appeal is taken.
10. Can rehear a case, if ordered by Circuit Court (or if the rules of procedure so provide). The court must find that the records are inadequate for proper court review, or that there is additional pertinent evidence which was not presented to the board of appeals. In rehearing a case, the board of appeals must review their decision and either modify or affirm its original findings and decision.

An appeal stays all proceedings unless the officer or body from whom the appeal is taken certifies a stay would cause imminent peril to life or property, in which case proceedings are not stayed unless by a Circuit Court restraining order.

Membership & Guidelines

(P.A. 207 of 1921, as amended, Section 5)

Membership on the board of appeals and its operating guidelines are prescribed in the City-Village Zoning Act. Supplementary requirements may be found in the zoning ordinance and/or city or village charter. Statutory membership requirements include:

1. The legislative body of a city or village may itself act as a board of appeals or it may appoint a board of appeals consisting of not less than five members each for three year terms. Appointments for the first year are to be staggered for a period of one, two and three years, so as nearly as may be to provide for the appointment of an equal number each year.
2. The legislative body of a city or village may also if it so desires, appoint in accord with the procedures specified in the zoning or-

dinance not more than two alternate members for the same term as regular members of the board of appeals. The alternate members may be called on a rotating basis, as specified in the zoning ordinance, to sit as regular members in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate members having been appointed serves in a case until a final decision has been made. The alternate member has the same voting rights as a regular member of the board of appeals.

3. If a city or village has created, or may create, a board of rules or board of building appeals, that board may be enlarged to consist of not less than five members and this board may be appointed the board of appeals.

Voting requirements for actions of the board of appeals differ depending on the size of the city or village, and on the type of action or request before them. Specifically, in cities or villages less than 1 million population (all but the City of Detroit), a majority vote of all members of the board is necessary except when considering use variances when a concurring votes of 2/3 of the entire membership of the ZBA is necessary. In Detroit, a 2/3 vote of the entire membership of the ZBA is necessary to reverse an administrative decision, grant a variance or decide in favor of an applicant on any other matter the ZBA must act pursuant to the ordinance.

Chapter Three

GENERAL ZONING PROCEDURES

This Chapter describes general procedures for administering the principal zoning functions in Michigan cities and villages. Each function is described in terms of the following: When Zoning Approval is Necessary; People Involved; General Procedural Steps; and Sample Checklist to Guide Decisions.

Most communities use standard forms to facilitate review and approval of zoning requests. If standard forms are not in use in your community, it will be valuable to develop some. If they are in use, they should be reviewed to insure they contain the necessary information to effectively implement zoning procedures.

Likewise, it is important that fees be adopted by the governing body to help defray the costs of processing zoning requests. Many communities set fees based on actual costs. Actual costs usually include any required notices, meeting expenses, per diems, and staff or consultant reviews. The applicant is usually required to pay into an escrow account an amount equal to the estimated cost. Where outside technical reviews by professional planners or engineers is necessary, these costs can be quite high. However, unless the community chooses to subsidize these expenses, it is only fair to pass them along to the applicant.

Once an application for zoning approval is determined to meet ordinance requirements, zoning approval must be granted.

There are generally three broad phases through which all zoning requests must pass: application or submission; investigation-evaluation (fact-finding and analysis); and final action. Throughout each phase in the process, proper and defensible zoning administration requires (1) responsible communication, (2) record keeping and (3) consistent adherence to all specific procedural requirements and standards found in the local zoning ordinance and the City-Village Zoning Act. Once an application for zoning approval is determined to meet ordinance requirements, zoning approval must be granted.

As a guide to insuring proper zoning decisions are made, sample checklists of review considerations are provided. These include sample checklists to:

- Guide Decisions on Zoning Amendments
- Guide Decisions on Zoning Permit Reviews
- Guide Decisions on Site Plan Reviews
- Guide Decisions on Special Land Uses
- Guide Decisions on Planned Unit Developments
- Guide Decisions on Variances

Guidelines for conducting public hearings and maintaining hearing records are also provided.

Specific land use and facility design criteria, or performance standards commonly applied to individual land uses, are not discussed here, but are no less important. To some extent, such location and design criteria, as well as performance standards may be obtained from source books published by the particular trade or industry involved. These may also be available from planning, engineering and architectural professionals in private firms and public agencies. Of course, local standards should also be developed as is appropriate.

Legislative Zoning Procedures **ZONING AMENDMENTS**

The zoning amendment procedure is initiated when a property owner, or city or village officials seek a change in the provisions, rules or requirements of the zoning ordinance (*text change*) or a change in the mapping of district boundaries (*rezoning*).

People Involved

Petitioner(s), zoning administrator, the planning commission, and city or village legislative body.

General Procedural Steps

Amendments, as legislative actions, must follow the same route required for the adoption of the original ordinance. This means that the proposed amendment should be considered carefully along-side adopted city or village land use policies and plans. The review should establish the compatibility of the proposal with

adopted community policies, plans and both existing and future land uses.

The general procedural steps for proposing zoning changes are as follows:

1. Applicant:

- a) Inquires of the zoning administrator (or other designated officer) as to how one must proceed and obtains the application form(s).
- b) Completes and files the application form(s) along with any required fee (and other supporting documentation) to the zoning administrator. If the application originates from the planning commission or legislative body, the fee is usually waived.

2. Planning Commission:

- a) Reviews amendment application and studies the appropriateness of the proposed amendment. The review is based on established planning and zoning criteria, as set forth in the zoning ordinance and community plans.
- b) A public hearing on the request is scheduled.

3. Opportunity for Public comments:

By law, the planning commission must hold a public hearing before submitting its recommendation to the legislative body of the city or village. If the city or village council acts as the zoning commission, it must conduct the hearing. The public hearing requirements are as follows:

- a) One public hearing is mandatory (additional public hearings are optional or may be required by local ordinance or charter).
- b) There must be one public notice in an official paper or newspaper of general circulation in the city or village announcing the public hearing. The notice must be given not less than 15 days prior to the date of the hearing.
- c) Notice of the public hearing must also be given by mail to each public utility company and to each railroad company owning or operating any public utility or railroad within the districts or zones af-

ected that registers its name and mailing address with the city or village clerk for the purpose of receiving the notice. The notice must also be given not less than 15 days before the public hearing.

- d) If the amendment involves rezoning of land, notice of the rezoning must be given at least 15 days prior to the hearing to the owner(s) of the property in question. (Many municipal ordinances also require notice to all adjacent property owners within 300 feet of the boundary of the property in question.)

If notices are sent by mail, an affidavit of mailing must be maintained as proof that the proper persons were notified within the proper number of days.

Public input is considered and evaluated.

- 4. The planning commission conducts the public hearing and considers all oral and written material presented. Thereafter, it votes on the application and transmits it along with a summary report to the legislative body. The summary report includes:

- a) A summary of the comments made at the public hearing.
- b) Detailed findings concerning the application based on planning and zoning criteria and concerns raised at the hearing.
- c) A recommendation supported by the above findings.

5. City-village legislative body either:

- a) Adopts amendment (adoption may require a 2/3 majority vote or more if a protest petition has been filed. See "e) Abutter's challenge" below).

or

- b) Rejects amendment.

or

- c) May first hold additional public hearings preceded by public notice thereof on the proposed amendments at its own initiative, or if required by local ordinance or charter.

or

- d) If the city or village legislative body feels changes in the proposed amendment are necessary, they may make such changes or they may refer the amendment back to

the planning commission for its further report before taking final action.

- e) *Abutter's challenge.* If the owners of at least 20 percent of the area included in a proposed rezoning OR the owners of at least 20 percent of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change (excluding publicly owned land) submit a properly signed protest petition to the clerk, then the amendment to the zoning ordinance may be passed only by a 2/3 vote of the legislative body, unless a larger vote, but not to exceed 3/4 vote, is required by ordinance or charter. In the absence of an abutter's challenge, only a simple majority of the total membership of the city or village council is necessary to amend the zoning ordinance.
- f) Each amendment must be adopted as an amendatory ordinance. A resolution is not a sufficient means for amendment of an ordinance. A notice of adoption must be printed in a newspaper of general circulation within 15 days after adoption. The notice must include either a summary of the regulatory effect of the amendment including the geographic area affected, or the text of the amendment, plus the effective date of the ordinance and the place and time where a copy of the ordinance may be purchased or inspected.



Sample Checklist to Guide Decisions on Zoning Amendments

In order for planning commissions and city and village legislative bodies to objectively determine whether a proposed zoning amendment is appropriate, the following questions could be considered:

1. For proposed *text amendments to add additional land uses* to a zone (zoning district classification), it is appropriate to determine the following:
 - a) Is the proposed land use already provided for elsewhere in the ordinance?
 - b) Is the proposed land use compatible with uses already permitted by right and by special land use permit in that district?
 - c) Does the proposed land use relate well with the city or village master plan? Assuming that the zoning district is in harmony with the city or village master plan, does the proposed use contribute to the character of development envisioned in the plan?
 - d) Does the proposed use relate well with the spirit and intent of the ordinance, and with the objectives of the zoning district?
 - e) Would the proposed use be appropriate anywhere in the district?
 - f) Is the proposed use more appropriate in the district if permitted by special land use permit?
 - g) Is there a need to add the proposed use at all?
2. For *text amendment applications to change or add additional regulations or standards*, it is appropriate to determine:
 - a) Does the proposed rule, change or addition help reinforce the city or village master plan?
 - b) Is the proposed rule, change or addition in keeping with the spirit and intent of the ordinance, and with the objectives of valid public purposes?
 - c) What is the problem or issue which the change is intended to address? Can this be accomplished in another, more appropriate fashion? Is it a new response to

new problems not addressed in the zoning ordinance?

- d) Is the proposed text change easily enforceable?
3. For rezoning requests to change, create, extend or reduce a mapped zoning district, it is appropriate to determine:
- a) Are there substantial reasons why the property cannot be reasonably used as currently zoned?
 - b) Is the use more appropriately handled as a special land use in the existing district or another district?
 - c) If a proposed zone change, is it supported by the adopted city or village master plan?
 - d) Would a change of present district boundaries be compatible with existing land uses in the area? Will it adversely affect property values?
 - e) Are adequate sites available elsewhere that are already properly zoned to accommodate the proposed use?
 - f) Would the rezoning constitute a *spot zone* granting a special privilege to one landowner not available to others?
 - g) Was there a mistake in the original zoning classification?
 - h) Has there been a change of conditions in the area supporting the proposed rezoning?
 - i) Would the change severely impact traffic, public facilities and the natural characteristics of the area, or significantly change population density? Is the change consistent with the purposes for which zoning is adopted?
 - j) Is the proposed change out of scale with the needs of the community?
 - k) If the change is approved, what will be the probable effect on stimulation of similar zoning requests in the vicinity? Would this secondary affect negatively impact community plans and public services?
 - l) Is the proposed change precedent setting?

m) Is the proposed boundary appropriate?

As a general rule, the most significant municipal concerns regarding a rezoning are embodied in the following question: *"Is the proposed location for the district or zone desired an appropriate location for all the uses which would be permitted there?"*

As a general rule, the most significant municipal concerns regarding a rezoning are embodied in the following question: 'Is the proposed location for the district or zone desired, an appropriate location for all the uses which would be permitted there?'

Answering this question requires looking beyond the use the applicant says s/he wants to establish on the property to all the possible uses that could be built there if it is rezoned. It may be the particular use in question is OK, but that many, if not most of the others in the new district are not. In answering this question, it is appropriate to consider the following factors:

- Whether rezoning would be consistent with other zones and land uses in the area?
- Whether it is consistent with the trend of development in the area?
- Whether other uses in the proposed zone are equally or better suited to the area than current uses?
- Whether the proposed rezoning is consistent with both the policies and uses proposed for that area in the master or comprehensive plan?

If a specific land use is proposed to be established if the rezoning is granted, it is also appropriate to establish whether the land uses permitted in the existing zone are reasonable? This is important because if the existing zoning is reasonable, then a denial of a rezoning won't likely result in an adverse "takings" decision if litigation ensues. On the other hand, if the existing zoning district does not permit a reasonable use of the land (i.e. it is not economically beneficial to use the land for uses permitted in the existing zoning district) then, the zone needs to be changed. That does not mean however, it must be changed to the district requested. Sometimes it is more prudent to amend the text of the ordinance to permit the desired use as a use by right or by special use permit in the existing zone. That would be done

BEWARE OF THESE ZONING EXCUSES

"Sad but true, far too many hearings on rezoning cases resemble a horse trading affair being carried out in a comic soap opera fashion.

Some of the more ridiculous excuses offered for granting rezoning follow such lines as:

- What is proposed is better than what is there.*
- The lot is only a weed patch, this will clear it up.*
- You can't keep a man from using his land.*
- This will bring in more revenue.*
- The owner of the land can get more money for it if its rezoned to commercial.*
- There are more vehicles on the street than when he built there or bought the property.*
- I promised the people if I were elected I would keep taxes down.*
- I am sure he would build something good.*
- They are too big an outfit, we can't deny the rezoning.*
- Her husband is overseas fighting for our country, how can we deny it?*
- He is just an old man trying to make a living, this won't really hurt anyone.*
- Service stations provide quick urban renewal.*
- We have to bring commerce and industry in today, not worry about a plan of tomorrow.*
- I promised the people if I were elected I would bring commerce and industry into our city and this will be a start.*
- We approved the commercial rezoning for the other fellow, how can we deny this one?*
- We don't have any right to say where commercial or industrial developments should go.*
- He invested a lot of money in this land and these proposals thinking the rezoning would be granted, how can we deny it?*
- There is commercial zoning on the other corner, how can we deny this corner?*
- Like his attorney said, it's probably 'unconstitutional', and we don't know for sure.*
- We don't want to have to go to court, after all it really doesn't look so bad."*

Adapted from the Northern Kentucky Area Planning Commission Newsletter, December, 1967.

if it is a compatible use. Alternatively, another zoning district that permits the requested use may be more appropriate. If so, it would be advisable to advertise that two options (rezoning to one of two districts) will be considered when the original newspaper notice is published. This way the public will be aware that the property proposed for rezoning will be considered for two different zoning classifications (only one can be ultimately selected).

SPOT ZONING

Occasionally a applicant will desire a zoning change which raises the specter of spot zoning. Spot zoning is the practice of rezoning a lot or parcel into a zoning classification quite different from and incompatible with the use of surrounding lands, and which serves to benefit an individual land owner rather than the broad public interest, while also being inconsistent with the master or comprehensive plan. Typically the lot or parcel singled out for this special treatment is small in size compared to lands around it, or to the size of the district around it. Spot zoning is typically considered an illegal practice and can be invalidated if challenged in Court.

If these factors are carefully considered and sufficient data are available for evaluation, a sound recommendation will result. In some cases, it may be necessary for special studies and surveys to be made in order to obtain enough information to answer these questions. Where this is true, the planning commission should not hesitate to investigate, making certain that professional technical assistance is used whenever possible. In the case of a major rezoning, such as for a shopping mall, a good technique for ensuring that the above points are thoroughly explored is to perform an environmental impact assessment. Large scale zoning changes can have tremendous environmental, social, fiscal and public utility implications. These may greatly affect the community's master plan and the ability to provide public services and should be evaluated very carefully.

Administrative Zoning Procedures **ZONING PERMITS**

Land development consistent with the municipal zoning ordinance is monitored by a zoning permit system. The two most commonly used ways are: (1) by issuance of a separate

zoning permit, or (2) as an element of the requirement for a building permit. Either approach is workable, however, one should be aware of the advantages and disadvantages of each as outlined below.

Zoning Permit as a Separate Permit

Advantages:

- separate review process,
- can handle all zoning situations dealing with uses, structures and lots.
- may be necessary if building permits are handled by another agency.
- insures proper record keeping and documentation practices.

Disadvantages:

- creates one additional permit requirement for the builder/developer.
- creates an additional administrative expense if the municipality already has a building permit program.

Building Permit With Zoning Compliance Checkoff

Advantages:

- one combined permit process, less "red tape."

Disadvantages:

- difficult to enforce all zoning regulations related to changes in use when no construction is involved (and hence, no building permit is needed).
- record keeping and documentation practices necessary for zoning administration are apt to be subordinated to building permit records.

When Zoning Approval is Necessary

Unless a particular use or structure is specifically exempted, zoning approval, either as a separate zoning permit or as part of building permit, is typically necessary:

1. Prior to construction of a new structure or addition to either a principal structure or use or to an accessory structure.
2. Prior to changing from one use of land to a different use.
3. Prior to moving a prebuilt structure onto a parcel.
4. Prior to changing certain accessory uses of land such as parking areas or signs.

Note: A change in occupancy or ownership of a parcel or structure where the same land use is to be maintained in the same fashion and to the same extent, does not usually require a zoning or building permit.

People Involved

Applicant, zoning administrator and possibly the planning commission.

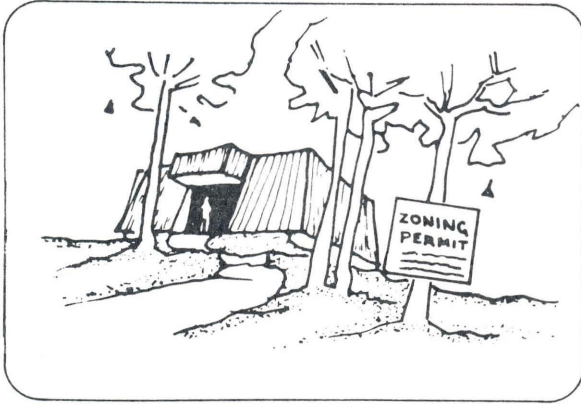
General Procedural Steps

1. Applicant:

- a) Inquires about the ordinary requirements pertaining to his/her proposed use of land with the zoning administrator and obtains the proper application forms.
- b) Completes and submits application along with fee and other supporting documentation to the zoning administrator.
- c) If site plan or plot plan approval is required by the zoning ordinance, the site plan or plot plan would also be submitted.

2. Zoning Administrator:

- a) Reviews the application:
 - 1) To make sure that it is the proper application for the zoning action requested.
 - 2) To see that all required information is submitted.
 - 3) To determine zoning compliance.
- b) Takes one or more of the following preliminary actions:
 - 1) Requests from the applicant that any omitted or pertinent and necessary information now be submitted.
 - 2) If necessary, requests the board of appeals to interpret an unclear ordinance provision.
 - 3) Reviews the submitted site plan according to site plan review standards as set forth in the zoning ordinance.
 - 4) If required by the local ordinance, discusses the application and site plan with the planning commission for advisory comments or approval (depending upon ordinance authorization).



5) Makes a site inspection to verify accuracy of the application and to gather additional information.

c) Takes final action:

1) Approves application (and site plan) if the proposed use complies with all ordinance requirements and if no special review procedure (such as with a planned unit development) is required. A zoning permit is issued or checked off on a building permit.

2) Disapproves and rejects application (and site plan) with reasons given in writing.

d) A decision of the zoning administrator may be appealed to the board of appeals.

Sample Checklist to Guide Decisions on Zoning Permit Reviews

When reviewing an application for a use or structure, the zoning administrator will consider a number of physical aspects about its development in relation to the zoning ordinance. However, because the review generally involves a simple check for zoning compliance and no discretion is involved (except if there is a requirement for site plan review), the zoning administrator will particularly look at certain key elements. Many administrators have established these key elements into a standardized or systematic review format. Shown below are some of the common key considerations contained in such a format.

All proposed uses and structures to be developed within any zoning district are reviewed to insure compliance with each of the following ordinance requirements:

1. That the proposed use is permitted either by right, by special use permit, or by other review and approval procedures provided for in the ordinance for the district in which the proposed use is to be located.
2. Minimum site area requirements of the district (lot size, lot width, lot coverage, required yard setbacks, setbacks from water bodies, streams and floodplains, maximum building height, etc.).
3. Minimum building requirements, if any (required area).
4. Minimum dimensions of parking spaces and the required number of parking spaces.
5. Sign requirements.
6. Required lighting, fencing, screening or buffer strips, if any.
7. All public structural or development easements where such exists.
8. All special standards and conditions applicable to the proposed uses or structures which are specifically provided for in the ordinance.
9. All general provisions of the zoning ordinance applicable to the proposed use or structure(s).

CERTIFICATES OF OCCUPANCY

The certificate of occupancy (C.O.) is a permit which is often required before a new or old structure is occupied or used, and is usually granted after an inspection. The major purpose for a C.O. is to insure zoning compliance. It is not uncommon to discover changes in design or use that were not authorized when conducting a C.O. inspection. Without the C.O. process this knowledge would not have been uncovered. It is essential to identify such violations before occupancy or else enforcement is much more difficult. For example, the C.O. helps to make sure that:

1. After construction, a new structure is of the same size, location and setbacks as the one for which a zoning permit was granted.
2. Before occupancy, the use is the same as the use for which a zoning permit was granted.
3. Both the structure and the use comply with all zoning requirements (and any conditions previously imposed).

It should be noted that because of the similarity to the zoning permit, the use of a certificate of occupancy is not common in rural villages where the pace of development is slow to moderate and a second separate permit is often not really necessary to insure ordinance compliance. However, C.O.'s are especially useful (1) where active zoning compliance is critical to the welfare of the community, and (2) in those municipalities where the city or village does not issue building permits.

When A Certificate of Occupancy is Necessary

This is a matter of local preference and procedures are established in the zoning ordinance. Generally, a certificate of occupancy can be required:

1. Prior to occupying a new structure.
2. Prior to using land in a manner different from the previous use.
3. Prior to occupying an existing structure with a "new" type of use other than what presently exists there.

Note: Certificates of occupancy are sometimes used to document lawfully existing nonconforming uses and nonconforming structures.

People Involved

Applicant, zoning administrator.

General Procedural Steps

1. Applicant:
 - a) Notifies zoning administrator that the structure and use are ready for inspection.
2. Zoning administrator:
 - a) Contacts applicant to establish a mutually agreed upon date and time for inspection.
 - b) Researches and reviews any known public records relating to the site in question.
 - c) Inspects for compliance with zoning requirements and with previously imposed conditions, if any.

(If occupancy permit review is combined with building permit review, the zoning administrator also inspects for compliance with building code.)

3. Zoning administrator takes final action:

- a) Grants the certificate of occupancy.

or

- b) Delays subject to completion or alterations necessary to achieve full compliance and follow-up inspection.

or

- c) Denies a certificate of occupancy in writing based on inspection findings of non-compliance with the ordinance and initiates enforcement action pursuant to ordinance requirements.

The certificate of occupancy procedure requires no discretionary decision. It is simply an inspection by the zoning administrator to determine compliance with the requirements of the zoning ordinance and adherence with any conditions previously imposed by a municipal body or official during the course of the zoning process. A certificate of occupancy permit may not be denied if there is compliance with all ordinance requirements.

NONCONFORMING USES

A nonconforming use is a *use of land legally in existence prior to the adoption or amendment of the ordinance which made it nonconforming*. They are also sometimes called "*grandfathered uses*". The term nonconforming use includes both preexisting land uses and nonconforming structures such as those with inadequate setbacks or excessive height or bulk. Nonconforming uses may continue in the future to the same extent and in the same manner as they existed at the time they became nonconforming. A nonconforming property can be sold and the new owner is permitted to continue to use it in the same fashion as the previous owner without any new zoning approvals. However, if a change in a nonconforming use or structure is proposed, it must conform with ordinance requirements. The ordinance must establish standards and procedures for treatment of nonconforming uses. The basic objective is gradual elimination of nonconforming uses. The three most basic types of regulation relate to enlargement or expansion, substitution, and reconstruction.

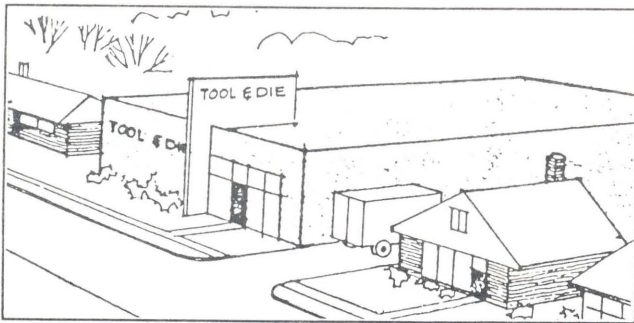
ENLARGEMENT of nonconforming uses is generally very restricted as it is usually contrary to the intent of the ordinance. Many communities prohibit any enlargement of nonconforming uses.

SUBSTITUTION of one nonconforming use for another is usually allowed if the change is

"more conforming" (a terrible standard). It is better to require it be "no less conforming".

RECONSTRUCTION of a nonconforming use is usually prohibited if damage is greater than 50%.

The City-Village Zoning Act now allows *classification of nonconforming uses* and the application of different standards to different classes. This technique can add important flexibility to the treatment of nonconforming uses, while still providing the necessary basis for eliminating those nonconforming uses which have significant negative impacts.



Most nonconforming use provisions are administered by the zoning administrator and/or the board of appeals. However, there is no prohibition against planning commission involvement in this area. Ordinances vary dramatically with regard to nonconforming use requirements. As a result, it is important that the reader become familiar with the unique requirements in your ordinance.

SITE PLANS

Most ordinances require that a site or plot plan or at least a sketch be submitted as part of the application for zoning approval of a particular land use. The site plan is used to insure ordinance compliance and to study both on-site and off-site impacts from proposed development. These impacts include ingress/egress, interior/exterior traffic flow, storm drainage, erosion, grading of land, landscaping, lighting and parking. A site plan can vary in detail depending upon the size and complexity of the project, and the administrative needs of the local government. Some site plans are highly detailed blueprints while other site plans may be nothing more than simple sketches on the backside of zoning permit forms.

The importance to the zoning administrator of having a site (or plot) plan to review cannot be overstated. The final site plan effectively documents that the applicant is knowledgeable of the regulations and is in compliance with them. Also, once a permit is granted based upon the final site plan, the approved site plan then serves as an enforcement tool. For further information see **Site Plan Review: A Guidebook for Planning and Zoning Commissions** listed in the bibliography in the Appendix.

When Zoning Approval is Necessary

Site plan review is most often not a separate zoning procedure, but instead is a part of another review process, such as review of a zoning permit application, to obtain a special land use permit, or in relation to a request for a variance. When a separate procedure is specified in a city or village zoning ordinance, it must be followed. Site plan review is required by statute relative to special land uses and planned unit developments. Section 4d of the City-Village Zoning Act provides the authority and requirements for use of the site plan review technique.

People Involved

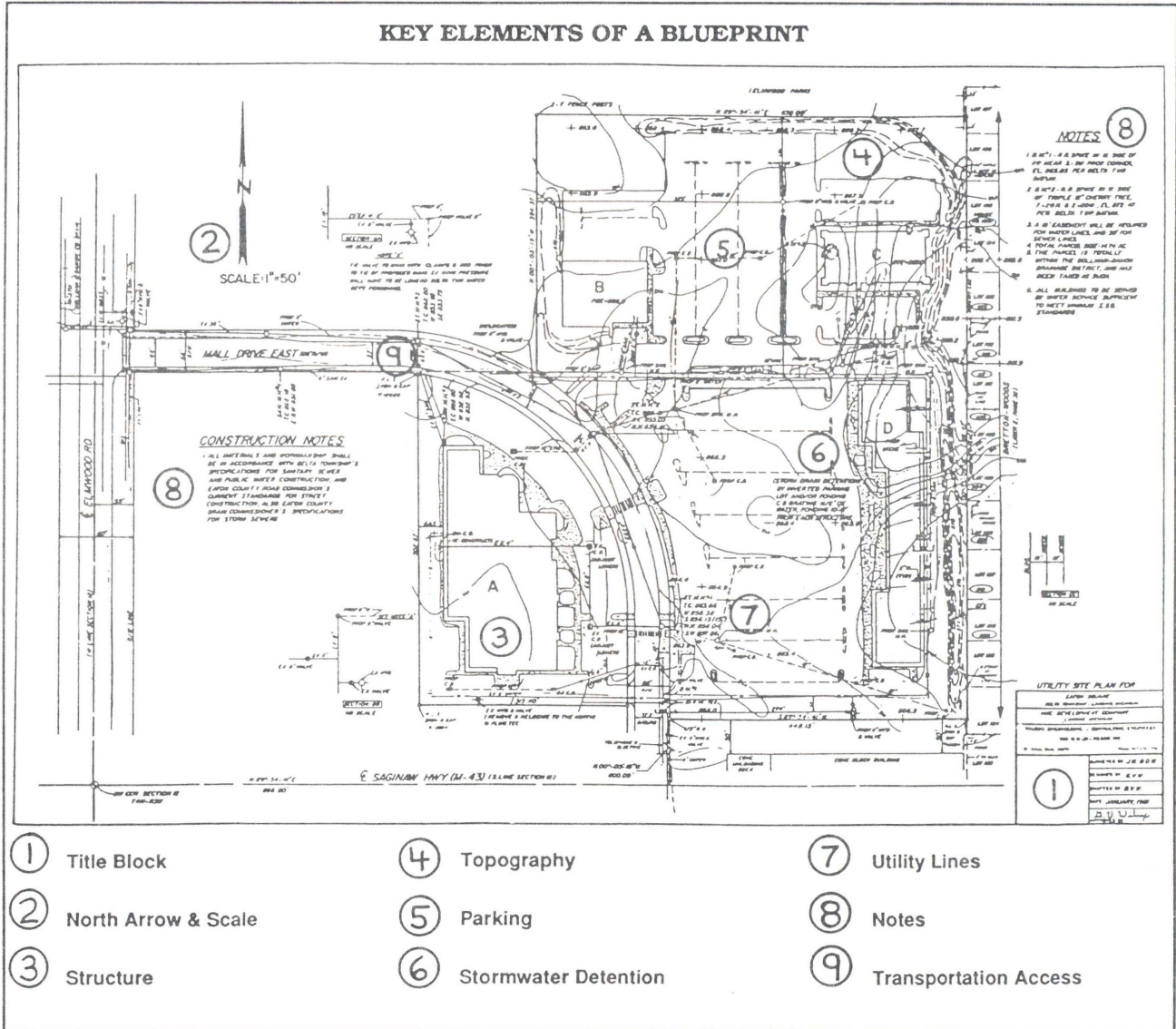
Typically, the zoning administrator and/or the planning commission are involved in site plan review. The statute requires that the zoning ordinance "specify the body, board or official charged with reviewing site plans and granting approval."

SITE PLAN ELEMENTS

A typical site plan is a drawing that shows:

- Property boundaries
- Existing and proposed buildings
- Topographic relief
- Existing and proposed roads and utilities
- Existing zoning
- Existing natural features
- Setback lines
- Auto ingress and egress
- Parking and loading areas
- Landscaping
- North arrow
- Scale
- Who prepared drawing
- Preparation date

KEY ELEMENTS OF A BLUEPRINT



- ① Title Block
- ④ Topography
- ⑦ Utility Lines
- ② North Arrow & Scale
- ⑤ Parking
- ⑧ Notes
- ③ Structure
- ⑥ Stormwater Detention
- ⑨ Transportation Access

General Procedural Steps

Procedural steps for site plan review vary tremendously from community to community. The statute requires, however, that the zoning ordinance specify "the procedures and requirements for the submission and approval of site plans." Site plans should not be accepted for review by the zoning administrator if they are incomplete. Decisions rejecting, approving or conditionally approving a site plan must be based upon requirements and standards stated in the ordinance. If a site plan complies with the ordinance requirements, it must be approved. Once approved, the site plan becomes a part of the record of approval and "subsequent actions relating to the activity authorized shall be consis-

tent with the approved site plan, unless a change conforming to the zoning ordinance receives the mutual agreement of the landowners and the individual or body which initially approved the site plan."

Sample Checklist to Guide Decisions on Site Plan Reviews

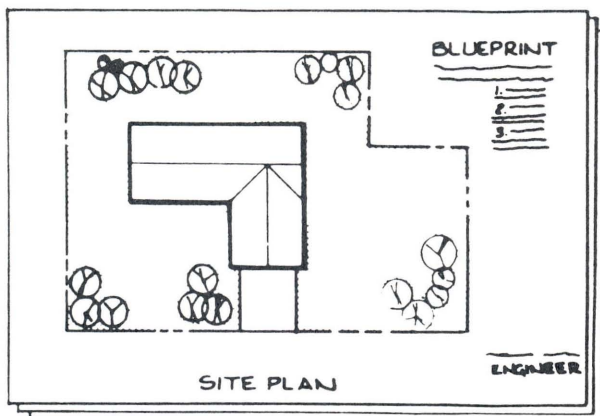
In making rational, defensible decisions and in setting forth conditions for permit approval, uniform review criteria should be employed. Following is an example of typical criteria currently in use. These criteria presume that an ordinance contains standards similar to those cited, and which must be complied with to gain zoning approval.

The site plan is reviewed in order to determine:

1. That the proposed use conforms to the uses permitted in that zoning district.
2. That the dimensional arrangement of building(s) and structure(s) conform to the required yards, setbacks and height restrictions of the ordinance.
3. That the proposed use conforms to all use and design provisions and requirements (if any) as found in the zoning ordinance for specified uses.
4. That there is a proper relationship between the existing and proposed streets and highways within the vicinity in order to assure the safety and convenience of pedestrian and vehicular traffic.
5. That the proposed on-site buildings, structures and entry ways are situated and designed to minimize adverse effects (upon owners and occupants of adjacent and surrounding properties) by providing for adequate design of ingress/egress, interior/exterior traffic flow, storm drainage, erosion, grading, lighting and parking, as specified by the zoning ordinance or other county or state law.
6. That natural features of the landscape are retained where they can enhance the development on the site, or where they furnish a barrier or buffer between the project and adjoining properties (used for dissimilar purposes) or where they assist in preserving the general safety, health and appearance of the neighborhood (i.e. controlling erosion or the discharge of storm water, etc).
7. That adverse effects of the proposed development and activities upon adjoining residents or owners are minimized by appropriate screening, fencing, or landscaping (as provided or required in the zoning ordinance).
8. That all buildings and structures are accessible to emergency vehicles.
9. That the site plan as approved is consistent with the intent and purposes of the zoning ordinance which is to promote public health, safety and general welfare, to encourage the use of lands in accordance with their character and adaptability, to avoid the overcrowding of population, to lessen congestion on the public roads and streets, to reduce hazards of life and property, and to facilitate existing municipal land use and development plans.



A Special Land Use?



SPECIAL LAND USES

Special land uses are typically described as those uses of land which upon special review are determined to be compatible with permitted land uses in a zoning district. They are also known as conditional uses, special exception uses, special approval uses and special uses. Standards are included in the ordinance to assure that the characteristics of the use under consideration are compatible with adjacent land uses, the natural environment of the site, and the general character of the area, including availability of public services and facilities.

Typically, a special land use permit is issued to identify compliance with the special land use requirement. A use permitted by special permit in one district is often allowed by right in another. Common special land uses include

junk yards, mobile home parks, race tracks, TV and radio towers, home occupations, hospitals, churches and schools. The City-Village Zoning Act specifically grants authority for municipalities to utilize the special land use technique in Section 4A of the Act. The statute requires that uses permitted as special land uses be identified in the ordinance. The body or official responsible for reviewing and approving special land uses as well as the review procedures and standards upon which approval will be based must also be stated in the ordinance.

When a Special Land Use Permit is Necessary

A special land use permit is typically necessary prior to development of (or conversion to) a use which is listed in the zoning ordinance as a special land use.

People Involved

Applicant, zoning administrator and the body or official responsible for reviewing and approving special land uses. The review and approval body or official may be either the zoning board, the planning commission, an administrative official or the city or village legislative body. An appeal of a decision on a special land use may be taken to the board of appeals *only if it is so specified in the ordinance*; otherwise, an appeal would go to Circuit Court. *The Board of Appeals is not authorized to be the body responsible for original review and approval of special land uses.*

General Procedural Steps

1. Applicant:

- a) Inquires about requirements with the zoning administrator and obtains the proper application forms.
- b) Completes and submits the application along with fee (and other supporting documentation) to the zoning administrator or the official responsible for receiving special land use applications.
- c) Submits a required site plan for approval (Act 207 of 1921, as amended, Section 4d(4)).

2. Zoning administrator:

- a) Reviews application package:
 - 1) to make sure that it is the right application for the zoning action requested;

- 2) To see that all required information is submitted; and

- 3) To make sure that the proposed use is allowed in that particular district by special land use permit.

b) Takes one or more of the following actions:

- 1) Requests from the applicant that any omitted or necessary information now be submitted;

- 2) If necessary, seeks an ordinance interpretation from the board of appeals; and/or

- 3) Forwards the complete application to the body or official designated to review and approve special land uses.

3. Special land use review body (or official):

- a) Reviews the site plan according to site plan review standards, as set forth in the zoning ordinance.

- b) Reviews the proposed special land use according to standards for special land use permits, as set forth in the ordinance.

TWO TYPES OF STANDARDS

There are two basic types of zoning standards: discretionary and nondiscretionary.

DISCRETIONARY: Judgement is used to determine compliance. For example:

- *"The project shall not alter the essential character of the area."*

NONDISCRETIONARY: The standards are measurable or otherwise certain to establish. No judgement is used. For example:

- *"A steel mesh fence eight feet in height shall surround the perimeter of the property."*

Most ordinances contain both types of standards. There are usually *general standards* which are discretionary and apply to all special land uses and *specific standards* which are nondiscretionary and apply only to a particular type of special land use.

4. Opportunity for public comments.

If the standards for special land use permits are such that a discretionary decision is to be made, the reviewing body or official must *either*:

- a) Give public notice in a newspaper of general circulation of official receipt of an application for a special land use permit which:
 - 1) Describes the nature of the special land use request,
 - 2) Indicates the property in question,
 - 3) States the time and place where the special land use request will be considered,
 - 4) Indicates when and where written comments will be received concerning the request, and
 - 5) Indicates that a public hearing on the proposed special land use may be requested by any property owner or occupant of and structure located within 300 feet of the boundary of the property being considered for a special land use permit.

This notice is also mailed or delivered to property owners and occupants within 300 feet of the property in question and must be made between five and 15 days before the date on which the application is to be considered. An affidavit of mailing or delivery of notice must be maintained.

or

Give public newspaper notice of a scheduled public hearing. This hearing notice includes items 1) through 4) above. It is also mailed or delivered to property owners and occupants within 300 feet of the property in question. These public hearing notices must be made between five and 15 days before the public hearing date. An affidavit of mailing or delivery of notice must be maintained.

All public input is considered and evaluated. A summary of the public comments should be retained in the record of the meeting.

5. Special land use review body (or official) takes final action and either:

- a) Approves the special land use permit application and final site plan. The zoning administrator is directed to issue the per-

mit and insure development consistent with the approved plan.

or

- b) Approves the special use permit application and final site plan subject to conditions which are imposed in order to insure the special land use complies with standards stated in the ordinance. The zoning administrator is directed to issue the permit and insure development consistent with the approved plan.

or

- c) Disapproves application and final site plan.

Note: All decisions must be accompanied with a concluding statement citing the reasons for the decision and any conditions which may be imposed. The facts presented in the application, staff report (if any) and from public comments should be specifically related to the standards required for approval. If the facts show that the ordinance standards are not met, the application must be denied. If all ordinance standards are met, the application must be approved.

Sample Checklist to Guide

Decisions on Special Land Uses

A site plan is required for submission and approval of all special land use permit applications.

An important concern in reviewing special land use requests is whether or not the proposed site is appropriate for the land use in question. A special land use is usually a unique use which may have particular intrinsic or design characteristics that could create potential problems for adjacent property owners. For this reason, a special land use may be appropriate in one place, but not in all locations throughout the particular zoning district. A classic situation is a proposal to build an all-night gasoline service station or car wash near a predominantly residential intersection, even though the subject property is zoned for commercial uses. Rational judgements and conditions may need to be imposed to protect adjacent lands and the overall character of the area from adverse changes and impacts. The following checklist is suggested for considering the appropriateness of a special land use in a particular area:

1. Relationship to the general safety, health and welfare of the community-at-large. This includes:

- accessibility of the property in question to fire and police protection;
 - traffic conditions (especially adding to a hazardous situation);
 - transportation design requirements, if any, which will be needed to accommodate any traffic impact from the use intended; and
 - appropriateness of the location, nature and height of the proposed use to the size, type and kind of buildings, uses and structures in the vicinity and adjacent properties, including the safety and convenience of people therefrom.
2. Any potential decrease in the market value of adjacent buildings, uses and structures which are permitted by right under current zoning, if the proposed special land use is approved.
 3. Harmony with the city or village master plan. This considers whether the location and size of the proposed use, the nature and intensity of the activities involved, the size of the site with respect to existing and future streets (giving access to it), parks and drainage systems, will be in harmony with the city or village land use plan, and the character of land use which is intended by the comprehensive plan for the area or district in question.
 4. Impact from the applicant's proposed use, its location and intensity and the height of its buildings, wall, fences and other structures upon the appropriate character of development existing or planned for the area.
 5. Any hazards arising from storage and use of flammable fluids.
 6. That the operation in connection with any special use is not environmentally objectionable to nearby properties by reason of noise, fumes, pollution, vibration, or light to an extent which is more than would be expected of any use permitted by right for the district in which the special land use is proposed.

PLANNED UNIT DEVELOPMENTS (PUD's)

The planned unit development, or PUD as it is frequently known, is a modern flexible application of zoning. The PUD zoning concept is employed by some communities to encourage innovative and imaginative project design.

Sometimes it is called cluster zoning, community unit plan, or planned residential development. Its use has become very popular all over the country. In Michigan, the use of the PUD has been given statutory recognition in the City-Village Zoning Act, see Section 4b.

What is a Planned Unit Development?

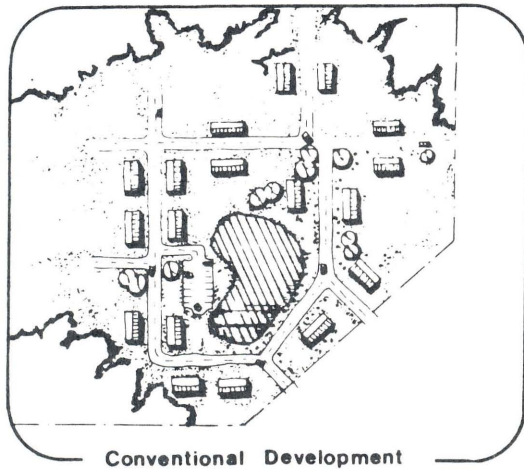
"Planned unit development (PUD) is a device which allows a development to be planned and built as a unit and which...permits variations in many of the traditional controls related to density, land use, setbacks, open space and other design elements, and the timing and sequencing of the development. PUD, therefore, is both a type of development and a regulatory process. As a development type, PUD permits flexibility in site design that allows buildings to be clustered; mixtures of housing types such as detached houses, townhouses, or garden apartments combining housing with such other ancillary uses as neighborhood shopping centers; better design and arrangement of open space; and retention of such natural features as flood plains or steep slopes. It offers greater opportunities for providing lower-cost housing along with conventional housing." Michael J. Meshenberg, the "Administration of Flexible Zoning Techniques", **Planning Advisory Service Report No. 318** (Chicago: ASPO, June 1976), p. 19.

Often communities define PUD's as large sites developed as a single unit combining a variety of structures and perhaps uses, in which ownership is retained by a single individual, partnership, corporation or association. Because of the trend to conserve and protect open space, sensitive land resources and the natural environment, a PUD may be the only feasible type of development where particular site conditions (e.g....flood plain, steep slopes, wetlands poor soils) demand clustering or grouping of structures on only part of the site.

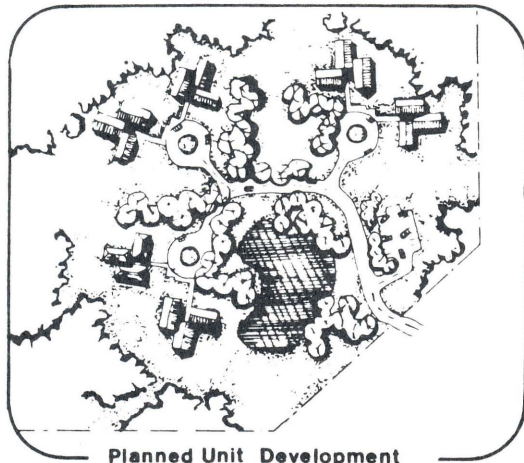
Ways to Provide for a PUD in a City or Village Zoning Ordinance

Development of land based on a PUD concept is permitted only if the zoning ordinance expressly permits and provides for such development. In developing PUD provisions, the planning commission and the city or village council:

1. Defines the term "*planned unit development*" for zoning purposes,



Conventional Development



Planned Unit Development

Comparative Site Layout

2. Specifies who shall be the designated review and approval body or official,
3. Determines eligibility criteria,
4. Establishes standards for approval,
5. Develops public hearing procedures, and
6. Sets forth the PUD review and approval process (which must include site plan review).

The eligibility criteria (provision 3 above) is perhaps the most important. Because the community is offering the developer so much flexibility in developing his/her land, the community should be getting demonstrable benefits in return. These could include better exterior building design, more open space, a better layout, special environmental protection measures and so on. These need to be identified as standards in the ordinance and verified at the

beginning of the review process to establish project eligibility for PUD Development.

With respect to provision 6 above, there are two basic ways to provide for PUD's in a city or village zoning ordinance: (1) like a special land use, and (2) as a separate zoning district. Processing PUD's via the same procedure used for special land uses is the simplest of these methods if special land uses are already provided for in the zoning ordinance. The only extra requirement prescribed by state statute for PUD's are: (1) that a public hearing is required for PUD's in contrast to the public notice option provided for single-purpose special uses; and (2) that special standards and eligibility criteria must also be provided specifically for review of PUD's. Under this alternative, the body or official charged with review and approval of special land uses also becomes the approving body for PUD's.

A separate PUD zone or district is an alternative approach wherein the mandatory criteria, standards and requirements are contained in a separate PUD district, just as for any zone. The local ordinance would have to include provisions which satisfy the above mentioned six features. Of course, in this instance, the land would actually have to be rezoned to permit a PUD if the land was not already zoned as such. Under this option, the legislative body is the approval body.

When PUD Approval is Necessary

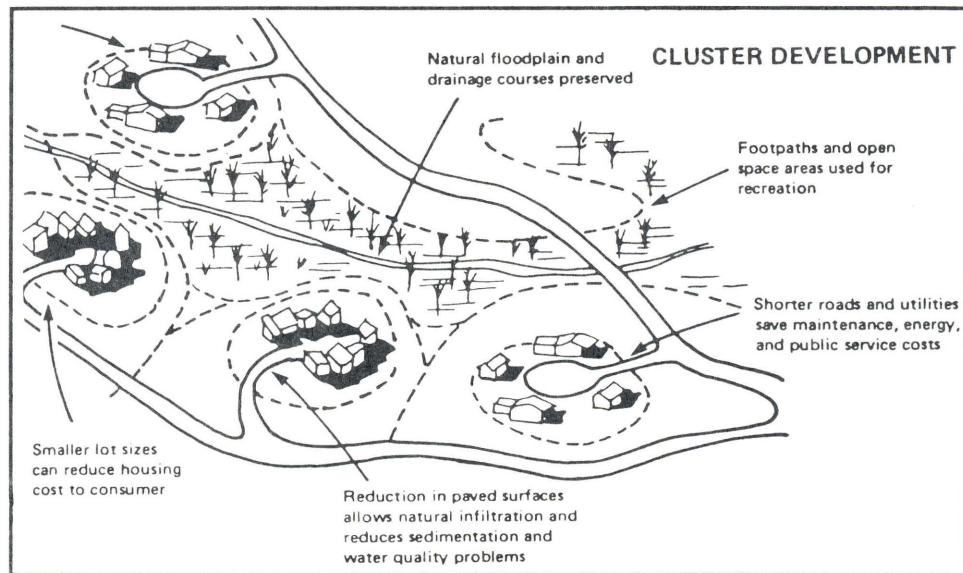
When an applicant desires to establish a PUD in a district in which PUD's are permitted as a special land use or when a special PUD district rezoning is requested.

People Involved

Applicant, zoning administrator, and the PUD review body or official. The PUD review body or official must be specified in the zoning ordinance as having the power to approve PUD's. The review and approval body or official may be either the planning commission, an administrative official or the city or village council.

General Procedural Steps

If the PUD is permitted as a special land use, then the procedures for processing special land uses are followed; *except that* a public hearing must be conducted (it is not optional as with certain special land uses). It is also permis-



sible, if the ordinance so provides, for *preapplication conferences* to be held between the applicant and city or village officials before submission of *preliminary site plans* before the public hearing.

If the PUD is permitted as a separate zoning district, the ordinance amendment process is integrated with the PUD review and approval process.

When a PUD application and site plan is found to satisfy all the criteria, standards, requirements and conditions for approval stated in the ordinance, the application must be approved. An appeal of a PUD decision may be taken to the board of appeals only if so specified in the zoning ordinance, otherwise it goes to Circuit Court.

Since reviewing a PUD application requires review of a site plan via a process similar to that for special uses, the decision guides previously presented should be reviewed as well as the following sample list of standards:

Sample Checklist to Guide Decisions on PUD's

1. Is the minimum PUD area requirement of the ordinance met? (Some communities have no area requirements). Are the densities appropriate for the area?
2. Is the location of the proposed PUD appropriate?
3. Are the proposed uses of the PUD permitted in the zoning district in which the PUD is to be located?
4. Is the PUD to be developed in multiple stages? If so, which parts are to be developed when?
5. Are all community water and sewer service requirements of all state, county and local agencies complied with?
6. Is all common property proposed in the PUD clearly provided for? Common property is a parcel or parcels of land, a privately-owned road or roads, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites. When common property exists, the ownership of such property may be either public or private but should be specified in writing and approved separately. When privately owned, arrangements must be made for the improvement, operation, and maintenance of such common property and facilities, including private streets, drives, service parking and recreational areas.
7. Are necessary public easements on common property which is privately owned adequately granted? When common property exists in private ownership, the owners should be required to grant easements, over, under, and through such property (to the city or village),

as are required for public purposes, prior to final approval.

8. Are all site design standards complied with? These standards typically include:
- lot area and yard requirements
 - height limitations
 - access
 - building areas (to be in harmony with PUD objectives)
 - boundary setbacks and buffer areas
 - off-street parking and loading
 - residential dwelling unit density (gross density)
 - landscaping
 - other local design limitations
9. Have any necessary performance guarantees been collected to insure required public improvements are installed?
10. Have all conditions required for approval been documented and incorporated into the PUD permit approval?
11. Have a statement of findings and conclusions relative to the PUD proposal been specifically listed and retained as a part of the record?

Note: Final approvals may be granted on each phase of a multi-phased PUD if each phase contains the necessary components to insure protection of natural resources and the health, safety and welfare of the users of the PUD and the residents of the surrounding area. In establishing PUD requirements, the city or village may also incorporate by reference, other ordinances or statutes which regulate land development. Violation of the terms of an approved PUD is a violation of the zoning ordinance.



Zoning Violation

ZONING VIOLATIONS

There will come a time in every community when the zoning ordinance is violated. Whether this is intentional or unintentional is of little importance. The credibility of successful zoning lies not only in the ability to administer it reasonably and fairly, but in the ability to enforce zoning requirements when violations occur. Many violations of zoning are voluntarily reported by concerned citizens and public officials. Following is a discussion of two ways of enforcing zoning and handling violators.

When Necessary

1. When a suspected zoning violation is reported to the zoning administrator or,
2. When the zoning administrator identifies what appears to be an ordinance violation.

People Involved

Suspected violator, zoning administrator, legislative body and city or village attorney.

General Procedural Steps

This section discusses two alternative approaches to dealing with zoning violations. The first is an example of a general approach with several opportunities for correction prior to court action. The second approach is a zoning summons approach which can be used where violations may be too numerous, costly and time consuming to prosecute using the first approach. The basic authority and procedure for either or both of these approaches should be specified in the local ordinance.

A. General Approach:

1. A suspected zoning violation is reported or identified.
2. Zoning administrator:
 - a) Makes a preliminary visit to the site to identify a zoning violation. If no violation is found, the matter is documented and the case closed. If a person contacted the city or village about the supposed violation they should be contacted about the outcome.
 - b) If a violation is found, it is documented as are the facts supporting this conclusion. A photo showing the violation and containing the date, time, place and signed

by the observer should be made and retained.

- c) Meets face to face with the landowner to discuss the violation.
 - 1) The zoning violation is explained.
 - 2) Remedial measures to correct the violation are concretely identified for the landowner.
- d) Issues a notice of violation (after the meeting) to the violator with one copy to be filed.

The notice documents:

- 1) The zoning violation,
 - 2) The meeting,
 - 3) Measures to be taken to correct the violation, and
 - 4) A (uniform) period of time given within which to correct the violation.
- e) Reinspects the site, upon expiration of the time period. If compliance is shown, the zoning administrator so signifies on the file copy and the violator's copy of the notice of violation. The matter is resolved.

However, if the zoning violation still exists after the expiration of the time period, the zoning administrator may proceed in the following manner:

- f) Schedules a hearing to be held by the city or village legislative body (or other body if so designated in the ordinance).
- g) Issues a second notice of violation to the violator. The notice:
 - 1. Advises that a hearing before the city or village legislative body has been scheduled.
 - 2) Gives the date, time and place of the hearing.
 - 3) Requires that the violator or his/her agent appear in order to show cause as to why the city or village should not proceed in court to prosecute the violation, and
 - 4) States that correction of the violation prior to the hearing date will automat-

ically void the requirement of a hearing before the city or village legislative body.

- 3. Legislative body (or other designated body):
 - a) Hears the violator's "show cause" response as to:
 - 1) Why compliance with zoning has not been met, and
 - 2) Why the ordinance should not be enforced against the violator.
 - b) Directs the zoning administrator and the city or village attorney to proceed with a formal complaint in Circuit Court if the violator or his/her agent fails to appear, does not give valid reasons for noncompliance or does not give valid reasons against enforcement of the ordinance.

Where the violation involves unlawful construction or illegal usage, either of which may be of a critical nature as specified in the ordinance, a Circuit Court injunction can be an added enforcement action and may be necessary to proceed with immediately.

Upon conviction, the violator usually pays a fine and certain legal costs (optional). Many local ordinances also state "each day of conviction, and during which a violation continues shall be deemed a separate offense". Remedies are also usually cumulative.

B. Zoning Summons Approach

The zoning summons approach is a popular alternative used by some communities. It is a good intermediate technique which often resolves the problem, and reduces the number of times the city or village attorney or a court has to be relied upon. The following is a general description of how this approach is used:

- 1. A suspected zoning violation is reported or identified.
- 2. Zoning administrator:
 - a) Makes a preliminary visit to the site to identify if a zoning violation exists. If no violation is found, the matter is documented and the case closed.
 - b) If a violation is found, it is documented along with the facts supporting this conclusion. A photo showing the violation and containing the date, time, place and

signed by the observer should be made and retained.

- c) Meets face to face with the landowner to discuss the violation.
 - 1) The zoning violation is explained.
 - 2) Remedial measures to correct the violation are concretely identified for the landowner.
- d) Issues a "warning ticket" (after the meeting) to the violator with one copy to be filed. The ticket states:
 - 1) The zoning violation,
 - 2) The meeting,
 - 3) Measures to be taken to correct the violation, and
 - 4) A (uniform) period of time allowed within which to correct the violation.
- e) Reinspects the site, upon expiration of the time period. If compliance is shown, the zoning administrator so signifies on the file copy and the violator's copy of the warning ticket. The matter is resolved.

However, if the zoning violation still exists after the expiration of the time period, the zoning administrator generally proceeds in the following manner:

- f) Issues a "zoning summons" to the violator. The summons:
 - 1) Cites the zoning violation;
 - 2) Gives the date of the first meeting and when the warning ticket was first issued;
 - 3) Repeats the original measures specified in the warning ticket that were to be taken to correct the violation;
 - 4) Indicates the fine as may be previously specified by ordinance or other action by the legislative body, payable to District Court. *Where the violation involves unlawful construction or illegal usage, either of which may be of a critical nature as specified in the ordinance, Circuit Court injunction might be a better enforcement action;* and
 - 5) Specifies the date and the time by which the fine is to be paid to the District Court

or at which a "not guilty" plea is to be entered, usually 5-7 days.

In most cases, compliance will be gained at this point. But if not, the zoning administrator:

- g) Issues a separate zoning summons for each day (or week) after the date the first summons was issued.
 - h) Reports to the city or village council about any violators who have accumulated repetitive summons for the same violation.
3. City or village council:
- a) Directs the zoning administrator and the municipal attorney to proceed with a formal complaint to Circuit Court for injunction relief.

As with zoning permits and certificates of occupancy, the enforcement process requires no discretionary decision on the part of the zoning administrator. The administrator simply follows adopted procedures and documents what s/he witnesses and what actions have transpired. Inspections are made according to the city or village zoning ordinance requirements.

Quasi-Judicial Zoning Procedures APPEALS - ORDINANCE INTERPRETATION - VARIANCES

The basic responsibilities of the Board of Appeals include hearing appeals of administrative decisions, interpreting the zoning ordinance, considering requests for variances and such other duties delegated by ordinance. The basic procedures and people involved are roughly the same in each case, but the criteria employed by the ZBA are different.

When Action by the Board of Appeals is Necessary

1. When a citizen appeals a decision made by the zoning administrator or by an administrative review body or official from which an appeal to the board of appeals is authorized by ordinance; or
2. When an interpretation of the zoning ordinance or map is requested by a citizen or public official;
3. When a variance from specific ordinance requirements is formally requested.
4. When other duties established by ordinance are delegated to the board of appeals, such

as requests for expansion of nonconforming uses.

Note: Decisions on special land uses and planned unit developments may not be appealed to the board of appeals unless specifically stated in the zoning ordinance. Likewise, decisions by the city or village legislative body on amendments to the zoning ordinance (text changes or rezonings) are not appealable to the board of appeals.

People Involved

Any aggrieved citizen, or any officer, department, board or bureau of the city or village.

Zoning administrator or an administrative review body (or official).

Zoning board of appeals (and its staff).

General Procedural Steps

1. The person (or public agency or official) who makes the appeal:

- a) Inquires of the local zoning administrator (or other designated officer) as to how one must proceed and obtains the appeal form(s).
- b) Completes and files the necessary form(s) with any required fee to the board of appeals or official responsible for receiving such application. On some matters, this must be done within a specified time, as prescribed by ordinance or the rules of the board of appeals. City or village bodies and officials are usually exempt from paying a fee if they initiate the appeal on behalf of the municipality.
- c) A copy of the appeal is transmitted to the official or body from whom the appeal is taken. Likewise, this official or body must then transmit to the board of appeals all documentation and records upon which the appeal was based.

2. Board of appeals:

- a) Reviews the appeal form(s):
 - 1) To make sure that it is the proper form for the requested action, and
 - 2) To see that all required information is submitted.
- b) Schedules a hearing within a reasonable period and gives notice thereof to the

parties affected in accord with ordinance procedures and any adopted rules.

- c) Notice of the appeal is also given by mail or personal delivery to the property owners and to the occupants of single and two-family dwellings within 300 feet of the premises in question.
- d) Formulates decision. The board of appeals considers the merits for the individual appeal based on standards and considerations established in the statute and as may be embodied in the ordinance.

3. Board of appeals takes final action:

The board of appeals has all the powers of the officer or body from whom the appeal was taken and may issue or direct the issuance of a permit. The board of appeals either:

- a) grants the appeal wholly or partly;
or
- b) grants the appeal wholly or partly with conditions attached;
or
- c) denies the appeal;
or
- d) when a variance is requested and there is just cause to grant such request due to practical difficulties or unnecessary hardship, the board of appeals may reasonably vary or modify specific local zoning requirements so that the *spirit of the ordinance is observed, public safety secured and substantial justice done.*

The board of appeals must state the reasons and facts supporting their reasons for any decision made. These must be written in the record.

4. Voting requirements on final actions:

Voting requirements for actions of the board of appeals differs depending on the size of the city or village, and on the type of action or request before them.

- a) In a city or village having a population of less than a 1,000,000, the concurring vote of a majority of the total membership of the board of appeals is necessary to reverse an order, requirement, decision or determination of an administrative official or body, or to decide in favor of the applicant a matter upon which they are required to pass under the ordinance, or

to effect a variation in an ordinance. However, a concurring vote of 2/3 of the members of the board of appeals is necessary to grant a variance from uses of land permitted in the ordinance (use variances).

- b) In a city of 1,000,000 or more, the concurring vote of 2/3 of the total membership of the board of appeals is necessary to pass an action by the board of appeals.

5. Further appeals in Circuit Court (P.A. 207 of 1921, as amended Sections 10, 11, and 5(6), 5(7) and 5(8):

Should an appeal be taken one step further to the Circuit Court, the City-Village Zoning Act prescribes guidelines for court review of the record and decision of the board of appeals. The court reviews the decision to insure that it:

- a) Complies with the constitution and state statutes.
- b) Is based on proper procedure.
- c) Is supported by competent, material, and substantial evidence of the record.
- d) Represents the reasonable exercise of discretion granted by law to the board of appeals.

Should the court find that the record of the board of appeals is inadequate to make the above review, or that additional evidence exists which was not presented to the board of appeals, the court can order the board of appeals to conduct further proceedings. The board of appeals may then change or stand by its original decision. The supplemental records and decision must be filed with the court.

As a result of court review, the court may affirm, modify or reverse a decision of the board of appeals.

Appeals

When reviewing an appeal from an action of the zoning administrator, the board of appeals reviews the facts and ordinance requirements and comes to its own conclusion as to the correct action. Similarly, if the city or village zoning ordinance permits appeal to the board of appeals of actions of special land uses or PUD requests, the board of appeals is limited to reviewing the facts as presented to the reviewing body or official and then determining if all or-

dinance standards were properly applied. In so acting, the board of appeals has no more power than the body or official from whom the appeal is taken. The most important point to remember in either case, is that another official or body has already acted and that the role of the board of appeals is not to review the matter as if nothing has previously occurred. Rather, it is the job of the board of appeals to establish whether the previous decision, based on the facts in the record, is warranted. If so, it would be upheld, if not, it would be overturned.

Interpretation Questions

Occasionally the text of the zoning ordinance may appear to have more than one meaning or a portion of the zoning map may be ambiguous. The zoning board of appeals has the responsibility to make interpretations of the zoning ordinance. Their decision remains the official ordinance interpretation unless modified by a court or the ordinance is amended by the governing body. Text interpretations are typically the most problematic. If not carefully considered, requests for interpretation can open a Pandora's box by creating a plethora of new problems.

Sample Checklist to Guide

Decisions on Ordinance Interpretation

Using the following guidelines when making a decision on an ordinance interpretation question will help reduce the chance of bad decisions, reduce the amount of litigation and prepare the necessary record for court action and future decisions.

1. Research the ordinance and supporting documentation carefully.
2. Carefully consider a questioned provision in light of the whole ordinance, and not simply the section in which it is found.
3. Consider the interpretation in light of the intent of the ordinance as it is written, not merely as it may have seemed to the people who drafted it.
4. Seek the advice of planning and legal counsel whenever it is needed.
5. Make the decision on narrow grounds and limit the scope of an interpretation so that other unintended consequences do not result from the interpretation.

6. Document in writing the interpretation decision and the rationale for the decision.
7. Remember that the decision of the ZBA on an interpretation question is final, until or unless the interpreted provision is amended by the legislative body or overturned by a court of law.
8. Good record keeping and cross-referencing of decisions is critical to a consistent application of interpreted provisions (staff and ZBA members change over time, the decision making process and factors considered in an interpretation decision should not).
9. Write clear and simple zoning ordinance provisions and define all key terms and phrases carefully, and use them consistently throughout the ordinance. This will greatly reduce the likelihood of a ZBA having to interpret particular provisions.
10. Review the zoning ordinance periodically with an eye to identifying unclear provisions and correct any deficiencies.
11. Include statements of clear legislative intent at the start of each zoning district and zoning process (such as special land uses).
12. Where the legislative intent is unclear and the facts cannot be clearly read to support only one interpretation of questioned provisions, the benefit of doubt should be extended to the property owner.

Source: "Zoning Ordinance Interpretation" by Mark A. Wyckoff, **Planning and Zoning News**, October, 1986, pp. 7-9.

Variations

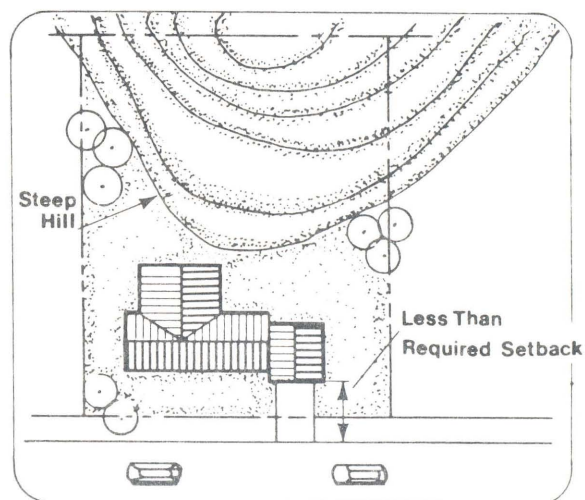
A variance is the grant of specific authorization by the board of appeals to utilize a parcel or structure in violation of ordinance requirements when certain findings have been made. In effect, a variance is a license to violate a specific ordinance requirement. Clearly variances need to be carefully considered and under normal circumstances should be rarely granted. Improperly granting variances can quickly undermine the integrity of the entire zoning ordinance.

In effect, a variance is a license to violate a specific ordinance requirement.

There are two types of variances: *use* and *nonuse*. A nonuse variance is often called a dimensional variance and usually deals with setback, height or area requirements. A use variance permits a use of land on a parcel that otherwise is not permitted by the zoning ordinance. Many zoning scholars consider use variances illegal, because in effect, they *rezone* without going through the rezoning process, thereby usurping the power of the governing body.

Improperly granting variances can quickly undermine the integrity of the entire zoning ordinance.

The one time that a use variance is clearly valid is when the applicant demonstrates that no reasonable use may be made of a parcel as it is presently zoned (i.e. that it cannot be used for any of the uses permitted in the existing zoning district) and that reasonable efforts to get the property rezoned or to obtain special approval (such as by a special use permit) have all been rejected. Failure to grant a use variance under these facts could be tantamount to a taking, which under recent U.S. Supreme Court pronouncements, would require compensation.



A Typical Variance Situation

When a board of appeals considers a variance request, it is important that they keep in mind that the variance authority is designed to provide relief to a property owner from an ordinance requirement that is uniquely affecting him/her. It is not designed as a technique to grant special favors to some persons or as a tool

to solve a problem shared in common with other properties. When a problem is common, the appropriate solution is amendment of the text of the ordinance so all similarly situated property owners are treated equally. Often people will claim that a variance will allow them to make more money from the property. However, this is not a legitimate argument, since zoning is not designed to permit the most profitable use of land, although reasonable use of property must be permitted.

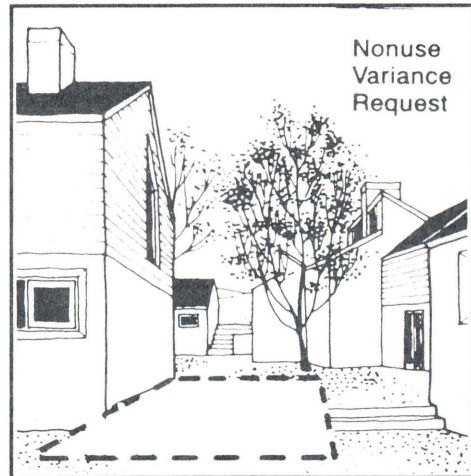
Sample Checklist to Guide

Decisions on Dimensional Variances

The most common requests for action by a board of appeals are requests for variance from specific ordinance standards such as dimensional requirements of the ordinance including: yard requirements, setback lines, lot coverage, height standards, frontage requirements and density regulations.

Where there are practical difficulties preventing a property owner from conforming with the strict letter of the ordinance, the board of appeals has the power to grant dimensional variances. Typically, the following circumstances must exist:

1. Dimensional zoning requirements cannot be met on an existing lot due to narrowness, shallowness or irregular shape, or the topography or natural characteristics of the site (such as a wetland, flood plain, bedrock condition, etc.) inhibit the lawful location of a principal or accessory structure (such as septic system, garage, shed).
2. The problem creates a practical difficulty which is unique (because of the above or similar reasons) and is not shared by neighboring properties in the same zone. If the board of appeals finds that the problem is not unique, but common, amending the ordinance or a rezoning should be pursued.
3. The practical difficulty was not created by an action of the applicant and either existed at the time of adoption of the requirement from which the variance is requested, or is necessary as the result of governmental action such as a road widening. A self-created hardship is not typically a valid basis for a variance.
4. The appellant presents information usually showing that the requested variance:



- a) Will not be contrary with the intent and purpose of the zoning ordinance;
 - b) Will not cause a substantially adverse affect upon adjacent properties;
 - c) Will relate only to the property under control of the appellant;
 - d) Will not essentially alter the character of the surrounding area;
 - e) Will not increase the hazard from fire, flood or similar dangers; and
 - f) Will not increase traffic congestion;
5. The variance is the minimum necessary to permit reasonable use of the land and buildings for activities permitted in the zoning district

The Michigan Court of Appeals has applied similar principles (widely recognized in many state courts) in recent variance cases:

1. To obtain a nonuse variance, the applicant must show "*practical difficulty*": by demonstrating:
 - A. Whether strict compliance with area, setbacks, frontage, height, bulk or density would *unreasonably prevent* the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome;
 - B. Whether a variance would do *substantial justice* to the applicant as well as to other property owners in the district, or whether a lesser relaxation would give

substantial relief and be more consistent with justice to others;

C. Whether the plight of the owner is due to *unique circumstances* of the property;

D. Whether the problem is self-created.

2. The ZBA must insure that the "*spirit of the ordinance is observed, public safety secured and substantial justice done*".

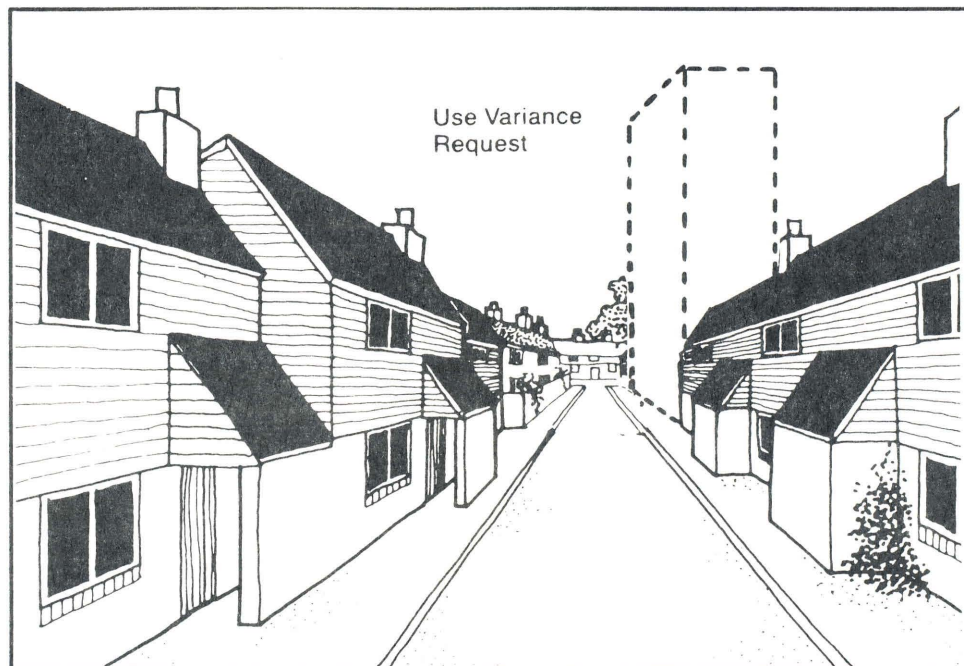
Note: Typically this means if D. is true, the decision is no. If D. is false, and B. and C. are true, decision is probably YES (in this case, A. is probably also true). If applicant only meets A. and the problem is not self-created (D.), the decision is NO. See: National Boatland v. City of Farmington Hills, 147 Mich App 380 (1985).

Sample Checklist to Guide Decisions on Use Variances

Use variances are provided for in the City-Village Zoning Act but as noted previously, such actions require a greater than majority vote of the zoning board of appeals. Because a use variance allows a use in a location that the ordinance otherwise prohibits, the actions of the zoning board of appeals must be cautiously and very carefully considered. Many commentators feel the improper application of the use variance authority is a significant contributor to community decay as the wrong use in a particular location may run counter to many municipal

service and planning programs, as well as create significant adverse impacts on adjoining parcels. Thus, the zoning board of appeals should not grant use variances which more appropriately would be handled by a rezoning by the city or village legislative body. A use variance should be granted by the zoning board of appeals only under those exceptional circumstances where the current zoning classification is clearly unreasonable and where the current zoning regulations provide the property owner with no reasonable use of his/her land. This requires demonstrating an unnecessary hardship exists, including showing:

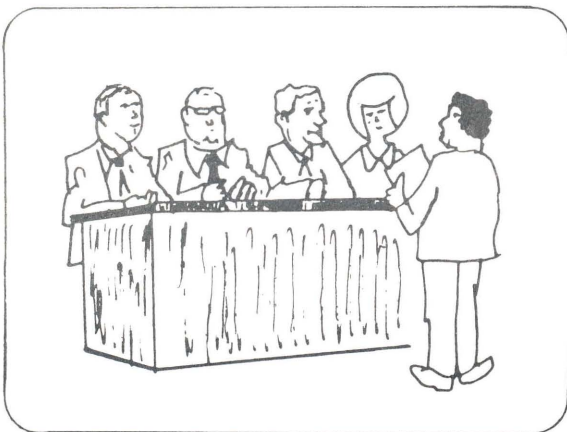
1. The property in question cannot be put to a reasonable use (i.e. there would be no reasonable economic return from the privilege of ownership) if permitted to be used only under the conditions allowed by the regulation in the district in which it is located.
2. The plight of the property is due to unique circumstances peculiar to the property and not to general neighborhood conditions.
3. The use variance, if granted, would not alter the essential character of the area or neighborhood.
4. The problem is not self-created.



If an unnecessary hardship is demonstrated, typically the board of appeals would grant the minimum necessary variance to permit reasonable use of the land and building. If the board of appeals finds the ordinance requirements can be met or that the use variance criteria have not been met, then a variance should not be granted. Many municipalities have prohibited their board of appeals from granting use variances by explicit language to that effect in the zoning ordinance.

PUBLIC HEARINGS

One of the most important steps in amendment, special land use, PUD, and variance procedures is the public hearing. Public hearings provide the principal opportunity for citizens to be heard on zoning matters that may affect their interests. It is absolutely essential that required notices of public hearings be published/distributed as specified in the zoning ordinance and the City-Village Zoning Act. At public hearings, it is very important that every interested person be given the opportunity to be heard. But this does not mean the process is spontaneous, a hearing should be conducted in a consistent and orderly fashion. The hearing body should not have their decision governed by the public applause meter. The hearing body should not be interested simply in whether neighbors are in favor or opposed to a given proposal, but rather in why they feel that way; what relevant information do they offer within the context of ordinance requirements to assist in making a decision? The primary purpose of the hearing is, of course, to gather facts and information relevant to making a decision on an applicant's request. Thus, a hearing process must be established that insures an open, objective atmosphere exists for orderly presentations. It need



"Presenting His Case"

not be one of paralyzing formality, it is not a court proceeding.

The need for public confidence in the honesty and integrity of the hearing body dictates that if any of its members has even a remote conflict of interest in the outcome of a proceeding, he or she should disqualify themselves from participation in the hearing.

The need for public confidence in the honesty and integrity of the hearing body dictates that if any of its members has even a remote conflict of interest in the outcome of a proceeding, he or she should disqualify themselves from participation in the hearing. Obvious conflicts of interest would include a financial interest in the outcome or a close business or family relationship with the applicant, his/her attorney or any expert witness. The member with a conflict of interest should disqualify him/herself at the outset of the hearing (or sooner if the conflict is identified earlier). It is not sufficient to participate in the hearing and merely abstain from voting. The general rule to follow if there is a doubt about a conflict of interest is: When in doubt--step down.

General Hearing Procedure

The following general hearing procedure is suggested as a guide to developing one in your community. Whatever procedure is developed, the procedure should be made clear to all in attendance and consistently adhered to. A simple handout sheet or large board visibly displaying the hearing procedure will serve this purpose well. Hearings should begin precisely at the time advertised in the notice although they may simply be one element of the agenda. Typically, the hearing procedure is as follows:

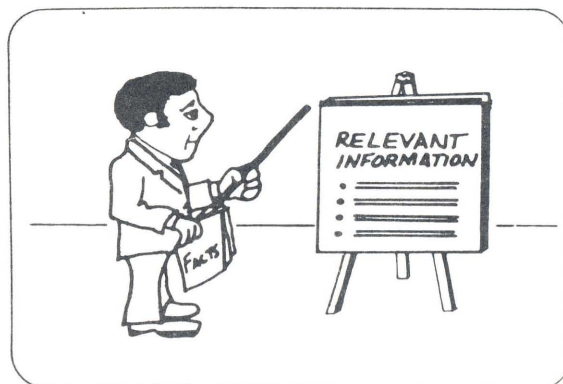
1. The chairperson announces the subject of the public hearing, as advertised.
2. The public hearing procedures are summarized for all present by the chairperson. A suggested opening statement might be:

This public hearing to receive public input on the following matter _____ in accordance with official notice, is now open. The (name of hearing body) would like to make clear that it is bound by rules and laws when making a decision on this application. In

order to conduct the hearing within a reasonable time and to keep to the subject at hand, you are asked to observe the following rules:

- After the staff presentation, the applicant will state his/her case fully and furnish us with pertinent information concerning the property.
 - Those who favor the proposed change will be heard next, and those opposed will be heard last.
 - Each person making a statement will be asked to state their name and address.
 - Please refrain from repeating what has been said before you, and please do not make comments on personalities or the character of any person involved.
 - Be as factual as possible.
 - We (name of hearing body) reserve the right to question any speaker.
 - All statements or questions must be directed to me (the chairperson).
 - We (name of hearing body) will (or will not if that is the case) make a decision on this matter at today's meeting following the close of the hearing.
3. The staff is then asked to present the substance of the application and of any staff reports and to answer technical questions of the hearing body.
 4. Individuals wishing to speak in support of the subject of the hearing are recognized by the chairperson beginning with the applicant(s) or their representative(s).
 5. Individuals wishing to speak in opposition to the subject of the hearing are next recognized by the chairperson. (If there are numerous people in the audience who would like to participate on the issue, and it is known that all represent the same opinion, it is advised that a spokesperson be selected to speak for the entire group. That person should be permitted to speak for a reasonable length of time, and to present a complete case. If this arrangement cannot be made, it may be necessary for the chairperson to restrict each speaker to a limited time in order that all may be heard. If so, this must be done according to previously adopted rules. The hearing body must permit comments from all interested or affected individuals and organizations (regardless of where they live or are located), and it should be stressed that consideration will be given to all comments or

suggestions made. Irrelevant and off-the-subject comments should be quickly and forcefully ruled out of order by the chairperson.)



"Stating The Facts"

6. The chairperson may, within reasonable limits, allow questions, cross-examination or rebuttal. All comments should be addressed to the subject of the hearing through the chairperson and not be directed to any other individuals. The hearing body should refrain from debating or arguing with persons commenting. However, they should ask any pertinent questions at this point. The function of the hearing is to gather facts--not to carry on an adversary relationship.
7. The chairperson should upon his/her motion or the motion of any member, announce the close of the public portion of the hearing or announce the continuation of the public hearing to another specified date, time and place if the hour is late or additional pertinent information must be obtained.
8. The commission then deliberates on the matter. All deliberations must be conducted in an open public meeting.

Deliberation and Fact Finding

Deliberation typically involves fact finding and discussion before a motion is made. Facts are nothing more than information that is pertinent to making a decision. Important sources of facts include:

- The application
- Ordinance requirements
- Physical characteristics of the lot and adjacent parcels
- Staff reports and agency reports regarding impacts on:

- Public services
- Natural resources
- Character of area
- Streets, parking & traffic
- Neighbors

Discussion

The purpose of discussion is to review pertinent facts from all information presented and to seek a majority viewpoint. In doing so remember:

- All *discussion must be in public.*
- The public is not involved in the discussion unless you bring them into it (not a good idea).
- The discussion should focus on insuring *conformance with ordinance standards.*

The discussion should proceed long enough for someone to feel confident in proposing a complete *motion* that embodies most of the important findings. *Alternatively*, action can be taken on *findings of fact* first, and then a separate motion would be made to approve, deny or approve with conditions.

Motions

The motion to approve, deny or approve with conditions should state the conclusion,

DECISION MAKING CONSIDERATIONS

In making zoning decisions it is important to always remember the following responsibilities:

- To *fairly and consistently apply* all adopted standards and regulations.
- To look out for the *best interests of the entire community*, not just the people at a public hearing, or an applicant or an opponent. In other words, decisions should *not* be made based on the *ap-
plause meter*.

Additionally, decisions must not be *exclusionary* of lawful land uses and must not result in irresponsible environmental degradation. Under the Michigan Environmental Protection Act, (PA 127 of 1970), planning commissions and city or village councils have the same responsibility as any other administrative body to ensure their decisions do not have the effect of *unlawfully polluting, impairing or destroying* the air, water, and other natural resources of the state and the public trust therein.

and the rationale for the conclusion. That is, *it should indicate how the facts support the conclusion that was reached.*

In some communities, either staff or legal counsel prepare a motion or several motions in advance with space for additions/deletions. *This is not a good idea.* It is too difficult for staff to anticipate relevant information that will appear at the public hearing.

This action may have to withstand scrutiny by a court and should be carefully prepared. Be sure conditions are detailed so the zoning administrator knows what is expected.

Conditions

Conditions may be imposed providing...

- They are *designed to protect* natural resources, the health, safety and welfare; and the social and economic well being of people.
- They are *related to a valid exercise of the police power.*
- They are *necessary* to meet the intent and purpose of the zoning ordinance, *are related to the standards established in the ordinance for the land use or activity under consideration, and are necessary to insure compliance with those standards.*

This last point is especially pertinent. It is not appropriate to impose conditions unrelated to specific ordinance requirements. The figure at the top of the following page illustrates how conditions should relate to ordinance standards.

Performance Guarantees

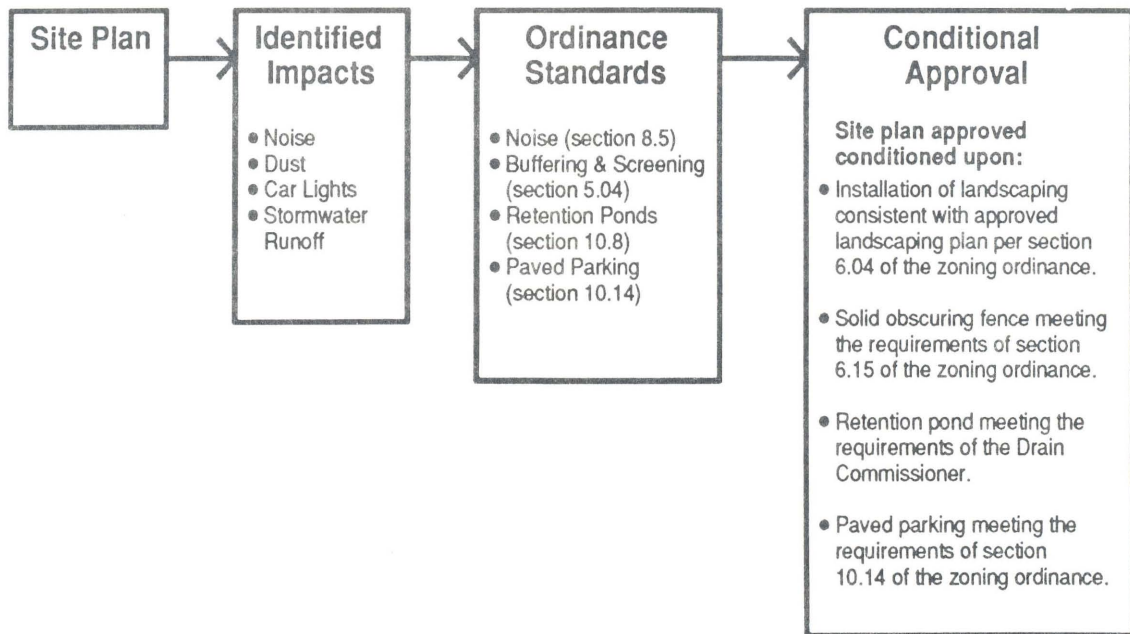
The community can collect a performance guarantee to insure required *improvements* are built. Choices include:

- Cash deposit
- Certified check
- Letter of credit
- Surety bonds

Improvements includes roadways, lighting, utilities, sidewalks, screening, and drainage. They do not include the value of the entire project.

Any money collected must be rebated in proportion to the ratio of the work completed. The ordinance should detail the standards for

Relationship of a Site Plan to Ordinance Standards on Conditional Approvals



collection, use and return of performance guarantees.

Hearing Records

The point that a hearing record is necessary is indisputable; the question which arises is how such a record should be made. Obviously, the most complete record can be obtained by using a court stenographer; however, this is very costly. Many communities have adopted the practice of tape recording each meeting. It is essential that speakers identify themselves in order to determine at a later time who said what. The extensive notes taken by a secretary or clerk to the hearing body should also be retained and be made a formal part of the record, after their review and correction if necessary, by a vote of the hearing body.

A complete record of the hearing will typically contain the following:

1. The applicant's request on a properly completed form.
2. The records of any action of this request by an administrative official or body including all past records regarding the property (such as an earlier request for variance, special land use approval, or a record of nonconforming status).
3. Records that verify due notice to the appropriate parties and to neighboring property owners has been given. Any newspaper notice and the affidavit of publishing thereof must also be retained.
4. Any relevant maps, drawings, or photographs presented as evidence, or as a part of the application.
5. Copies of any correspondence received or sent out with regard to this request.
6. A complete record of all public input made at the hearing.
7. A record of what the hearing body saw on any visit it made to the property in question and a summary of any conversations between the hearing body and parties with an interest in the application.
8. A copy of references to relevant ordinance requirements.

9. The findings of fact, the conclusions reached and the recommendation or decision made on the request by the hearing body.
10. A copy of any other correspondence to or from the petitioner regarding the decision.

The crucial element of this record is, of course, the findings, conclusion, and decision (or recommendation) of the hearing body. The decision must be in writing and include all conditions that may be associated with the decision. The decision or recommendation should not be a mere conclusion or a statement. Each decision should be accompanied by specific findings of fact. These findings should be related to the specific standards stated in the ordinance which the applicant must satisfy. It is not sufficient, for example, for a board of appeals to merely parrot the general statutory requirements that a "*practical difficulty or unnecessary hardship exists*"--this is not a finding, it is a conclusion. The facts which led the board to reach this conclusion consistent with ordinance and statutory standards must be identified to support the conclusion reached.

These decisions run the chance of having to stand up in a regular court of law, where detailed findings of fact must be presented, and the conclusions of law based upon those facts must follow. Clear and uniform hearing procedures assist a hearing body in properly carrying out their responsibilities. On occasion, however, the assistance of the city or village attorney is needed. It should be sought when needed. Likewise, before adopting any rules of procedure or public hearing rules, the advice of the city or village attorney should be sought.

GUIDELINES TO AVOID LIABILITY

- Find good reasons for acting and discuss them in public.
- Know your rules of procedure & follow them.
- Know the limits of your authority.
- Review your insurance policies.
- If sued, hire competent legal counsel.
- Correct immediately any situations which could be/are found liable.
- Keep informed.
- Don't try to steal or extort property by zoning, buy it.
- You must act within the scope of your authority and with "good faith" in order to minimize your liability.

TEN COMMON ZONING PROBLEMS

Among typical kinds of problems growing out of lax zoning administration, improper granting of variances and inappropriate amendments are the following:

1. There are many spot zones, comprising of only one or two lots, whose location is not in accordance with a land use plan and which is inconsistent with adjacent land uses.
2. The board of appeals grants too many variances without adequate scrutiny. Rather than "*hold the line*", their motto is "*move it as requested*".
3. The zoning administrator has issued permits for uses that do not meet ordinance requirements, or has failed to make use of occupancy permits to regulate changes in use, or has failed to carry out an active program to detect and prosecute zoning violations.
4. The zoning administrator and board of appeals tend to rely on complaints or the consent of neighboring property owners as the principal basis for action rather than consistent application of ordinance standards.
5. The community haphazardly copies another community's ordinance provisions without careful review and adaptation.
6. The community prepares or adopts the ordinance or amendments without obtaining or consulting the "public pulse" (the prevailing values and attitudes of the public).
7. The community fails to utilize available technical assistance in making rational decisions in the development of zoning regulations.
8. The zoning administrator, planning commission, city or village council and board of appeals fail to make uniform and consistent decisions on similar matters.
9. The zoning map is made to look just like a 20 year master plan, rather than reflecting a land use pattern appropriate to just the next 3-5 years of expected development in a manner consistent with the plan.

Adapted from "*Common Deficiencies*", by Robert M. Leary, which was printed in **Principles and Practice of Urban Planning** by William I. Goodwin and Eric C. Freund, (Washington, D.C.: International City Managers' Association, 1968), pp. 419-420.

DECISION MAKING REMINDERS**General reminders to aid decision making:**

1. When in doubt--check it out! But,
2. Don't delay when the decision can be made.
3. Remember that permits, approvals and zoning districts run with the property and not the owner.
4. When all standards stated in the ordinance have been met, the permit must be issued.
5. Consistency is very important, but mistakes should not be perpetuated.
6. Permits are of little value if there is no monitoring to insure continued ordinance compliance.
7. At least one member of the body on which you serve should be an expert on the ordinance requirements and on past decisions made.
8. The planning commission and zoning board of appeals should adopt rules of procedure (bylaws), follow them, and keep them current.
9. A simple public hearing procedure should be adopted, clearly explained to citizens at each public hearing, and consistently adhered to.
10. Good records of all meetings of the body on which you serve should be maintained.
11. All decisions must be documented. The facts uncovered in the process of reviewing the application, making the analysis and those presented at the public hearing should be explicitly related to ordinance standards and documented along with the conclusions reached on the matter.
12. If a procedural error is made such as publishing a required newspaper notice or failing to notify appropriate persons, the process should be stopped and begun again with the deficiencies corrected.
13. No decision on a zoning request should be made by vote of less than a majority of the total membership of the decision body (a simple majority of those present is inadequate).
14. When technical assistance from the city or village planing staff, or consultants, or the city of village attorney, or other professionals is needed, get it.
15. Remember your job is to protect the public interest as embodied in the zoning ordinance. Required procedures and standards must be adhered to. If the zoning ordinance is inadequate to the task, then it should be amended. As a general rule, the zoning ordinance should be thoroughly reviewed and updated at least once every 5 years. Annual updates are a better method, however.

Chapter Four

THE END (OR IS IT THE BEGINNING?)

In Chapter One of this guide, zoning was described as a tool that can be very useful in shaping and forming a safe, healthy and efficient community in a manner consistent with a plan.

Chapters Two and Three identified *who does what* in city and village zoning, and generally how they carry out their responsibilities. This descriptive method is intended to illustrate that zoning, while a technical and legal community power, is really composed of relatively few activities which fall into one or another of three basic functions: legislative, administrative and quasi-judicial. Each zoning activity has its own statutory and ordinance procedures which are intended to insure that the rights of citizens are protected while important community interests are promoted. Most of the procedures have very similar mechanics, but the details and differences are very important. Equally important is the basic issue of which body or official is responsible for acting on certain zoning functions and what standards or guidelines do, or should, they use in making decisions. Thus, Chapters Two and Three attempted to describe basic zoning functions and procedures in order to help you develop your skills in understanding the use of zoning. The more familiar you are with zoning tools, the better zoning artisan you'll become.

Zoning is Worth Doing Well

While a zoning ordinance clearly identifies which uses of land are permitted in which zoning districts, in so doing it should provide for the whole host of land uses reasonably expected and needed within the city or village in the next few years. The City-Village Zoning Act prohibits unlawful exclusion of lawful land uses. Attempts to exclude needed land uses from the community may have significant legal consequences and may unnecessarily impose a costly financial burden which could be avoided by foresightful action.

Zoning can have an influence on community form beyond the obvious locational/use relationships. As a technique to help a community manage its growth and development, the use of flexible zoning techniques such as PUD and special land uses can provide opportunities

for more detailed and sensitive public review of private development plans while encouraging creative development consistent with environment and economic constraints. These techniques may also provide added protection against unconstitutional takings without compensation by providing yet another development option.

These new techniques along with traditional zoning tools like amendments, appeals and variances, can achieve many public objectives while enhancing the use and enjoyment of private property. As this guide has tried to illustrate, the process for reviewing and approving changes in the use of land is every bit as important as the actual change itself.

Zoning is a job worth doing, as the benefits can be great, and thus, it is worth doing well. Consequently, in addition to everyone involved in zoning decisions being knowledgeable of their responsibilities and zoning procedures, the zoning ordinance and community plans must be kept current.

EFFECTIVE ZONING

Zoning can be successful if:

- it is based on a sound understanding of the community's needs and reflects the citizen's desires and concepts of what the community should be;
- competent legal and other technical assistance is sought as needed;
- it is based on a properly structured and enacted zoning ordinance;
- it is consistently, fairly and impartially administered and enforced;
- it is administered in strict compliance with procedures required by statute and all procedures specified in the municipal zoning ordinance;
- it is periodically reviewed and updated (at least once every 5 years);
- it is understood and supported by the public; and
- it is an integral part of the mechanisms adopted by the community to implement community plans and growth management programs.

THE NEED FOR PERIODIC ASSESSMENT

A land use plan and zoning ordinance begin to grow old and dated from the time of adoption. In rapid growth communities, they often become outdated sooner than expected.

How does a community keep the land use plan and zoning ordinance from becoming obsolete? The best way is through periodic assessment every three to five years by the planning commission. At that time, the following questions would be asked:

1. To what extent is the land use plan being actively implemented...
 - through zoning?
 - through public improvements?
 - through other efforts?
2. Is implementation taking place as scheduled? If not, why not?
3. Does the settlement pattern of recent development actively coincide with the land use plan map and the recommended land use intensities? If not, why not? What should be done--change the map or increase enforcement of the ordinance?
4. Do the goals and policies still reflect the community's major concerns? If not, what should be changed? Is change realistic?
5. Are items identified in the land use plan as desirable, adequately being protected by zoning?
6. Are unexpected land use conflicts being created by the zoning ordinance which are not addressed by the land use policies?

Based on the answers to the above questions, the planning commission must decide if there is a need to revise the land use plan. If the plan needs to be revised, then after the revision is made, the zoning ordinance and/or map should also be reviewed and amended as needed. However, many land use plans and zoning ordinances are updated and amended on a "stop-gap" basis when faced with what appears to be a "crisis". Periodic reassessment will reduce the need to react in this manner and provides a mechanism whereby a community can maintain control of its future.

Efforts should also be made to orient each new zoning official and city or village council member as to the structure of zoning and what their role is in various zoning procedures. The Michigan Society of Planning Officials offers annual training programs to help meet this need. When technical planning and or legal assistance is necessary, it should be sought. There is no reason to perpetuate zoning mistakes from the past, instead proper planning and zoning can be used to help build a future that city or village residents can look forward to.

Appendix

Glossary of Terms

ADMINISTRATIVE - certain responsibilities delegated to a specified body or official to exercise pursuant to various procedures and standards that are specified in the zoning ordinance. They usually include zoning permits, site plan review, special land uses, and enforcement matters.

APPEALS - any person denied approval of any administrative zoning matter can appeal the decision. In most cases, appeals go first to the zoning board of appeals; from there they go to circuit court.

BY RIGHT - see USE BY RIGHT.

CAPITAL IMPROVEMENT PROGRAM (CIP) - this is a listing of physical public improvements (roads, streets, sewers, etc.) that are planned to be constructed over a multi-year period (usually 6 years), including where they are located, when they are to be built, and how they are to be financed. A CIP is a very important mechanism for insuring that public works are built in a manner consistent with a local comprehensive plan.

COMPREHENSIVE PLAN = MASTER PLAN = BASIC PLAN = FUTURE LAND USE PLAN - These are all terms for the plan created by the planning commission to guide the future growth and development of the community. It is used as the basis for zoning regulations/decisions, subdivision regulations and capital improvement programs.

CONDITIONAL USE - see SPECIAL LAND USE.

DISCRETIONARY STANDARD - this term refers to general standards in the ordinance which are used in review of site plans, PUD's and special land uses which serve as the basis for determining whether a land use proposal is compatible with adjacent uses of land, natural resources and public services as regulated and defined in the zoning ordinance.

LEGISLATIVE - refers to zoning functions which are exclusively in the domain of the legislative or elected body. These include adoption of the original zoning ordinance, as well as subsequent amendments to either the map or text.

MASTER PLAN - see COMPREHENSIVE PLAN.

NONCONFORMING USE - a use of land or building that was lawfully in existence prior to the adoption of the zoning ordinance and which is therefore permitted to continue in the future even though current zoning regulations applying to that parcel would not permit it to be established anew.

NONDISCRETIONARY STANDARDS - are criteria which specifically indicate a measurable numerical or performance standard that must be met or complied with in order to get zoning approval. For example a setback, height or bulk regulation is a "*nondiscretionary standard*". Anyone can readily measure or calculate whether a proposed structure or site plan conforms with this type of standard.

ORDINANCE INTERPRETATION - a power of the zoning board of appeals to determine what an unclear provision in the zoning ordinance means, or where an ambiguous line or district actually falls on the zoning map.

PERFORMANCE GUARANTEE - a collection of a financial security by a community from a land developer/owner to insure that required public improvements are actually constructed. Several forms are common including cash, surety bond, and irrevocable bank letter of credit.

PLANNED UNIT DEVELOPMENT (PUD) - a flexible zoning technique that allows a land developer much

more creativity in how land is utilized without sacrificing public concerns for compatibility with adjacent uses of land and often with greater protection of significant environmental features.

PLANNING ENABLING ACT - this refers to the three state statutes that authorize the establishment of local planning commissions and the preparation of local comprehensive plans.

PRACTICAL DIFFICULTY - a term that applies to decisions by a zoning board of appeals on nonuse or dimensional variance requests (e.g. setbacks).

QUASI-JUDICIAL - decisions by a zoning board of appeals on matters including variances, ordinance interpretation and appeals from administrative decisions.

REZONING - the name of the process for changing a zoning district from one classification to another (eg. from R-1 single family to C-2 commercial).

SELF CREATED - a term referring to a zoning problem created by action of the applicant himself. A self created problem is not grounds for a variance.

SITE PLAN REVIEW - the process of reviewing site plans (drawings) that illustrate the layout of land and structures, for conformance with ordinance requirements.

SPECIAL LAND USE = CONDITIONAL USE = SPECIAL EXCEPTION USE - these are all terms for a class of land uses permitted in particular zoning districts when use specific standards stated in the zoning ordinance have been met. Special land uses have characteristics that make them potentially incompatible with adjacent uses of land unless special care is taken during the review process.

STANDARDS/CRITERIA - these are either general or specific requirements stated in the ordinance which must be met in order for a proposed land use to be established on a parcel. They may be part of a discretionary or a nondiscretionary review process.

SUBDIVISION REGULATIONS - regulations related to how land is divided to insure consistency with ordinance requirements and basic public service concerns.

UNNECESSARY HARDSHIP - a standard which an applicant must prove has been met in order to gain approval for a "use variance" in a city or village.

USE BY RIGHT - a use permitted in a particular zone without any special hearing or review procedure, provided minimum lot size, height, setback, bulk, parking and accessory use requirements are met. A single family home in a low density residential district is typically a use permitted by right.

USE VARIANCE - the grant of a variance by a board of appeals allowing a use of land on a parcel that otherwise is not permitted by the zoning ordinance. Clear statutory authority exists only for cities and villages. Many zoning scholars consider most use variances illegal, because they in effect "rezone" land without going through the rezoning process. A use variance may be appropriate where an applicant proves no reasonable use of the property exists under the present zoning classification.

VARIANCE - the grant of specific authorization by the board of appeals to utilize a parcel or structure in what would otherwise be a violation of ordinance requirements when certain findings have been made. There are two types of variance, "use" and "nonuse". A nonuse variance is often called a dimensional variance and usually deals with setback, height or area requirements.

ZONING ENABLING ACT - the state laws authorizing local units of government to adopt and administer zoning regulations. Without such laws, local governments would have no authority to use the zoning power to regulate land use.

ZONING ORDINANCE - a local ordinance adopted by the legislative body upon the advice of the planning/zoning commission to regulate the use of land in the community.

**BIBLIOGRAPHY OF
PUBLICATIONS FOR
MICHIGAN PLANNING COMMISSIONS
and ZONING BOARDS OF APPEAL**

MICHIGAN SOCIETY OF PLANNING OFFICIALS (MSPO)

Helen Willis, Executive Director

P.O. Box 1217

Rochester, MI 48308-1217

313/651-3339

MICHIGAN PLANNER - Anna Hampton, Editor

Each issue of this quarterly magazine focuses on a single topic which is illustrated with several articles including case examples from Michigan communities.

MSPO ADVISOR - Helen Willis, Editor

A bi-monthly newsletter geared to issues of current concern and focuses on the "how to" of planning and zoning.

MSPO TRAINING PROGRAMS - HANDOUT MATERIAL by Mark A. Wyckoff (\$5.00/set)

- Master Plan
- Planned Unit Development
- Zoning Case Studies
- Basic Training/Planning Commissioners
- Basic Training/Zoning Board of Appeals Members
- Site Plan Review

THE COMMUNITY PLANNING PROCESS: A GUIDE FOR PLANNING COMMISSIONERS IN MICHIGAN by Ken Verburg

This new easy to understand guidebook will help new planning commissioners become active and contributing members in a short time. The guidebook covers being an effective planning commissioner, the historical development of planning, the legal basis for planning, the community planning process, major tools for implementing the community plan and key terms used in planning/zoning. 38 pages \$4.00 MSPO Members \$5.00 Nonmembers

SITE PLAN REVIEW: A GUIDE FOR ACHIEVING GOOD SITE DESIGN IN YOUR COMMUNITY by Mark A. Wyckoff

This publication explains basic site planning principles and the relevant health and safety aspects of common standards. Guidelines are presented for reviewing your own ordinance to identify design requirements that stifle creative site design or prevent design that is more harmonious with the natural characteristics of a site and adjoining lands than traditional standards will allow. 68 pages. \$8 plus postage for MSPO Members \$10 plus postage for Nonmembers

PLANNING & ZONING NEWS

Mark A. Wyckoff, Editor

Planning & Zoning Center, Inc.

400 Everett Drive

Lansing, MI 48915-1106

517/484-3333 or 517/886-0555

Planning & Zoning News is a monthly magazine covering current topics in the field. It is a practical guide which reports on court decisions, attorney general opinions, and legislation. Each issue explains how statutory or case law changes may affect your planning & zoning operations. Feature stories explore current topics in depth and offer guidelines and sample zoning language. Articles are authored by professional planners, attorneys and others with expertise. Many planning commissions and zoning boards of appeals subscribe. The *Michigan Townships News* recently stated "...MTA strongly recommends the monthly magazine **Planning & Zoning News** as the best source of timely information tailored to planning and zoning functions." Call or write the above address for subscription information.

COMMUNITY DEVELOPMENT PROGRAMS

42 Kellogg Center
Michigan State University
East Lansing, MI 48824-1022
517/332-6571

MICHIGAN LAWS RELATING TO PLANNING

Includes the full text or major excerpt of 73 key planning acts, a listing by title and MCL number of other Michigan laws that relate to planning, and a reference by title of federal laws and orders that have an impact on planning within the state of Michigan. 1982. \$17.50 plus \$1.50 postage

MICHIGAN LOCAL PLANNING COMMISSIONERS HANDBOOK, by *Robert B. Hotaling*

Discusses organizing a local planning commission, reviews basic planning concepts, planning studies, the comprehensive plan, planning controls, and the roles of citizen and professional planners. 1983. 102 pages \$5.00 plus \$1.50 postage

MICHIGAN TOWNSHIPS PLANNING AND ZONING HANDBOOK (Revised Edition)

by *Robert B. Hotaling and Geoffrey V. Moffat*

Written especially for Michigan townships by practicing planners, the book describes the planning process, the development and implementation of the comprehensive plan, zoning ordinances and enforcement, subdivision controls, capital improvement programs, and the legal sources of authority to regulate land use. It includes statutory and case law references and a comprehensive index. CDP will issue **Updates** each year as the legislature and courts make changes in planning and zoning law. \$16.00 (postpaid)

COOPERATIVE EXTENSION SERVICE

Michigan State University
Bulletin Office, P.O. Box 231
East Lansing, MI 48823-0231
517/355-0240

CITY & VILLAGE ZONING: A BASIC GUIDE FOR CITIZENS AND LOCAL OFFICIALS, 2nd Edition, by *Mark Wyckoff* Extension Bulletin E-1740 49 pages

ADMINISTERING TOWNSHIP ZONING: A BASIC GUIDE FOR CITIZENS AND LOCAL OFFICIALS

by *Ron Lee and Mark Wyckoff*

Extension Bulletin E-1408 33 pages \$1.00 (plus postage & handling)

ADMINISTERING COUNTY ZONING: A BASIC GUIDE FOR CITIZENS & LOCAL OFFICIALS, by *Mark Wyckoff*

Extension Bulletin E-1739 26 pages \$1.00 (plus postage & handling)

Each of these guidebooks covers the basic zoning techniques authorized under Michigan Zoning Enabling Acts and the processes that should be followed in reviewing specific requests. The guidebooks are written in an easy to use format with step-by-step instruction.

MICHIGAN CHAPTER OF THE AMERICAN PLANNING ASSOCIATION

David C. Birchler, President MAPA
3005 Berkshire
Birmingham, MI 48010
313/540-4723

MICHIGAN CONSULTANT DIRECTORY

This directory lists firms in Michigan offering professional planning and zoning services. A brief description of available services and personnel is provided. (no charge)

TEN GUIDELINES FOR EFFECTIVE LOCAL ZONING

1. Before taking action on any zoning request, be sure to determine whether the body taking action is the PROPER BODY to be acting at that time.
2. Before taking action on any zoning request, be sure to check and see if all PROPER PROCEDURES have been followed.
3. Remember, ZONING RUNS WITH THE LAND AND NOT WITH THE OWNER. If property changes hands, whatever zoning approval is in place carries over to the new owner. Of course, the new owner must still meet the conditions associated with any prior zoning approval.
4. There is NO AUTHORITY TO GRANT APPROVAL OF A LAND USE FOR A TEMPORARY PERIOD OF TIME, unless the use itself is temporary, such as a gravel pit which will be in existence only so long as there is gravel to extract.
5. On any REZONING request, the most important question to answer is, "IS THAT AN APPROPRIATE LOCATION FOR THAT ZONE"? Remember of course that any of the uses permitted in a particular zone may be erected once approval for that zone is granted. The primary criteria to consider is conformance with the master plan.
6. On any SPECIAL LAND USE request, the most important question to answer is, "IS THAT AN APPROPRIATE LOCATION FOR THAT USE"? Only the degree to which the characteristics of a requested special land use conform with specific ordinance standards are in question when considering a special land use request.
7. If an applicant demonstrates that his/her petition meets all the ordinance requirements for site plan or special land use approval, then APPROVAL MUST BE GIVEN.
8. When the zoning board of appeals considers variance requests it should remember that IN ORDER TO GRANT A USE VARIANCE, FACTS MUST BE PRESENTED BY THE APPLICANT THAT SHOW "UNNECESSARY HARDSHIP". To qualify for a NONUSE VARIANCE, THE APPLICANT MUST SHOW "PRACTICAL DIFFICULTY". In either case the problem the owner faces must be created by a circumstance UNIQUE to the property and not shared by surrounding parcels and the problem can NOT BE SELF-CREATED.
9. Deviation from the terms of a zoning permit, site plan, special land use permit, or variance is a VIOLATION of the ordinance and should be prosecuted as such.
10. If a community doesn't ENFORCE an ordinance every time it is violated (or amend it to eliminate the source of the violation if it is in the public interest to do so) then the community may lose the right to enforce the ordinance when it wants/needs to. The OBJECTIVE OF PROSECUTION FOR A VIOLATION IS TO ACHIEVE ORDINANCE CONFORMANCE--not the imposition of fines, penalties or imprisonment.



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