

# How to Influence Zoning Decisions

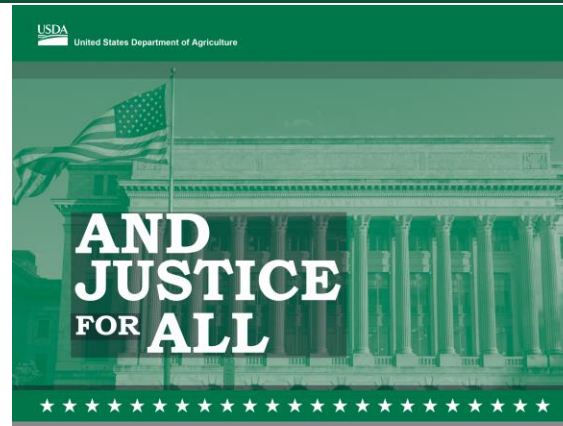


## Part Two

(Part One is Planning and Zoning Primer)



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## Today's Presenter

- [Name]
  - [Title]
  - [Organization]
  - [Contact Information]





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# What We Will Cover

- A.** Why Plan
- B.** Legal Authority for Zoning
- C.** How to Have Effective Submissions/Comments
- D.** Division of duties and types of zoning decisions
- E.** Special Use Permits (including Planned Unit Developments (PUD))
- F.** Zoning Amendments (including PUD)
- G.** Variances



## A. Why Plan?

"Would you tell me please which way I ought to walk from here? - said Alice.

That depends a good deal on where you want to get to - said the cat."

- Alice's Adventures in Wonderland by Lewis Carroll (Charles Dodgson)



Sir John Tenniel -1865

## A. We all Plan

- Often, **we plan subconsciously.**
- We think ahead and **prepare accordingly.**



We get dressed  
before going out  
of the house



We make a list  
before going to  
buy groceries)



We measure  
before we cut  
the board



## A. We all Plan



To buy a car:

**1.** We establish a goal

*“To have a new car all the time”*

*“To buy a new car every two years”*

**2.** We establish a policy

“To put \$200 each month in a savings account for the car” or “To maintain a good credit rating so I can get a car loan” or both.

**3.** We establish a strategy

“To have monthly income which is more than \$\_\_\_\_.” (So, we can afford the \$200 per month or car payments.)

**4.** We take action

*“Research, test drive, and select the car we want”* and we **buy the car.**





## A. We all Plan



**Planning as a Government** (when one plans for a community)

- **Can not do it subconsciously** (Open Meeting Act; we are in a democracy).
- **Must be open**; include many people.
- Must have a **formal process**.
- Must have **formal adoption**.

P.A. 33 of 2008, as amended, Michigan Planning Enabling Act M.C.L. 125.3801 etseq.



## A. We all Plan



Does this all seem too complex, difficult?

That is a good sign because:

***“For every problem, there is one solution which is simple, neat and wrong.”***

– H. L. Mencken



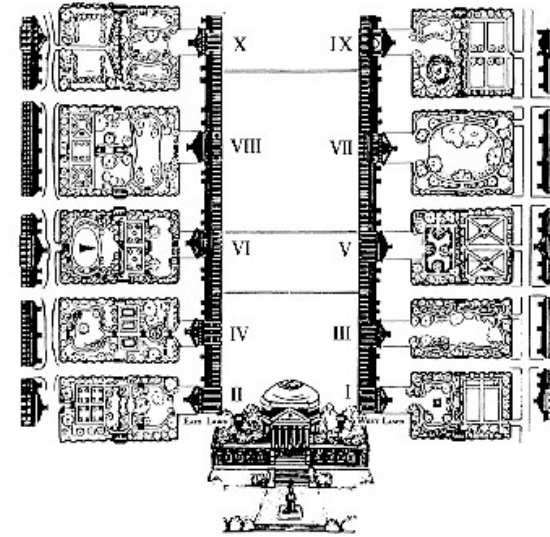
## A. We all Plan

Planear no es nuevo:

- New Haven (1682)
- Philadelphia (1682)
- Detroit (1700)
- New Orleans (1718)
- Savannah (1733)
- Washington D.C. (1800)



**Our founding fathers  
did community planning:**



Jefferson's Plan for the University of Virginia. Public Domain.

**Thomas Jefferson** (Charlottesville  
and University of Virginia)  
Washington D.C. (1800)



## A. We all Plan

### The Purpose of Planning

Why Plan according to **Michigan Society of Planning Officials.**

(Wyckoff, Mark A. and others; *Community Planning Handbook-Tools and Techniques for Guiding Community Change*; Michigan Association of Planning; March 1992; Page 2.)



## A. We all Plan

»» Planning is a **process**, fundamental to what we do (personal lives, jobs, and in a community).



Planning (or failing to plan) is important at the community level as it **affects many people**.

Change occurs with or without planning – planning is a way to guide change.



To **maximize** the **positive**



**Minimize** the **negative** impacts



## A. We all Plan



Zoning is based on a plan; **the plan is when/where decisions are made** about possible development.

“The world  
is run by  
those who  
show up.”

- Then: Often big picture issues are decided in the planning process.
- By the time it is a zoning permit or amendment proposed, it is too late.
- So: **Be active in the development of the Plan. Participate.**



## A. Implement the Plan

- Zoning is not **all there is**.
- Government has **other powers** that should also be used to use to **promote/discourage development** in different areas.



Power of  
Taxation



Power of  
Spending  
Money



Police  
Power



Coordination

## A. Implement the Plan



### Taxation

Provide tax breaks (TIFF, etc.)  
 Downtown Development Authority  
 Industrial Facilities Districts.  
 Create Brownfield Redevelopment Authority  
 Public-private bonding pollution abatement.



### Spend Money

Build/improve roads, or not.  
 To buy or not buy, keep land.  
 To build or not build sewers.  
 To build or not build water mains.  
 To build or not build storm sewers.  
 To provide or not provide parks.  
 To build or not build public buildings.



### Police Power

Police Power.  
 Zoning ordinance.  
 General ordinances (blight,  
 urban renewal, junk, housing, road,  
 land division, subdivision  
 /condominium, etc.)  
 Natural Beauty Roads.



### Cooperation

Joint authorities: (Joint fire  
 departments, etc.)  
 Partnerships: (local and state  
 operation of campground, river or  
 watershed protection, wellhead  
 protection, etc.)  
 Urban Cooperation Act agreements.  
 P.A.425 agreements





## B. Zoning



**United States Supreme Court** (*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926))

**Upheld zoning as a proper exercise of the police power to protect the public welfare.** (Euclid is a suburb of Cleveland, Ohio.) Court warned zoning must “find their justification in some (proper) aspect of . . . protecting **the public welfare.**” e.g. a Plan.

**Many Other Court Cases.**



## B. Enabling Statute in Michigan

Michigan Courts ruled local government can not just adopt a zoning. **Local government must be given authority to zone by Legislature** (“enabling statutes”)



Zoning is based on a plan: **Legal Basis** (Know where your zoning authority comes from)

P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*)



## B. Some claim zoning is unconstitutional

- That is nonsense. (*Village of Euclid v. Ambler Realty Co.*, U.S. Supreme Court)
- It is possible for **part of a specific zoning ordinance** to be unlawful, **unconstitutional**.
- **Big difference between::**  
Zoning is unconstitutional (not true), and a specific part of a particular zoning ordinance is unconstitutional.



## B. Zoning is:



Use of  
Land



Form



Impact on land  
and adjacent uses

## B. Zoning is not:

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



## B. Zoning is not:

- **Other categories of limits on zoning:**
  - **Outright Preemption** of local zoning.
  - **Outright Preemption** (the state steps in to establish greater scrutiny over how something is regulated)
  - **If one type of land use is allowed**, then other types of categories outside the Zoning limits must also be allowed.
  - Can Regulate, **but not prohibit.**
  - Can Regulate, but must be as strict or **stricter than the state**
- **See:** Land Use Series “Restrictions on Zoning Authority” available at [https://www.canr.msu.edu/resources/restrictions\\_on\\_zoning\\_authority](https://www.canr.msu.edu/resources/restrictions_on_zoning_authority)



## **C. How to have Effective Submissions and Comments**



## B. Research

- Do not use just any “study.”
- There is **good and bad** research/science.

### Know the signs of good research:



Those standards are:

- Was the data "**double-blind**?"
- Was the study **peer-reviewed**?
- Can the study be repeated and get **similar results**?
- **The researcher does not have a stake in the outcome.**





## C. Research

Was the data "double blind?"



- **Double blind** means both the researcher and the subject do not know if they received the test item or the placebo.
- **Someone else sets up** which is the control and which is the tested item.
- The person collecting the data does not know which is which.
- The subject does not know which is which.



## C. Research

Was the study peer-reviewed?



- This usually means the **research was published in a journal.**
- Usually a journal has a **committee of scientists who review the research project** to determine if it meets proper scientific method before it is published.



## C. Research



Can the study be repeated and get similar results?

- Usually, **one study is not enough.**
- One wants to see if **the same study**, done by different people, **have similar results.**
- **If the same results are not received**, this makes the **conclusions suspect.**
- Thus, one looks for a series of similar studies with similar results to **verify the conclusions.**



## C. Research



The researcher does not have a stake in the outcome.

- The researcher's job or future **funding is not dependent on the outcome** of the study.
- When a **corporation** pays for a study, is it set up so that one's livelihood is not in jeopardy because the results might not be what is wanted by the corporation.
- With a **university**, this is often accomplished by providing faculty with tenure **protection from these types of influences.**



## C. Avoid “Foolish” Statements

Certain public comments can/will be used as ammunition against your cause by attorneys representing the other side.



Avoid statements along the lines of:

- *We do not want “those” people to live here.*
- **Threatening** to recall the board.
- **Unsubstantiated statements/claims**, such as about traffic, sewer/water capacity, etc.



## C. The Planner, the Zoning Administrator



### Staff as “professional”

- Seek help from the Zoning Administrator and/or staff Planner and/or consulting planner.
- Remember staff should remain professional.
- That means what they say and do **reflects their legal obligation or the views and wishes of who they work for**. It may be the opposite of their personal view.



## C. The Planner, the Zoning Administrator



### Staff as “professional” continued

- **Do not condemn, vilify, or glorify staff for their actions:**
  - Their action and words do not necessarily reflect their personal view.
- **Focus on** (attack/support) the **issues** not the person.



## **D. Division of duties and types of zoning decisions**

Three parts



**Executive /  
Administrative**



**Legislative**



**Quasi Judicial**





## D. Division of duties



- A. Permits (must be specifically listed)
- B. Special Use Permits (must be specifically listed)
- C. Amendments (based on a Plan)
- D. Variances, Appeals.



## D. Division of duties

ZONING ADMINISTRATOR	PLANNING COMMISSION	LEGISLATIVE BODY	APPEALS BOARD
Permits	Adopts plan (recommends adopting plan)	Might adopt plan (active in plan adoption)	Hear appeal of zoning administrator decision
Receive applications for special use, PUD, site plans and checks for completeness	Acts on special use, PUD permits (usually)	Appoints members of planning commission, appeals board, may hire zoning administrator	Hear appeal on special use, PUD, <u>only</u> if zoning says
Enforcement	Conduct hearing and make recommendation on zoning amendments	Adopt zoning amendments (might hold additional hearing)	Hear appeal on interpretation of zoning ordinance
Collect fees		Sets fees	Hear requests for variances



## D. Zoning Actions

The Public has influence on **b. Special Uses, c. Amendments, d. Variances & Appeals** (public notices, hearing, or similar)

Means any of the following can participate and make submissions:



Applicant /  
Developer



Neighborhood  
wishing to support  
or oppose



Local  
government/agency  
wishing to support  
or oppose or provide  
facts.



## E. Special Use Permit (incl. PUD)

### Focus is on “Standards.”

- **Rule:** If all the “standards” are met; then must approve.
- **Special Use** permit is an administrative action.
- **Notices** that someone has applied sent to everyone within/around 300 feet & in **newspaper**.



## **E. What you should do before the hearing**



### **Homework:**

- Get a full copy of the Special Use Permit application.
- Get a copy of all the standards in the zoning ordinance for Special Uses (entire ordinance).
- Read them.

**Review the Application against the standards.**



## E. What you should do before the hearing

Standards are found in up to four places in a zoning ordinance:



### 1. In the Article on Special Uses

- Generic, general, discretionary.
- It will be stated (or implied) a special use must also **follow standards** found in the other three locations.



## E. What you should do before the hearing

Standards in four places:



**2. In the Article on the respective zoning district.**

- Setbacks (front, rear, side, waterfront)
- Parcel Size,
- Parcel width,
- Building size,
- And more.



## E. What you should do before the hearing

Standards in four places:



### 3. In the Article on General Provisions (regulations that apply everywhere)

- Parking,
- Screening,
- Groundwater protection,
- And lots more.





## E. What you should do before the hearing

Standards in four places



**4. Sometimes there will also be specific standards for a specific type of Special Use.**

*Examples include:*

- Mining.
- Mobile Home Parks.
- Heavy Industry.
- And more.



## **E. What you should do before the hearing**



If you do not like the standards,  
**then seek to amend the zoning ordinance.**

## E. What you should do before the hearing



Prepare a submission for the hearing.

- Focus on the **facts**.
- Focus on the **standards**.
- Does the proposed Special Use meet the standards?
- Does the proposed Special Use fail to meet one or more standards?



## E. What you should do before the hearing



### “Compatible with neighborhood”

It is a discretionary standard and residents in the area may have a large influence here.



### “Within capacity of Infrastructure”

It is a discretionary standard and local government/agencies can provide facts.

## E. What you should do before the hearing

### Remember: Effective Submissions/Comments



- Protect your credibility.
- Do not be Emotional.
- Cite Sources (use good research.)
- Focus on Use of Land, impact on land (not to promote/oppose economic, racial, or religious views; enforcement of private deed restrictions; neighborhood feuds or personal quarrels; a tool for the political arena; or a public popularity contest.)
- Avoid “foolish” statements.



## E. Attend the hearing



**Give the entire submission in writing**  
(copies for everyone, including the recording secretary and staff)



**Orally summarize the written submission**  
staying within the time limit  
(if any)



## E. To summarize



### Before hearing:

- Do your homework, read application and ordinance standards
- Standards found in four places
- Prepare a written Submission: Focus on facts and the standards.
- Remember: Effective Submissions/Comments
  - » Protect your credibility
  - » Do not be Emotional
  - » Cite Sources (use good research)
  - » Focus on Use of Land, impact on land (not political/personal stuff)
  - » Avoid “foolish” statements.

Attend the hearing. Everyone gets a copy, and orally summarize.



## (Same Process for EGLE, DNR, etc.)



EGLE sends out notices, publish in newspaper.

**Might be hearing. Before hearing, or submission:**

- Do your homework; read application; EGLE/DNR Statutes, federal regulations, administrative rules for standards.
  - Statute is found at: <http://www.legislature.mi.gov/>
  - Administrative Rules are found at: <https://www.michigan.gov/lara/bureau-list/moahr/admin-rules>
  - Federal regulations are found at: <https://www.govinfo.gov/help/cfr> or at <https://www.epa.gov/laws-regulations>





## (Same Process for DEQ, DNR, etc.)



- Prepare written Submission: **Focus facts & standards.**
- Remember: **Effective Submissions/Comments.**
  - Protect your credibility, Do not be Emotional, Cite Sources (use good research), Avoid “foolish” statements.
- **Mail the submission, or attend the hearing.** Everyone gets a copy, and orally summarize.)



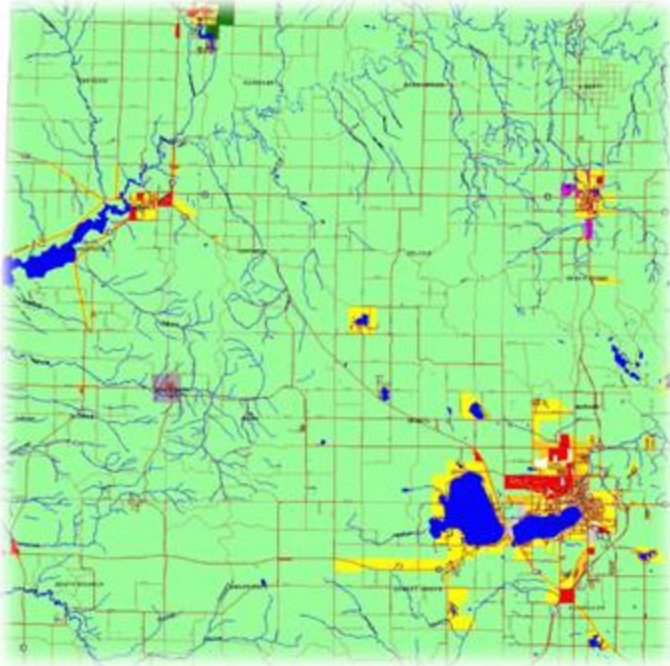
## F. Zoning Amendment (incl. PUD)



- **Zoning** is based on a **Plan**.
- An **amendment to zoning** must also be based on (follow) the **Plan**.
- **Zoning amendment is a legislative action.**  
The elected officials have much more **discretion** on **adopting, or not adopting, a zoning amendment**



## F. Amendment (including PUD)



Two types of zoning amendments:

- **Changes a zoning district boundary** on the zoning map
- **Changes the text** of the zoning ordinance.

## F. Amendment (including PUD)



### Notices of a proposed amendment:

- Amendment involves **10 or fewer parcels: notices sent to everyone within, and 300 feet around, the proposed location and in the newspaper.**
- Amendment involves **11 or more parcels** (or is not parcel specific): notice is in the **newspaper.**



## F. Amendments change a lot

A zoning amendment makes changes for more than just what is being proposed.



- A text amendment might **change rules for an entire zoning district, or the entire area under that zoning ordinance** – not just the property that someone is proposing something for.
- A map amendment means **any of the permitted or special uses can happen**, not just what someone is proposing on that day.



## F. What you should do before the hearing



### Homework:

- Get a **full copy of the proposed zoning amendment** (and an application if it exists).
- Get a **copy of the Plan**.
- **Read them.**

**Review the proposed amendment against the Plan** (Plan = standards, sort of).



## F. Reminder

- **Effective Submissions/Comments**
  - Protect your credibility.
  - Do not be Emotional.
  - Cite Sources (use good research)
  - Focus on Use of Land, impact on land (not to promote/oppose economic, racial, or religious views; enforcement of private deed restrictions; neighborhood feuds or personal quarrels; a tool for the political arena; or a public popularity contest.)
  - Avoid “foolish” statements.
- **Attend the hearing.**
- **Submission in writing** (copies for everyone, including recording secretary and staff)
  - Orally summarize. Stay within time limit (if any).



## F. After the Hearing

- **Planning Commission makes a recommendation to the Elected Body.**
  - (Township Planning Commission also refers the amendment to the County Planning Commission, which also makes a recommendation to the Elected Body.)
- **In a City or Village: Can file a protest petition (abutter's challenge).**
  - See a lawyer to do this.
  - Do not delay. There are deadlines and things that must be done within a certain amount of time.





## F. After the Hearing



### Elected Body can:

- **Adopt proposed amendment**, as recommended.
- **Hold additional Hearing(s).**
  - Attend and give submission as was done before.
- Return **proposed amendment** to the **Planning Commission for further study.**
  - When a proposed amendment comes back a second time, the Elected body can adopt, hold hearings, or reject it..



## F. Still not happy?

If the Amendment is adopted and one is still opposed to it:



Can petition to **bring the amendment to a vote** of the people (maybe not in a city/village).



**See a lawyer** to do this.



Do not delay. **There are deadlines** and things that must be done within a certain amount of time.



## F. To summarize



### Before the hearing:

- Do your homework, **read proposed amendment**, and Plan.
- Zoning Amendment is **based on a plan**.
- Zoning Amendment **has far more impact** than just on the proposal.
- Prepare a written Submission: **Focus on facts and Plan**.



## F. To summarize

- Remember: Effective Submissions/Comments
  - Protect your credibility
  - Do not be Emotional
  - Cite Sources (use good research)
  - Focus on Use of Land & impacts (not political/personal stuff)
  - Avoid “foolish” statements.
- Attend the hearing. Everyone gets a copy, and orally summarize.
- Attend the elected body’s meeting, orally summarize the written testimony (and everyone gets a copy).
- Abutter’s challenge (city & village).
- Petition for Voter Referendum (county & township).



## Abutter's challenge

It's an objection from a neighborhood group to a rezoning.

## F. To summarize

### Remember: Effective Submissions/Comments:

- Protect your credibility
- Do not be Emotional
- Cite Sources (use good research)
- Focus on Use of Land & impacts (not political/personal stuff)
- Avoid “foolish” statements.
- Attend the hearing. **Everyone gets a copy, and orally summarize.**
- Attend the elected body's meeting, **orally summarize the written testimony** (and everyone gets a copy).
- **Abutter's challenge** (city & village).
- **Petition for Voter Referendum** (county & township).



## G. Appeals / Variances



Appeals Board does four things:

- Interpretation of the **Zoning Ordinance**.
- Interpretation of the **Zoning Map**.
- **Issues Dimensional/Regulation** and Use (sometimes) **Variances**.
- **Appeal administrative decisions**.



## G. Appeals / Variances

Who can appeal?



Any aggrieved  
person



Officer,  
department,  
board, bureau  
of the state



Officer,  
department,  
board, bureau of  
the local unit of  
government.



## G. Appeal / Interpretations



Appeal decision of the Zoning Administrator. **Text, Map: Interpretations .**

- “**Administrative appeal**” and “**ordinance interpretations**” occur when someone is asking the appeals board to double-check a decision of the zoning administrator.
- There will be cases where the permit applicant, zoning administrator, and planning commission will **read the ordinance, or look at the zoning map, and decide the wording means** two different things, or not agree on where a zoning district boundary is located.





## G. Appeal / Interpretations



For text interpretation issues (=standards):

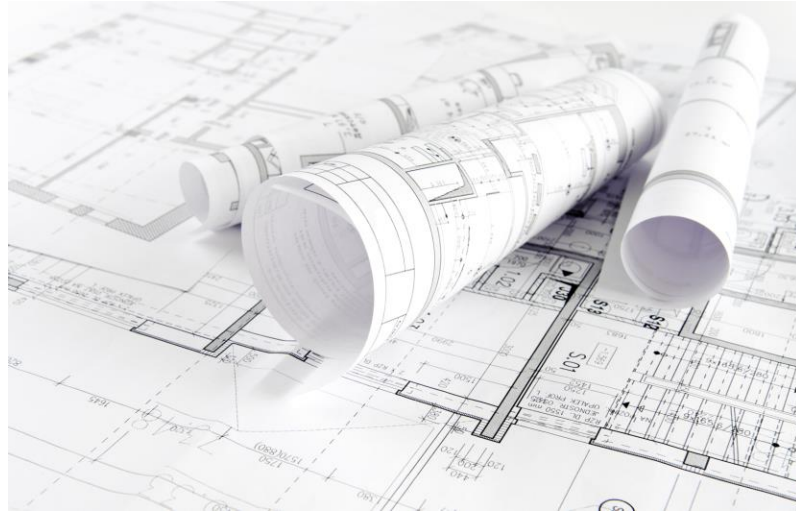
- **Research zoning** ordinance, old minutes, etc.
- **Consider in context** of entire ordinance, section.
- **Review** the definitions in the **ordinance**.
- **Review other zoning districts.** If questioning “if it is allowed in one zoning district?”, and it is listed in another district, but not the one district, then the answer is likely “no.”
- **Seek advice** of planning and legal counsel.
- When it is not clear how to interpret, **benefit of doubt** is extended to the property owner.



## G. Appeal / Interpretations

### For map interpretation issues:

(see specific rules spelled out in the zoning ordinance ( § 1807 or § 18XX) e.g. = to standards).



## G. Appeals / Variances



### Request a Regulation Variance.

- Grant an exception to **regulations** for a given use in a zoning ordinance --such as lot size, yard setbacks, building height, building size, parking requirements, etc.
- Appeals board find that a “**practical difficulty**” exists. Thus, one of the regulations must be waived.



## G. Appeals / Variances



### Request a Regulation Variance, continued.

- **Example:** Parcel is large enough to use, but because it has a pond, a minimum-size house would not fit between the pond (water setback) and the setback from the road or property line. In such a case, a variance to the set back for the side yard setback or road setback may be appropriate.



## G. Appeals / Variances



A regulation variance should be difficult to obtain.

“Practical difficulty” (court established standards):

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



## G. Appeal / Use Variance



### Request a Use Variance:

- **An example** might be someone who wishes to build a tavern in a residential district and the zoning ordinance does not list “tavern” as a permitted use or special use for the residential district.
- A use variance should be almost impossible to obtain. The person seeking the variance from the board of appeals must show that an **“unnecessary hardship”** exists.



## G. Appeal / Use Variance



### Request a Use Variance:

- A county and township appeals board may not have the authority to **grant use variances**.
- **Can grant use variance if:**
  - » A city or village.
  - » A township or county that has zoning which prior to February 15, 2006 specifically authorizes granting use variances: “Use variance” or “variances from uses of land.”
  - » A township or county that actually granted one or more use variances before February 15, 2006.



## G. Appeal / Use Variance



A use variance should be almost impossible to obtain. “Unnecessary hardship” (court established standards):

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





## G. All appeals



**Follows a process.**

See Land Use  
Series Checklist #6.



Notices that someone has  
asked for a variance must  
be **sent to**  
**everyone within/around**  
**300 feet & in newspaper.**

## G. What you should do before the Appeals hearing



### Homework:

- Get a **full copy** of the Demand for Appeal request.
- Use the “**practical difficulty**” (dimensional variance) or “**unnecessary hardship**” (use variance) standards.
- Get a **copy of the entire ordinance**.
- **Read them.**

**Review the Application against the standards.**



## G. To Summarize

Before hearing.



Do your homework, **read Demand for Appeal** and standards



**Prepare a written Submission:**  
Focus on facts and the standards (above).

## G. To Summarize



### Remember: Effective Submissions/Comments:

- Protect your credibility.
  - Do not be Emotional.
  - Cite Sources (use good research.)
  - Focus on Use of Land, impact on land (not political/personal stuff.)
  - Avoid “foolish” statements.
- 
- **Attend the hearing.** Everyone gets a copy, and orally summarize.
  - **If all else fails, go to court.**



# What we covered

- A.** Why Plan
- B.** Legal Authority for Zoning
- C.** How to Have Effective Submissions/Comments
- D.** Division of duties and types of zoning decisions
- E.** Special Use Permits (including Planned Unit Developments (PUD))
- F.** Zoning Amendments (including PUD)
- G.** Variances





## Thank you

- [Name]
  - [Title]
  - [Organization]
  - [Email]
  - [Organization website]



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