

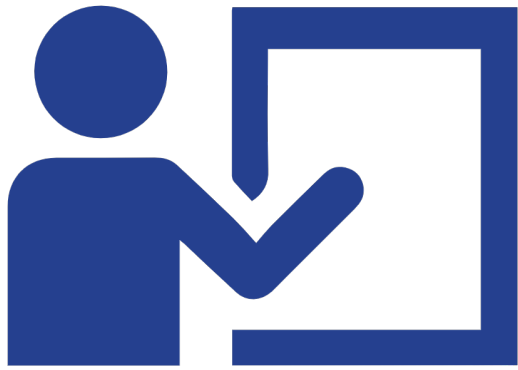


A HERITAGE OF GOOD LIVING

ZONING BOARD OF APPEALS

Training Session

February 28, 2022



Zoning Board of Appeals (ZBA)

1. Establishment and Structure
2. Roles and Responsibilities
3. Meetings
4. Etiquette

Zoning Board Of Appeals

ESTABLISHMENT AND STRUCTURE

Act 110 of 2006, The Michigan Zoning Enabling Act, Article VI:

A zoning ordinance SHALL establish a Zoning Board of Appeals

- ✓ Number of members must be established by ordinance
 - Pop under 5,000: Minimum 3 members
 - Pop 5,000+: Minimum 5 members
- ✓ Members appointed by Legislative body (majority vote)

- ✓ **Cities and villages:** legislative body may serve as a ZBA and must establish rules for itself when it serves in this capacity
- ✓ 1 member may be from legislative body
- ✓ Remaining members selected from electors of the jurisdiction
 - Representative of local population and interests
 - Up to 2 alternate members may be appointed

- ✓ Term of appointment is 3 years, staggered so they do not expire simultaneously.
 - Vacancies filled for remainder of term
 - Vacancies must be filled within a month
- ✓ ZBA members may be paid a per diem or be reimbursed for expenses
- ✓ Legislative body may remove ZBA members for malfeasance, misfeasance, nonfeasance after a public hearing



ZBA should adopt Rules of Procedure
(by-laws)

Zoning Board Of Appeals

ROLES AND RESPONSIBILITIES

- ✓ The ZBA is a quasi-judicial body. It is an important part of due process for applicants and municipalities.
- ✓ Public hearings are required for all actions of a ZBA.

ZBA: In general

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- ✓ ZBAs are a powerful appointed board in local government
- ✓ ZBA decisions can make or break a community's planning and zoning efforts
- ✓ ZBA decisions can affect the character of an area or the entire city
- ✓ ZBAs need on-going training and assistance to do their job correctly
- ✓ As a general rule, a ZBA should grant few variance requests; a variance is not simply a means to skirting the zoning ordinance
- ✓ The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses.

All actions of the ZBA are application-driven:

1. **Variances** from the standards of the zoning ordinance
2. **Interpretation** of zoning ordinance and/or map
3. **Appeals**
 - ✓ related to an order or decision of an administrative official or body, such as the zoning administrator, building official, planning commission, or legislative body
 - ✓ related to special land use and PUD decisions only when permitted by the zoning ordinance [Note: not permitted in LV]
 - ✓ related to certain nonconforming uses, if authorized by the zoning ordinance [the ZBA does consider issues related to nonconformities]
4. **Temporary use approval**, if authorized by the zoning ordinance
[No temporary uses included in the LV ordinance for ZBA review]

Decision guidelines

- ✓ Base all decisions on the record
- ✓ Don't substitute ZBA's judgment for the judgment of the PC or CC
- ✓ Limit ruling on appeal to whether appropriate standards were applied and/or whether the original decision constituted a breach of duty or discretionary power
- ✓ Only address the appeal that is requested
- ✓ Seek planning and legal advice as needed

Per statute, proof of practical difficulty is required

- ✓ Is the problem self-created?
- ✓ Do unique circumstances exist?
- ✓ Would strict compliance with the ordinance prevent the owner from using his/her property for a permitted use?
- ✓ Will a lesser variance than requested give substantial relief to the owner and be consistent with justice to other property owners?
- ✓ Will the spirit of the zoning ordinance be observed, public safety secured, and substantial justice done?

Other considerations

- ✓ Is the request consistent with the character of the area?
- ✓ Would the variance confer a special privilege?
- ✓ Is the variance request the minimum necessary to allow reasonable use of the property?
- ✓ Are there alternatives which would minimize or eliminate the need for a variance?

- ✓ The zoning ordinance establishes criteria for granting a variance; the ZBA's analysis of the issue should be framed by these criteria.
- ✓ Only the minimum variance needed to provide substantial justice should be granted.
- ✓ In general, the ZBA should grant few variances. Consistently granting similar variances suggests your zoning ordinance needs amendment

R-1 Single-Family Residential

3.1.2

D. DEVELOPMENT STANDARDS

Lot Size

Minimum lot area⁽¹⁾: 9,000 sq ft

Setbacks⁽¹⁾

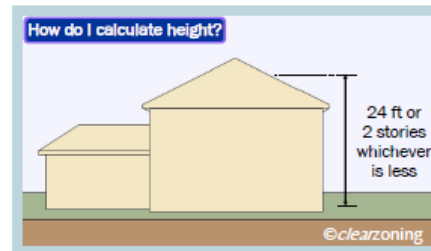
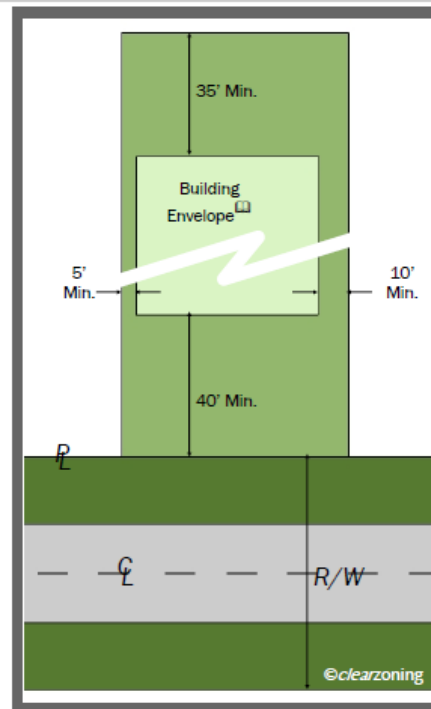
Minimum front yard setback: 40 ft
Minimum rear yard setback: 35 ft
Minimum side yard setback: 5 ft one side
15 ft total
15 ft between houses

Building Height⁽¹⁾

Maximum building height: 24 ft or 2 stories, whichever is less

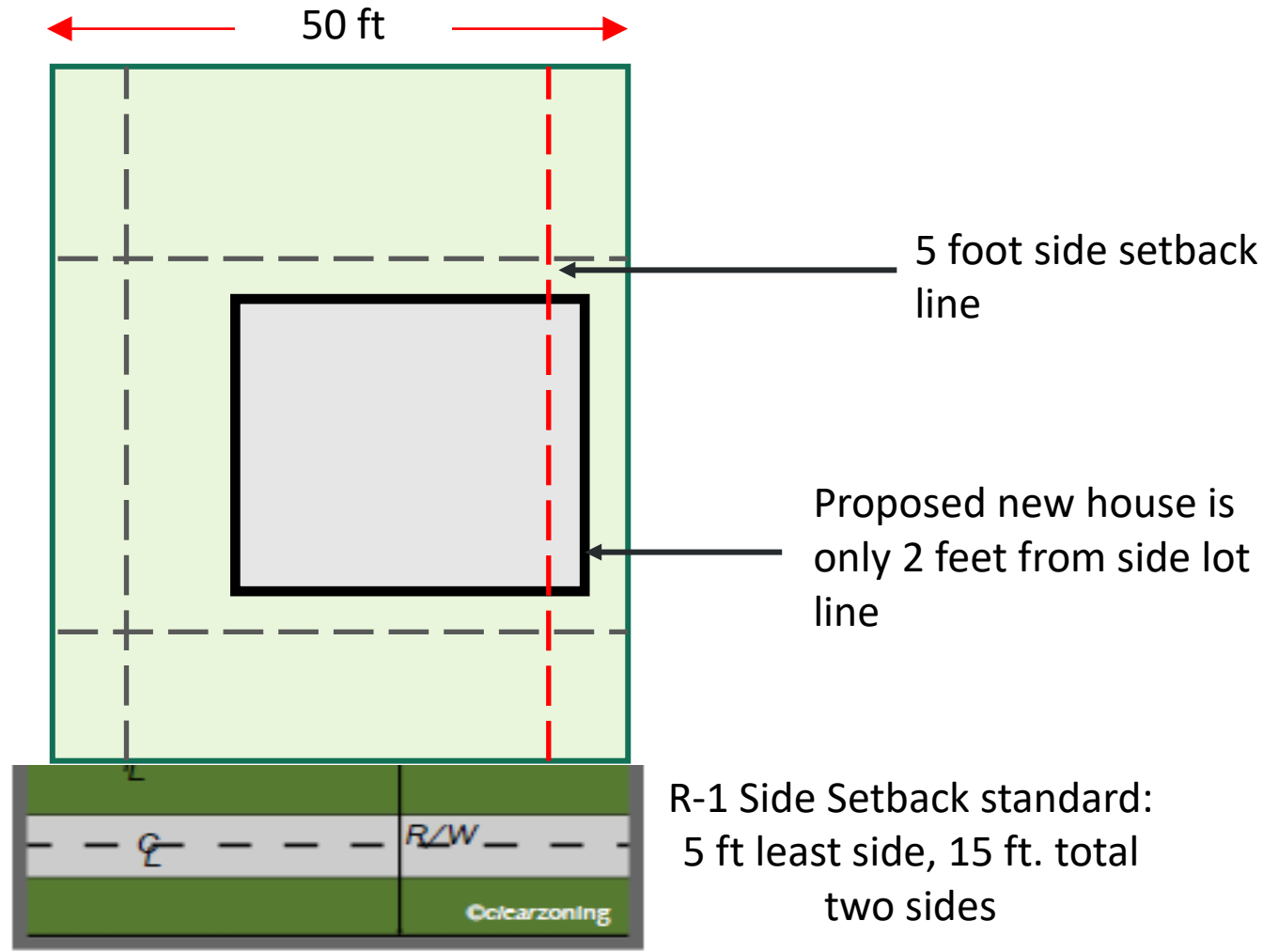
Floor Area⁽¹⁾

Minimum floor area per one-family dwelling⁽¹⁾:
1 story 1,250 sq ft
1+ stories 900 sq ft (first floor)
400 sq ft (second floor)
Basement 50% of the first floor area



Dimensional Variances: Example 1

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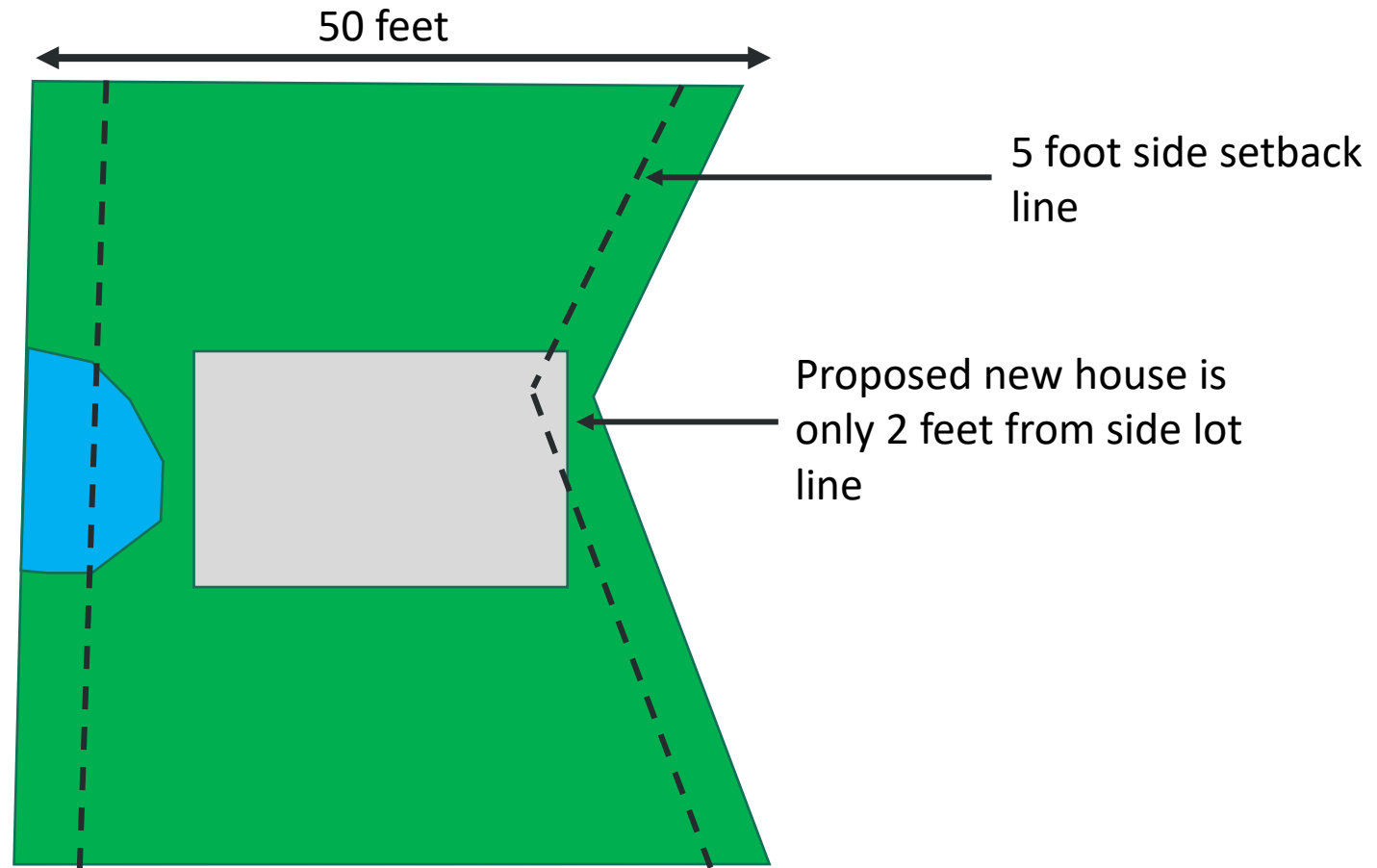


- Lot is conforming, with no natural features to avoid.

Dimensional Variances: Example 2

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Lot is conforming but very oddly shaped, with wetland on west side.



- ✓ In making their decision, the Zoning Board of Appeals shall consider the location of the property, the use of surrounding property, the use of the structure in its relation to the zoning district in which it is located, and any other considerations deemed relative to rendering a decision in the best interest of the City
- ✓ The ZBA shall hold a public hearing before taking action
- ✓ ZBA may hear requests for variances from the nonconforming lot provisions of the zoning ordinance.

A use variance permits a use not otherwise permitted in a district.

- ✓ Cities and villages may grant use variances but may also prohibit them. [Lathrup Village permits such requests]
- ✓ Townships may only grant use variances if their zoning ordinance specifically established that power prior to February 15, 2006, or if any use variances were granted prior to that date.
- ✓ Use variance can only be approved by 2/3 majority of ZBA.

Per statute, the applicant must show that the strict application of the ordinance would result in unnecessary hardship.

- ✓ The property cannot otherwise be put to a reasonable use.
- ✓ Hardship is not self-created and due to unique circumstances.
- ✓ Use will be in character with surroundings.
- ✓ Variance is minimum necessary to alleviate unnecessary hardship.

Per the Zoning Enabling Act, the applicant for a dimensional variance must demonstrate a practical difficulty, while the applicant for a use variance must demonstrate an unnecessary hardship.

As the two variance types have different approval thresholds by statute, they should be addressed separately in a zoning ordinance, reflecting the statute.

Ordinance Interpretations:

- ✓ Give weight to past interpretations.
- ✓ Keep interpretations as narrow as possible.
- ✓ Make sure interpretations are practical as possible to enforce.

Map Interpretations

- ✓ The ZBA cannot move zoning district boundaries (see next slide).
- ✓ Interpret the map based on what the ordinance says about the map.
- ✓ The ZBA can also review minutes of Planning Commission and legislative body and other records for guidance.

Official interpretations of zoning ordinance text are the sole responsibility of the ZBA (other interpretations are only opinions)

- Once made, interpretations become the official standard. Keep good records!
- **Interpretation guidelines:**
 - ✓ Avoid broad interpretations
 - ✓ Consider past administrative decisions
 - ✓ Consider history of relevant text / intent
 - ✓ Only interpret what is requested
 - ✓ Seek planning and legal advice as needed
 - ✓ If appropriate, direct applicant to seek an ordinance amendment

Administrative Appeals

- ✓ Section 7.7.5 allows a person “aggrieved” by the decision or by an officer, department, board, or bureau of the city.
- ✓ The ZBA shall review the facts of the case, along with the ordinance to determine whether the decision in question was made properly.
- ✓ The applicant shall not provide additional information as the question is over the facts available to the decision-maker.

Appeals to decisions regarding zoning ordinance issues are the responsibility of the ZBA

- Appeals must be based on the record
- **Decision guidelines:**
 - ✓ Base all decisions on the record of the decision or action being appealed
 - ✓ Don't substitute ZBA's judgment for the judgment of the entity being appealed
 - ✓ Limit ruling on appeal to whether the original decision constituted a breach of duty or discretionary power
 - ✓ Only address the appeal that is requested
 - ✓ Seek planning and legal advice as needed

When making decisions on administrative appeals, consider, was the decision being appealed made properly?

- ✓ **YES:** Uphold it by denying the appeal.
- ✗ **NO:** then ZBA must review the case based on the standards of the review in the zoning ordinance and make a decision.

- ✓ ZBA may hear appeals to decisions of the PC and legislative body regarding SLUs and PUDs only when permitted by zoning ordinance. Limitations on appeals must be specified in zoning ordinance.
- ✓ In Lathrup Village, the ordinance does not allow PUD or SLU decisions to be appealed to the ZBA

Zoning Board Of Appeals **MEETINGS**

Scheduling Meetings

- ✓ Meetings of the zoning board of appeals shall be held at the call of the chairperson and at other times as the zoning board of appeals in its rules of procedure may specify.
- ✓ Generally, a typical meeting date (e.g., first Thursday of each month) should be established in the rules.
- ✓ A **quorum** (majority of members) must be present for a meeting to occur.
- ✓ **Cancelling meetings.** A regularly scheduled meeting may be cancelled for lack of an agenda, provided that notice is posted at the location of the meeting no less than 18 hours before the scheduled start of the meeting.

- ✓ Publish notice of the hearing in a newspaper of general circulation in the local unit of government not less than 15 days before the date of the hearing.
- ✓ Notice must be provided to:
 - The owners of the subject property
 - All persons to whom real property is assessed within 300 feet of the subject property
 - The occupants of all structures within 300 feet of the subject property
 - For multi-unit structures, 1 occupant of each unit shall be given notice.
 - If more than 4 units, notice may be given to the manager or owner; must be posted at the primary entrance

Noticing Requirements

Notice is considered to be given when:

- ✓ Personally delivered, OR
- ✓ Deposited by USPS or other delivery service

The notice shall be given **not less than 15 days** before the meeting date.

“Occupant” may be used if names are unknown.

If the notice isn’t tied to a property (such as a request for interpretation), notice is published in the newspaper and given to the applicant.

A notice shall do all of the following

- ✓ Describe the nature of the request.
- ✓ Indicate the property that is the subject of the request.
 - Include all addresses (OK if none exist).
 - If no address, use parcel IDs or similar info.
- ✓ State when and where the request will be considered.
- ✓ Indicate when and where written comments will be received concerning the request.

The Open Meetings Act (OMA) is a mechanism to promote government transparency. The OMA requires that a meeting of a public body must be made open to the public.

Therefore, this requires that:

- ✓ All decisions by the public body must be made in a meeting open to the public.
- ✓ All meetings must be accessible to the general public with reasonable accommodations, with ample notification, and include a segment where public comments can be heard. All deliberations of a public body in quorum shall take place at a public meeting with limited exceptions.
- ✓ The public may make audio or video recordings of all meetings.

Conducting ZBA Meetings

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1. All meetings must be in compliance with the Open Meetings Act
2. ZBA should conduct business according to adopted rules
3. Meetings should begin on time and follow the written agenda
4. All comments should be directed through the Chairperson
5. All deliberations should be in the open
6. Do not hold private conferences during the meeting
7. Express your opinions
8. Focus on the request

Chairperson: Role & Responsibility

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- ✓ Maintain order throughout the meeting
- ✓ Enforce meeting procedures
- ✓ Ensure courtesy is maintained and that the speakers are not interrupted
- ✓ Chairperson may administer oaths and compel the attendance of witnesses.



Describe ground rules first

- ✓ Speakers must address the Chairperson
- ✓ Comments should be brief and to the point (suggest a 3-minute limit)
- ✓ Speakers must be courteous and respectful
- ✓ Speakers should only address the ZBA one time; special requests to speak a second time may be made but are not guaranteed and should only be permitted after everyone else has been heard

Open the floor to comments on the agenda item

- ✓ Do not engage in debate with audience members
- ✓ When everyone that wants to speak has spoken one time, close the public hearing
- ✓ Once the hearing is closed, all comments should come from the ZBA...

...unless the Chairperson grants permission to ask questions of the Applicant, his/her representatives, or other parties with a clear interest

- ✓ If a motion is made and seconded, all comments from this point on should refer to the motion at hand
- ✓ When discussion ends, the Chairperson should repeat the motion and ask for a vote
- ✓ Once a vote is taken and the matter is concluded, the next agenda item should be presented

Orderly Public Meetings: Tips

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- ✓ Print public participation rules on the back of the agenda or put them up on a screen
- ✓ Every question does not have to be answered
- ✓ If things get out of hand, take a recess
- ✓ Do not feel compelled to make a decision the night of the hearing if a postponement would lead to a more informed decision
- ✓ The ZBA represents the interests of the entire community, not just those at the hearing
- ✓ Once the hearing is closed, the public should not be involved in the discussion (unless invited by the Chair)

Motions must include:

- ✓ Maker of the motion/seconder
- ✓ Description of the request
- ✓ Action taken (approval, denial, tabling or postponement)
- ✓ Any conditions attached to approval
- ✓ Reasons for action taken (related to review standards)
- ✓ Reference to staff reports, as appropriate

Be sure everyone is clear on the motion before a vote

Chairperson should entertain only one motion at a time

If a motion includes conditions, they must be:

- ✓ Reasonable
- ✓ Designed to protect natural resources, the health, safety and welfare, and the social and economic well being of users, residents, landowners, and the community
- ✓ Related to the valid exercise of police power
- ✓ Necessary to meet the intent and purpose of the ordinance

Motion should identify who is responsible to ensure conditions are implemented.

“I move to ***grant*** the variance requested in [Case #] by [applicant] for the encroachment of a single-family home three feet into the required 5-foot side yard setback based on the following findings:

- a. The practical difficulty is not self-created and is due to unique circumstances of the lot, specifically the unusual shape of the lot and presence of unbuildable areas elsewhere on the lot.
- b. The granting of the variance will do substantial justice to the applicant by allowing the construction of a home similar to those on surrounding lots and will not have a foreseeable impact of surrounding properties given that all other standards of the zoning ordinance are met and the variance will not result in greater lot coverage than otherwise permitted.
- c. The applicant is requesting the smallest possible variance necessary to construct the home while preserving the wetland and wooded areas of the property.
- d. The approval is conditioned on the placement of all noise-generating equipment, including but not limited to air conditioners and generators, in yards other than the eastern side yard.”

“I move to *deny* the variance requested in [Case #] by [applicant] for the encroachment of a single-family home three feet into the required 5-foot side yard setback based on the following findings:

- a. The practical difficulty is self-created and is not due to any unique circumstances of the lot, particularly given its regular shape and flat surface.
- b. The granting of the variance may have a foreseeable impact of surrounding properties given the encroachment into the side yard.
- c. The applicant has not demonstrated that any other alternatives were considered that would allow the home to be built in conformance with the ordinance or with the smallest possible variance necessary.

These are **NOT** valid reasons to grant a variance

- ✓ Following the ordinance would be expensive for the applicant.
- ✓ No one objected.
- ✓ The applicant already built it.
- ✓ I don't like that standard.
- ✓ We trust that the applicant will do a good job
- ✓ The applicant really needs to get started soon.
- ✓ The applicant didn't know about the standard.

Minutes, agendas, and adjournment can be approved by majority of those present.

ZBA actions on cases require a majority vote of the membership

- If there are seven members, four must vote for a motion to pass it; if only four members are present, all four must vote for it.
- 2/3 majority of full membership applies to use variances, if permitted by ordinance.

- ✓ Concurring vote of the majority of ZBA members is required to pass a motion
- ✓ Appeals to any decision of the ZBA are taken by the circuit court
- ✓ Rehearing of the same case by the ZBA after a denial cannot occur unless there is a substantive change in the requested variance or appeal

- ✓ PA 110 of 2006: “The zoning board of appeals shall maintain a record of its proceedings which shall be filed in the office of the clerk of the legislative body.”
- ✓ Variances run with the land, so keeping a good record that is easily accessible is important. Consider identifying them by parcel in a GIS mapping database or BS&A.
- ✓ Check for existing variances on the property when a new development application is submitted.

Once the ZBA makes a decision, the local unit of government must be prepared to follow up and ensure that the applicant complies with the decision.

Zoning Board Of Appeals

ETIQUETTE & PROCEDURES

- ✓ A member of the zoning board of appeals who is also a member of the zoning commission, the planning commission, or the legislative body shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the zoning commission, the planning commission, or the legislative body.
- ✓ However, the member may consider and vote on other unrelated matters involving the same property.

- ✓ In serving the community in which one lives and may work, conflicts of interest may arise. If there is a remote possibility that a decision will benefit a ZBA member personally, tell fellow members about the conflict and ask to recuse yourself from consideration of the issue.
- ✓ If unsure as to whether to recuse yourself, consult the municipal attorney.
- ✓ If you stand to benefit financially from any outcome of a case, there is a conflict of interest and you must recuse yourself from deliberations.
- ✓ A recused member should not participate in discussion of an issue.
- ✓ Put your conflict-of-interest procedures in your by-laws.

Potential conflicts

- ✓ You are the applicant
- ✓ A close relative is an applicant
- ✓ A business associate in an applicant
- ✓ A close personal friend is an applicant

- ✓ In no instance should ZBA members exchange emails deliberating on ZBA items in a quorum.
- ✓ Passive comments about subject matters, including sharing opinions, between less than a quorum of members likely do not violate OMA. However, it is best practice to not discuss ZBA matters outside of ZBA meetings.
- ✓ The e-mail account you use to receive ZBA communications could be subject subject to FOIA requests (Freedom of Information Act).

Visiting a site can help members better understand proposals and concerns during the review process.

Etiquette for site visits:

- ✓ Do not enter a site without written permission from the property owners (the application can be modified to grant permission).
- ✓ If granted permission, schedule prior to the public hearing. If a quorum of members is attending, provide public notice.
- ✓ Avoid commenting on the case while on site.
- ✓ When on site, look closely at key conditions and surroundings.

Regardless of the ZBA's care in making decisions, some cases will go to litigation. Manage your municipality's exposure by doing the following:

- ✓ Follow your procedures in every case—be consistent
- ✓ Avoid conflicts of interest
- ✓ Keep good records
- ✓ Make strong motions that record your reasons for taking a given action
- ✓ Treat all applicants the same way



COMMENTS & QUESTIONS