

How to Influence Zoning Decisions

December 18, 2008
(Originally prepared August 2003)

This program is not for planning commission, zoning board, appeals board members, or zoning administrators. This program is for members of the neighborhood, area associations, and special interest groups that wish to be more effective and be more convincing when advocating a particular outcome on an issue in their community.

Michigan State University Extension
Bringing Knowledge to Life

Kurt H. Schindler
REGIONAL LAND USE EDUCATOR

schindl9@msu.edu
Schindler's Land Use Page: www.msue.msu.edu/lu/
MSU Extension Land Use: <http://ntweb11.ais.msu.edu/luaoe/index.asp>

**MSU Extension, Wexford County
401 N. Lake Street
Cadillac, Michigan 49601-1891**

**(231)779-9480
fax(231)779-9105**

-
- A. This Program Will Cover
1. A. Why Plan
 2. B. Legal Authority for Zoning
 3. C. How to Have Effective Submissions/Comments
 4. D. Division of duties and types of zoning decisions
 5. E. Special Use Permits (including Planned Unit Developments (PUD))
 6. F. Zoning Amendments (including PUD)
 7. G. Variances

-
- B. Handouts
1. Green: Overhead slides
 2. Yellow: These detailed speaker notes
 3. White: Handouts
-

A. A. Why Plan?

1. ““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)
2. B. We all Plan
 - a. Often we plan subconsciously.
 - b. We think ahead and prepare accordingly.
 - 1) (We get dressed before going out of the house)
 - 2) (We make a list before going to buy groceries)
 - 3) (We measure before we cut the board)
 - c. To buy a car:
 - 1) We establish a goal “*To have a new car all the time*”
 - 2) We establish an objective “*To buy a new car every two years*”
 - 3) 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.
 - 4) We establish a strategy: “*To have monthly income which is more than \$_____.*” (So we can afford the \$200 per month or car payments.)
 - 5) We take action: “*Research, test drive, and select the car we want*” and we buy the car.
3. Planning as a Government
 - a. When one plans for a community:
 - 1) Can not do it subconsciously (Open Meeting Act; we are in a democracy).
 - 2) Must be open; include many people.
 - 3) Must have a formal process.
 - 4) Must have formal adoption.
 - b. Does this all seem too complex, difficult?
 - 1) That is a good sign because: “For every problem, there is one solution which is simple, neat and wrong.” – H. L. Mencken
4. Planning is not new:
 - a. New Haven (1682); Philadelphia (1682); Detroit (1700); New Orleans (1718); Savannah (1733); Washington D.C. (1800).
 - b. Our founding fathers did community planning: Thomas Jefferson (Charlottesville and University of Virginia); Washington D.C. (1800).
5. The Purpose of Planning
 - a. Why Plan according to Michigan Society of Planning Officials. (Wyckoff, Mark A. and others (Planning & Zoning Center); *Community Planning Handbook-Tools and Techniques for Guiding Community Change*; Michigan Society of Planning Officials; Rochester, Michigan; March 1992; Page 2.)
 - 1) Planning is a process, fundamental to what we do (personal lives, jobs, and in a community).
 - 2) Planning (or failing to plan) is important at the community level as it affects many people.

- 3) **Change occurs with or without planning** – planning is a way to guide change
 - i. to maximize the positive and
 - ii. minimize the negative impacts
- b. Zoning is based on a plan; the plan is when/where decisions are made about possible development.
 - 1) Then: Often big picture issues are decided in the planning process.
 - 2) By the time it is a zoning permit or amendment proposed, it is too late.
 - 3) So: Be active in the development of the Plan. Participate. “The world is run by those who show up.”
- 6. It is not just Zoning
 - a. Zoning is not all there is.
 - b. Government has other powers that should also be used to promote/discourage development in different areas.
 - 1) Power of Taxation
 - 2) Power of Spending Money
 - 3) Police Power
 - 4) Coordination

B. Legal Authority for Zoning

1. 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.
2. Many Other Court Cases.
3. Enabling Statutes in Michigan. Michigan Courts have ruled local government can not just adopt a zoning. Local government must be given authority to zone by the Michigan Legislature (“enabling statutes”).
 - a. Zoning is based on a plan¹: Legal Basis (Know where your zoning authority comes from)
 - 1) P.A. 110 of 2006, as amended, being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*²
4. Some claim zoning is unconstitutional
 - a. That is nonsense. (*Village of Euclid v. Ambler Realty Co.*, U.S. Supreme Court)
 - b. It is possible for part of a specific zoning ordinance to be unlawful, unconstitutional
5. Big difference between:
 - a. Zoning is unconstitutional (not true), and
 - b. A specific part of a particular zoning ordinance is unconstitutional.
6. Zoning is:
 - a. Use of Land
 - b. Impact on land and adjacent uses
 - c. Zoning is **not**:
 - 1) to promote/oppose economic, racial, or religious views.
 - 2) enforcement of private deed restrictions.
 - 3) a solution for neighborhood feuds or personal quarrels.
 - 4) a promoter of development (it merely permits it).
 - 5) a tool for the political arena (to reward/punish others).
 - 6) a public popularity contest – zoning decisions are to be based on facts, not majority of votes.

¹The plan zoning is based on must be adopted following the procedure and content specified in P.A. 33 of 2008, as amended, being the Michigan Planning Enabling Act, M.C.L. 125.3801 *et seq.* The planning authority used to be from three separate statues, one for each form of local government. Those were repealed as of September 1, 2008 and replaced by a single statute for all forms of local government. Before September 1, 2008 the zoning authority was from (1) County Planning Act, being P.A. 282 of 1945, as amended, M.C.L. 125.101 *et seq.*, (2) Township Planning Act, being P.A. 168 of 1959, as amended, M.C.L. 125.321 *et seq.*, and (3) Municipal Planning Act, being P.A. 285 of 1931, as amended, M.C.L. 125.31 *et seq.* (for cities, villages, and some township planning commissions created prior to 1959).

²The zoning authority used to be from three separate statues, one for each form of local government. Those were repealed as of July 1, 2006 and replaced by a single statute for all forms of local government. Before July 1, 2006 the zoning authority was from (1) Cities & Villages: P.A. 207 of 1921, as amended, (being the City or Village Zoning act, M.C.L. 125.581 *et seq.*); (2) Townships: P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.271 *et seq.*); or (3) Counties: P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.201 *et seq.*).

- d. Zoning **cannot** regulate or prohibit
- 1) General Rule(s):
 - i. To quote:
“A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful.”³
 - ii. Must allow the continued use of a **non conforming** use⁴ and expansion of a non conforming use⁵ (existing building or use of land that lawfully existed prior to zoning, or prior to the zoning amendment). (But can provide for phased elimination as long as there are reasonable terms of restoration, reconstruction, extension, substitution, and can acquire non conforming uses).
 - iii. **Takings:** Have regulations so sweeping they in effect take away any/economically viable use of one’s land or where the regulation does not substantially advance a legitimate state interest.⁶

³Section 207 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3207). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 27a. of P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.227a); section 27a of P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.297a.); and section 12 of P.A. 207 of 1921, as amended, (being the City and Village Zoning Act, M.C.L. 125.592).)

⁴Section 208 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3208). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 16 of P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.216); section 16 of P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.286.); and section 3a of P.A. 207 of 1921, as amended, (being the City and Village Zoning Act, M.C.L. 125.583a.).)

⁵*Century Cellunet of Southern Michigan v. Summit Township et. al* State of Michigan Court of Appeals No. 225713, March 29, 2002, Jackson Circuit Court LC No. 99-096108-AA.

⁶Both state and federal constitutions prohibit taking of private property for public use without just compensation. U.S. Constitution, Amendment V and Michigan Constitution 1963, Article 10 §2. The U.S. Supreme Court has recognized that the government effectively “takes” a person’s property by overburdening that property with regulations. *Pennsylvania Coal Co. v Mahon* 260 US 393, 415; 43 S Ct 158; 67 L Ed 2d 322 (1922). Generally, there are two situations where a land use regulation will effect a taking: (1) where the regulation does not substantially advance a legitimate state interest, or (2) where the regulation denies an owner economically viable use of his land. *K & K Construction, Inc. v Department of Natural Resources*, 456 Mich 570, 576; 575 NW2d 531 (1998). See also *Lucas v South Carolina Coastal Council*, 505 US 1003, 1015; 112 S Ct 2886; 120 L Ed 2d 798 (1992). *Penn Central Transportation Co v New York City*, 438 US 104; 98 S Ct 2646; 57 L Ed 2d 631 (1978). *Adams Outdoor Advertising v City of East Lansing* (after Remand), 463 Mich 17, 23-24; 614 NW2d 634 (2000). *Palazzolo v Rhode Island*, 533 US 606; 121 S Ct 2448, 2457; 150 L Ed 2d 592 (2001). *Loveladies Harbor [Inc v United States]*, 28 F3d [1171 (1994)] at 1179 and 1177. *Creppel [v United States]*, 41 f3d [627 (1994)] at 632. *Good v United States*, 189 F3d 1355 (1999).

- iv. Must provide for **due process of law** and must provide to persons **equal protection** of the laws.⁷
- 2) Other categories of limits on zoning authority (See *Land Use Series “Restrictions on Zoning Authority”* available at www.msue.msu.edu/lu/)
 - i. Outright Preemption:
 - ii. Preemption, sort of:
 - iii. If one is permitted, then must also permit:
 - iv. Can Regulate, but not prohibit:
 - v. Can regulate, but must be as strict or stricter than the state:

⁷U.S. Constitution, Amendment IV.

C. How to Have Effective Submissions/Comments

1. Credibility
 - a. This is your most important commodity
 - b. Protect your credibility first and foremost.
2. Do not be Emotional –focus on facts.
3. Cite Sources (use footnotes, attach a copy or summary)
4. Research
 - a. Do not use just any “study.”
 - b. There is good and bad research/science. Know the signs of good research:
 - c. Those standards are:
 - 1) Was the data "double blind?"
 - 2) Was the study peer-reviewed?
 - 3) Can the study be repeated and get similar results?
 - 4) The researcher does not have a stake in the outcome.
 - d. Was the data "double blind?"
 - 1) Double blind means both the researcher and the subject do not know if they received the test item or the placebo.
 - 2) Someone else sets up which is the control and which is the tested item.
 - 3) The person collecting the data does not know which is which.
 - 4) The subject does not know which is which.
 - e. Was the study peer-reviewed?
 - 1) This usually means the research was published in a journal.
 - 2) 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.
 - f. Can the study be repeated and get similar results?
 - 1) Usually one study is not enough.
 - 2) One wants to see if the same study, done by different people, have similar results.
 - 3) If the same results are not received, this makes the conclusions suspect.
 - 4) Thus, one looks for a series of similar studies with similar results to verify the conclusions.
 - g. The researcher does not have a stake in the outcome.
 - 1) The researcher's job or future funding is not dependant on the outcome of the study.
 - 2) 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.
 - 3) With a university, this is often accomplished by providing faculty with tenure protection from these types of influences.

5. 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:
 - a. We do not want “those” people to live here (Federal Fair Housing Act, discrimination).
 - b. Threatening to recall the board (grounds to show a judge the decision was not made based on standards, but rather in response to the threat).
 - c. Unsubstantiated statements/claims, such as about traffic, sewer/water capacity, etc. (the opposition will bring expert witnesses in to discredit those statements).
 6. Staff as “professional”
 - a. Seek help from the Zoning Administrator and/or staff Planner and/or consulting planner.
 - b. Remember staff should remain professional.
 - c. 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.
 - d. Do not condemn, vilify, or glorify staff for their actions: Their action and words do not necessarily reflect their personal view.
 - e. Focus on (attack/support) the issues not the person.
- D. Division of duties and Types of Zoning Decisions
1. Three parts
 - a. Executive/Administrative
 - b. Legislative
 - c. Quasi Judicial

Division of Zoning Authority

ZONING ADMINISTRATOR

PLANNING COMMISSION/ ZONING BOARD

APPEALS BOARD

LEGISLATIVE BODY

	<p>PLANNING COMMISSION ONLY: Researches, conducts studies, etc. to make a comprehensive plan (or parts) or to update the plan (every five years).</p>		<p>Recommend the governing body have an active role in the plan development.</p>
	<p>PLANNING COMMISSION ONLY: Holds at least one public hearing on proposed comprehensive plans (or parts), and updated plans.</p>		
	<p>PLANNING COMMISSION ONLY: Formal adoption of the comprehensive plan (or parts) or updates of the plan.</p>		<p>Recommended the governing body be asked to endorse the plan.</p>
	<p>Accepts petitions, requests for zoning changes.</p>		
	<p>Researches, authors a zoning ordinance and map or zoning amendment (with zoning review about every 2 to 2½ years).</p>		
	<p>Holds at least one public hearing on the zoning ordinance or amendment.</p>		
	<p>Recommends to governing body adoption of the zoning ordinance/amendment after the county has reviewed it (if a township) or after the state has reviewed it (if a county).</p>		<p>May hold additional hearing(s) prior to adopting a proposed zoning ordinance/amendment.</p>
			<p>Final adoption of the zoning ordinance/amendment.</p>
	<p>Might review applications for zoning administrator's position, and performs employee job evaluation</p>		<p>Hires a zoning administrator and may dismiss him or her.</p>
<p>Issues land use permits for "permitted uses" and site plans.</p>		<p>Hears and settles appeals of determinations/decisions made by the zoning administrator.</p>	
<p>May receive applications for special use permits, planned unit developments (P.U.D.) and site plans and checks to see that applications and site plans are complete before forwarding to the planning commission/zoning board.</p>	<p>Acts on applications for special uses and P.U.D. (A P.U.D. might also be handed as a zoning amendment.) (A special use might also be handled by the zoning administrator, and/or may have final approval by the governing body.)</p>	<p>May hear and settle appeals on P.U.D. and special use permit requests <u>only</u> if specified in the zoning ordinance.</p>	
<p>Collects permit fees</p>			
<p>Patrols the land in the municipality and initiates steps for enforcement. May have civil infraction ticket-writing authority.</p>	<p>May hear of enforcement problems from the zoning administrator and (1) has authority to start legal action or (2) recommends to governing body to start legal action.</p>		<p>Act to start legal action on violations or delegate that authority (with budget) to planning commission/zoning board.</p>
<p>Might be assigned other duties (instead of zoning board/appeals board); such as keeping minutes, handling correspondence, public notices for applications and/or hearings, calling meetings of the appeals board.</p>			
<p>May receive request for appeals/variances.</p>		<p>Hears both sides and settles a disagreement over the interpretation of all/part of the zoning ordinance and boundary locations shown on the zoning map.</p>	
		<p>Acts on applications for use-variances (rare or never granted, townships and counties may not be able to give use-variances).</p>	
		<p>Acts on applications for regulation-variances, such as making an exception to setback, lot size, building size, etc. (not often granted).</p>	

2. Zoning Actions:
 - a. Permits (must be specifically listed)
 - b. Special Use Permits (must be specifically listed)
 - c. Amendments (based on a Plan)
 - d. Variances, Appeals
3. The Public has influence on b. Special Uses, c. Amendments, d. Variances & Appeals.
 - a. Public influence means any of the following (people can participate and make submissions):
 - 1) Applicant/Developer
 - 2) Neighborhood wishing to support or oppose
 - 3) Local government/agency wishing to support or oppose, or provide facts.

E. Special Use Permits (including Planned Unit Development (PUD))

1. Focus is on “Standards”
2. Rule: If all the “standards” are met; then must approve.
3. Special Use permit is an administrative action
 - a. Follows a specific process. See *Land Use Series*; “Check List #5 For Processing a Zoning Special Use Permit (including some PUDs) in Michigan”
 - b. Download at:
<http://web1.msue.msu.edu/wexford/pamphlet/pamphlet5zoneSpUseChecklst.pdf>
4. Notices that someone has asked for a special use permit must be sent out to everyone within, and 300 feet around, the proposed location and in the newspaper.
5. What you should do before the hearing:
 - a. Homework:
 - 1) Get a full copy of the Special Use Permit application.
 - 2) Get a copy of all the standards in the zoning ordinance for Special Uses (entire ordinance).
 - 3) Read them.
 - b. Review the Application against the standards.
 - c. Standards are found in up to four places in a zoning ordinance:
 - 1) In the Article on Special Uses”
 - i. Generic, general, discretionary
 - ii. It will be stated (or implied) a special use must also follow standards found in the other three locations.
 - 2) In the Article on the respective zoning district
 - i. Setbacks (front, rear, side, waterfront)
 - ii. Parcel Size,
 - iii. Parcel width,
 - iv. Building size,
 - v. And more.
 - 3) In the Article on General Provisions (regulations that apply everywhere)
 - i. Parking,
 - ii. Screening,
 - iii. Groundwater protection,
 - iv. And lots more.
 - 4) Sometimes there will also be specific standards for a specific type of Special Use. Examples include:
 - i. Mining
 - ii. Mobile Home Parks
 - iii. Heavy Industry
 - iv. And more.
 - d. (If you do not like the standards, then seek to amend the zoning ordinance.)
 - e. Prepare a submission for the hearing
 - 1) Focus on the facts

- 2) Focus on the standards
 - i. Does the proposed Special Use met the standards?
 - ii. Does the proposed Special Use fail to meet one or more standards?
- 3) “Compatible with neighborhood” – is a discretionary standard and residents in the area may have a large influence here.
- 4) “Within capacity of Infrastructure” – is a discretionary standard and local government/agencies can provide facts.
- 5) Remember: Effective Submissions/Comments
 - i. Protect your credibility
 - ii. Do not be Emotional
 - iii. Cite Sources (use good research)
 - iv. 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).
 - v. Avoid “foolish” Statements.
6. Attend the hearing
 - a. Give the entire submission in writing (copies for everyone, including the recording secretary and staff)
 - b. Orally summarize the written submission staying within the time limit (if any).
7. To summarize:
 - a. Before hearing
 - 1) Do your homework, read application and ordinance standards
 - 2) Standards found in four places
 - 3) Prepare a written Submission: Focus on facts and the standards.
 - 4) Remember: Effective Submissions/Comments
 - i. Protect your credibility
 - ii. Do not be Emotional
 - iii. Cite Sources (use good research)
 - iv. 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).
 - b. Attend the hearing. Everyone gets a copy, and orally summarize.
8. (NOTE: Same Process for hearings before Michigan Department of Environmental Quality (DEQ))
 - a. DEQ sends out notices and newspaper notice of permit
 - b. Might be a hearing. Before hearing, before submission:
 - 1) Do your homework, read application and DEQ/DNR Statutes, federal regulations, administrative rules for the standards.

- i. Statute is , found at <http://www.legislature.mi.gov/>.⁸
 - ii. Administrative Rules are found at: <http://www.michigan.gov/orr/>.⁹
 - iii. Federal regulations are found at <http://www.gpoaccess.gov/cfr/index.html> or at <http://www.epa.gov/epahome/rules.html>.¹⁰
- 2) Prepare a written Submission: Focus on facts and the standards.
 - 3) Remember: Effective Submissions/Comments
 - i. Protect your credibility
 - ii. Do not be Emotional
 - iii. Cite Sources (use good research)
 - iv. Avoid “foolish” Statements.
- c. Mail the submission, or attend the hearing. Everyone gets a copy, and orally summarize.)

⁸Electronic copies of Act 451 of 1994, as amended, (being the Michigan Natural Resources and Environmental Protection Act, M.C.L. 324.101 *et seq.*) are available. A disk in either DOS/Windows ASCII or Macintosh ASCII format can be ordered from the Legislative Service Bureau for \$10.00. Complete a check payable to the State of Michigan, address to the Legislative Service Bureau, Business Office/NREPA, P.O. Box 30036, Lansing MI 48909-7536, and mail together with your request, the disk format required, and a return address. Be aware that the disk does not include the administrative rules. Some Parts of Act 451 can be accessed through the Internet. These sites include:

- www.deq.state.mi.us (select "MDEQ Divisions and Offices," select the appropriate DEQ division overseeing a program area of your interest, follow the links to that division's regulations);
- www.deq.state.mi.us (select "Legislative Information," select "DNR Law Division" for various Parts of Act 451);
- www.dnr.state.mi.us (select "Divisions," select "Law," select "DNR Laws, Rules and Regulations," select "Michigan Compiled Laws" for the various Parts of Act 451);
- www.voyager.net/miconservation (select "NREPA").

If you are unsure of what division is involved or which regulations apply, call the Environmental Assistance Center at 800-662-9278 for assistance.

⁹Several portions of the Code of Administrative Rules are available on the Internet at <http://www.state.mi.us/orr/>. Many of the rules can also be obtained through the DEQ division overseeing those regulations. Go to that division's home page. If you are unsure of what division is involved or which regulations apply, call the Environmental Assistance Center at 800-662-9278 for assistance.

¹⁰Several of the state requirements adopt federal regulations by referencing applicable sections of the Code of Federal Regulations (CFR). Most of these federal requirements can be accessed through the Internet at <http://www.gpoaccess.gov/cfr/index.html> or at www.epa.gov/epahome/rules.html. Printed copies can also be ordered through the U.S. Printing Office. Call 202-512-1800 for ordering information. Some libraries also have regulations available. Check with your local librarian.

F. Amendment (including PUD)

1. Zoning is based on a Plan.
2. An amendment to zoning must also be based on (follow) the Plan.
3. Zoning amendment is a legislative action.
 - a. The elected officials have much more discretion on adopting, or not adopting, a zoning amendment.
 - b. Two types of zoning amendments:
 - 1) Changes a zoning district boundary on the zoning map
 - 2) Changes the text of the zoning ordinance.
4. Amendments are a legislative action:
 - a. Follows a specific process. *Land Use Series*; “Check List #4 For Adoption of a Zoning Ordinance Amendment (including some PUDs) in Michigan”
 - b. Download at:
<http://web1.msue.msu.edu/wexford/pamphlet/pamphlet4zoneAmendmentChecklst.pdf>
5. Notices of a proposed amendment:
 - a. If the amendment involves 10 or fewer parcels of land notices are sent to everyone within, and 300 feet around, the proposed location and in the newspaper.
 - b. If the amendment involves 11 or more parcels (or is not parcel specific) notice is in the newspaper.
6. **A zoning amendment makes changes for more than just what is being proposed.**
 - a. 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.
 - b. A map amendment means **any of the permitted or special uses can happen**, not just what someone is proposing on that day.
7. What you should do before the hearing:
 - a. Homework:
 - 1) Get a full copy of the proposed zoning amendment (and an application if it exists).
 - 2) Get a copy of the Plan.
 - 3) Read them.
 - b. Review the proposed amendment against the Plan.
 - c. Prepare a submission for the hearing
 - 1) Focus on the facts
 - 2) Focus on if it follows the Plan
 - 3) Remember: Effective Submissions/Comments
 - i. Protect your credibility
 - ii. Do not be Emotional
 - iii. Cite Sources (use good research)
 - iv. 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).
 - v. Avoid “foolish” Statements.
8. Attend the hearing
 - a. Give the entire submission in writing (copies for everyone, including the recording secretary and staff)
 - b. Orally summarize the written submission staying within the time limit (if any).
 9. The Planning Commission makes a recommendation to the Legislative Body.
 - a. (Township Planning Commission also refers the amendment to the County Planning Commission, which also makes a recommendation to the Legislative Body.)
 - b. In a city or village: Can file a protest petition (abutter’s challenge).
 - 1) See a lawyer to do this
 - 2) Do not delay. There are deadlines and things that must be done within a certain amount of time.
 10. Legislative Body can:
 - a. Adopt proposed amendment, as recommended
 - b. Hold additional Hearing(s). Attend and give submission as was done before.
 - c. Return to the Planning Commission for further study.
 - 1) When a proposed amendment comes back a second time, the Legislative body can adopt, hold hearings, or reject it.
 11. If the Amendment is adopted and one is still opposed to it:
 - a. Can petition to bring the amendment to a vote of the people. (May not be able to do this in most cities and villages.)
 - b. See a lawyer to do this
 - c. Do not delay. There are deadlines and things that must be done within a certain amount of time.
 12. To summarize:
 - a. Before hearing
 - 1) Do your homework, read proposed amendment, and Plan.
 - 2) Zoning Amendment is based on a plan.
 - 3) Zoning Amendment has far more impact than just on the proposal.
 - 4) Prepare a written Submission: Focus on facts and Plan.
 - 5) Remember: Effective Submissions/Comments
 - i. Protect your credibility
 - ii. Do not be Emotional
 - iii. Cite Sources (use good research)
 - iv. 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).
 - v. Avoid “foolish” Statements.
 - b. Attend the hearing. Everyone gets a copy, and orally summarize.

- c. Attend the elected body's meeting, orally summarize the written testimony (and everyone gets a copy).
- d. Petition for Voter Referendum.

G. Variances

1. Appeals Board does four things
 - a. Interpretation of the Zoning Ordinance
 - b. Interpretation of the Zoning Map
 - c. Issues Dimensional/Regulation Variances
 - d. Issues Use Variances
2. Who can appeal any decision the zoning administrator makes?
 - a. Any aggrieved¹¹ person
 - b. Officer, department, board, bureau of the state
 - c. Officer, department, board, bureau of the local unit of government.
3. Appeal decision of the Zoning Administrator. Text, Map: Interpretations
 - a. “**Administrative appeal**” and “**ordinance interpretations**” occur when someone is asking the appeals board to double-check a decision of the zoning administrator.
 - b. 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.
4. For **text** interpretation issues:
 - a. Research the zoning ordinance and supporting documents carefully (minutes, early map drafts, testimony from the person who wrote the ordinance or had drawn the map).
 - b. Consider the provision at issue in light of the intent of the entire ordinance, not just the section it is found.
 - c. Review the definitions in the ordinance.
 - d. Review references to other documents for definitions (*Standard Industrial Classification (SIC) Manual*; *North American Industrial Classification System (NAICS)*). These are exclusive categories. Look for it anywhere in the book. If it is found elsewhere, then it is not included within the meaning of the word at issue.
 - e. Review other zoning districts. If the question is “is a particular land use allowed in one zoning district?”, and the land use is specifically listed in another zoning district, but not the one being questioned, then the answer is likely “no.”
 - f. Look at the entire context (entire section or article, not just the one sentence or paragraph).

¹¹“Aggrieved Party” means one whose legal right has been invaded by the act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. The interest involved is a substantial grievance, through the denial of some personal, pecuniary (relating to or consisting of money) or property right or the imposition upon a party of a burden or obligation.

It is one whose rights or interests are injuriously affected by a judgment. The party’s interest must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgement.

Only aggrieved parties can appeal a particular order or judgement.

- g. Seek advice of planning and legal counsel.
 - h. Make the decision on narrow grounds and limit the scope of an interpretation so other unintended consequences do not result. (These decisions create precedent.)
 - i. Document, in writing, the interpretation and decision.
 - j. Remember, a zoning board decision is final until the zoning ordinance is changed or a court rules otherwise.
 - k. Where the legislative intent is not clear and facts cannot be clearly read to support only one interpretation, the benefit of doubt should be extended to the property owner.
5. For **map** interpretation issues
- a. (see specific rules spelled out in the zoning ordinance (§1807 or §18XX))
6. Request a Regulation Variance.
- a. 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.
 - b. Appeals board find that a “practical difficulty” exists. Thus, one of the regulations must be waived.
 - c. 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.
 - d. A regulation variance should be difficult to obtain. “Practical difficulty”:
 - 1) *Will strict compliance with the dimensional requirements of the zoning ordinance prevent the applicant from using the property for the permitted purpose?*
 - i. For this, the appeals board should figure out if there is a way to accomplish the same purpose without a variance (even if more inconvenient or more expensive).
 - ii. If so, a variance should not be granted.
 - iii. A variance is granted for circumstances unique to the *property*, not those unique to the property owner.
 - 2) *Will granting the variance be fair to the applicant or would a lesser variance work just as well?*
 - i. A zoning ordinance is not meant to take away all of an individual’s property rights, however, zoning does restrict some aspects of how property can be used.
 - ii. There are valid health and safety reasons for zoning setbacks, height standards, etcetera.
 - iii. However, when these regulations treat an applicant unfairly in relation to a unique aspect of the land, they should be relaxed.
 - iv. If a lesser variance than what is requested will do the job, then it should be considered.

- v. The idea is to stay as close to the zoning ordinance as possible.
- 3) *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?*
- i. If the situation is often repeated in the same zoning district, then the variance request should be denied.
 - ii. It may be proper to consider amending the zoning ordinance instead.
- 4) *If granted, will the variance uphold the spirit and intent of the ordinance and be fair to neighboring properties?*
- i. There are reasons why the zoning ordinance was adopted. Those reasons should be respected and upheld.
 - ii. Residents should reasonably expect the zoning ordinance will to be upheld. (They generally do not come to the meeting.)
- 5) *Has the need for the variance been created by some action of the applicant?*
- i. A self-created hardship is an action taken by an individual that causes their property or use to no longer meet the requirements of the zoning ordinance.
 - ii. “Self” created hardship can be done by the current owner or any previous owner(s).
 - iii. It is assumed a buyer purchased land knowing the property did or did not meet zoning.
 - iv. The Appeals board is not responsible for “bailing out” an applicant who created (or who purchased land from a previous owner who created) the need for a variance in the first place.
 - v. If an applicant asks for a side yard variance to construct an addition to a home, the need for the variance is already self-created.
 - vi. If, however, there are no other practical alternatives to constructing the addition on that side due to some unique circumstance of the *property*, and the other variance standards are met, the need for a variance may be justified
7. Request a Use Variance.
- a. 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.
 - b. 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.
 - c. A county and township appeals board may not have the authority to grant use variances.

- 1) Can only grant a use variance if:
 - i. A city or village, or
 - ii. A township or county that has zoning which prior to February 15, 2006 specifically authorizes granting use variances: e.g., the specific language “use variance” or “variances from uses of land” is found in the zoning ordinance, or
 - iii. A township or county that actually granted one or more use variances before February 15, 2006.
- d. A use variance should be almost impossible to obtain. “Unnecessary hardship”:
 - 1) *The property owner must show credible proof his property will not yield a reasonable return if used only for a purpose allowed by the ordinance.*
 - i. Simply saying one cannot make as much money is not reason enough.
 - ii. The requirements of the zoning ordinance must be such that to obey the ordinance means confiscation of the land, i.e. the zoning ordinance virtually deprives the landowner of all reasonable use of the property.
 - 2) *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*
 - i. (e.g. a court would declare the ordinance confiscatory, unreasonable, and unconstitutional in its application to the property involved).
 - 3) *The need for the variance is not created by some action of the applicant.*
 - i. A self-created hardship is an action taken by an individual that causes their property or use to no longer meet the requirements of the zoning ordinance.
 - ii. A “self” created hardship can be done by the current owner, or any previous owner(s).
 - iii. It is assumed a buyer purchased land, knowing the property did or did not meet zoning.
 - iv. The Appeals board is not responsible for “bailing out” an applicant who created (or who purchased land from a previous owner who created) the need for a variance in the first place
 - 4) *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.*
 - i. If the situation is found often in the same zoning district, the variance should be denied.

- ii. It may be proper to consider amending the zoning ordinance instead.
 - iii. Granting the variance does not alter the character of the neighborhood.
- 8. Focus is on “Standards” listed above.
- 9. Variance and Appeals are administrative actions.
 - a. Follows a specific process. See *Land Use Series*; “Check List #6 For Processing a Zoning Appeal and Variance in Michigan”
 - b. Download at:
<http://web1.msue.msu.edu/wexford/pamphlet/pamphlet6zoneAppealsChecklst.pdf>
- 10. Notices that someone has asked for a variance/appeal hearing must be sent out to everyone within, and 300 feet around, the proposed location and in the newspaper.
- 11. What you should do before the hearing:
 - a. Homework:
 - 1) Get a full copy of the Demand for Appeal request.
 - 2) Use the “practical difficulty” (non-use or dimensional variance) or “unnecessary hardship” (use variance) standards (above)
 - 3) Get a copy of the entire ordinance.
 - 4) Read them.
 - b. Review the Application against the standards.
 - c. Prepare a submission for the hearing
 - 1) Focus on the facts
 - 2) Focus on the standards
 - 3) “Unique to the property”
 - 4) “Will variance uphold spirit and intent of the ordinance”
 - 5) “Variance is fair to neighboring properties”
 - 6) Know a history of the parcel (past actions of parcel owners)
 - 7) Remember: Effective Submissions/Comments
 - i. Protect your credibility
 - ii. Do not be Emotional
 - iii. Cite Sources (use good research)
 - iv. 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).
 - v. Avoid “foolish” Statements.
- 12. Attend the hearing
 - a. Give the entire submission in writing (copies for everyone, including the recording secretary and staff)
 - b. Orally summarize the written submission staying within the time limit (if any).
- 13. To summarize:
 - a. Before hearing
 - 1) Do your homework, read Demand For Appeal and standards

- 2) Prepare a written Submission: Focus on facts and the standards (above).
- 3) Remember: Effective Submissions/Comments
 - i. Protect your credibility
 - ii. Do not be Emotional
 - iii. Cite Sources (use good research)
 - iv. 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).
 - v. Avoid “foolish” Statements.
- b. Attend the hearing. Everyone gets a copy, and orally summarize.
- c. If all else fails, go to court.

MSU is an affirmative-action, equal- opportunity employer. Michigan State University Extension programs and materials are open to all without regard to race, color, national origin, gender, gender identity, religion, age, height, weight, disability, political beliefs, sexual orientation, marital status, family status or veteran status.

Issued in furtherance of MSU Extension work, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Thomas G. Coon, Director, MSU Extension, East Lansing, MI 48824.

This information is for educational purposes only. Reference to commercial products or trade names does not imply endorsement by MSU Extension or bias against those not mentioned.

This material becomes public property upon publication and may be printed verbatim with credit to MSU Extension. Reprinting cannot be used to endorse or advertise a commercial product or company.