

Hayes Township, Charlevoix County
Zoning Board of Appeals
Administrative Meeting
January 24, 2024 1:00 pm
Hayes Township Hall
9195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

AGENDA

Call to Order

Pledge of Allegiance

Public Comment

Introduction of Zoning Board of Appeal (ZBA) Members

Approval of Agenda

Approval of draft minutes from January 11, 2023

New Business

Election of Officers

ZBA Training with Todd Millar (Township Attorney)

ZBA Comment

Adjournment

To best facilitate a meeting please adhere to the following guidelines:

In person attendance

1. Doors to the hall will open at 12:50 pm
2. Please voluntarily provide a name for the record
3. Please hold all comments until the appropriate designated public comment agenda item
4. To maintain an orderly meeting while providing opportunity for the public to be heard, Recording Secretary will call names in appropriate order
5. We ask that you voluntarily state your name for the record
6. Direct all comments to the Zoning Board of Appeals Chair
7. Keep comments brief and to the point (3 minutes per person); deputy clerk will advise when time is up
8. Do not speak while others are speaking
9. Minutes may not be yielded to other speakers.

Note: A quorum of the Hayes Township Board members may be present at this meeting. No Hayes Township Board business will be discussed or conducted at this meeting.

Hayes Township
Zoning Board of Appeals
January 11, 2023 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720
Zoom id: 840 4420 7655

1
2 The January 11, 2023, meeting of the Hayes Township Zoning Board of Appeals was called to
3 order by Chair Thomas Darnton at 10:00 am.

4
5 BOARD MEMBERS PRESENT: Thomas Darnton (Chair), Doug Kuebler (Board of Trustee Rep),
6 Rex Greenslade (Planning Commission Representative), Janice Vender-Whipple and Bruce
7 Deckinga. Rod Slocum (Alternate) also present.
8 ALSO PRESENT: Kristin Baranski (Recording Secretary/ Clerk) April Hilton (Deputy Clerk), Ron
9 Van Zee (Zoning Administrator)

10
11 Audience Members Signed In: Mr. Harmon

12
13 **PLEDGE OF ALLEGIANCE:** Mr. Darnton led the Pledge of Allegiance

14
15
16 **INTRODUCTION OF THE ZONING BOARD OF APPEALS (ZBA) MEMBERS:** All present ZBA
17 members introduced themselves.

18
19 **REVIEW AND APPROVAL OF THE AGENDA:**

20 Mr. Deckinga made a motion, with support from Mr. Greenslade, to approve the agenda as
21 presented.

22 Yeas: Doug Kuebler, Bruce Deckinga, Tom Darnton, Rex Greenslade, and Janice Vender-
23 Whipple.

24 Nays: None

Motion Carried

25
26 **REVIEW AND APPROVE DRAFT MINUTES OF OCTOBER 24, 2022:**

27 Mr. Kuebler made a motion, with support from Mr. Greenslade, to approve the October 24,
28 2022 minutes as presented.

29 Yeas: Doug Kuebler, Tom Darnton, Bruce Deckinga, Rex Greenslade, and Janice Vender-
30 Whipple.

31 Nays: None

32 **Motion Carried**

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33

34 **ELECTION OF OFFICERS:**

35 Mr. Deckinga made a motion, supported by Ms. Vender-Whipple to open nominations for
36 chair.

37 Yeas: Doug Kuebler, Bruce Deckinga, Rex Greenslade, and Janice Vender-Whipple.

38 Nays: None

39 Recused: Tom Darnton

40 **Motion Carried**

41
42 Mr. Deckinga made a motion, supported by Ms. Vender-Whipple to nominate Tom Darton as
43 Chair of the ZBA. A roll call was taken.

44 Yeas: Doug Kuebler, Bruce Deckinga, Rex Greenslade, and Janice Vender-Whipple.

45 Nays: None

46 Recused: Tom Darnton

47 **Motion Carried**

48 Mr. Kuebler made a motion, supported by Mr. Deckinga to close nominations for chair.

49 Yeas: Doug Kuebler, Bruce Deckinga, Rex Greenslade, and Janice Vender-Whipple.

50 Nays: None

51 Recused: Tom Darnton

52 **Motion Carried**

53 Mr. Kuebler made a motion, supported by Mr. Deckinga to open nominations for Vice-Chair.

54 Yeas: Doug Kuebler, Bruce Deckinga, Rex Greenslade, Tom Darnton and Janice Vender-
55 Whipple.

56 Nays: None

57 **Motion Carried**

58 Ms. Vender-Whipple made a motion, supported by Mr. Kuebler to nominate Bruce Deckinga
59 to Vice-Chair of the ZBA.

60 Yeas: Doug Kuebler, Rex Greenslade, Tom Darnton and Janice Vender-Whipple.

61 Recused: Bruce Deckinga.

62 Nays: None

63

64 Mr. Deckinga excused himself from the position.

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65
66 Mr. Deckinga made a motion, supported by Mr. Greenslade to nominate Janice Vender-
67 Whipple to Vice-Chair of the ZBA.
68 Yeas: Doug Kuebler, Bruce Deckinga, Rex Greenslade, and Tom Darnton.
69 Recused: Janice Vender-Whipple.
70 Nays: None

71 **Motion Carried**

72
73 Mr. Kuebler made a motion, supported by Mr. Deckinga to close nominations for Vice-Chair
74 of the ZBA.
75 Yeas: Doug Kuebler, Bruce Deckinga, Rex Greenslade, and Tom Darnton.
76 Recused: Janice Vender-Whipple.
77 Nays: None

78 **Motion Carried**

79
80 Mr. Greenslade made a motion, supported by Mr. Deckinga the ZBA minutes submitted by
81 Kristin Baranski (clerk) are excellent.
82 Yeas: Doug Kuebler, Bruce Deckinga, Rex Greenslade, Tom Darnton, and Janice Vender-
83 Whipple.
84 Nays: None

85 **Motion Carried**

86 Mr. Kuebler made a motion, supported by Ms. Vender-Whipple for the Clerk to continue
87 serving as the ZBA Recording Secretary.
88 Yeas: Doug Kuebler, Bruce Deckinga, Rex Greenslade, and Tom Darnton.
89 Recused: Janice Vender-Whipple.
90 Nays: None

91 **Motion Carried**

92
93 **DISCUSSION ITEM: WHETHER TO CONDUCT A REVIEW OF RULES AND PROCEDURES:**
94 Janice Vender-Whipple, Rod Slocum, and Bruce Deckinga will work on new procedures as a
95 subcommittee. Focusing on ways to make meetings more efficient and decrease the amount
96 of paperwork the ZBA must read through for a ZBA hearing. Specifically, an outline for the

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97 appicate to identify their purpose for the hearing, summarize their statement, and include
98 documentation for support. The goal for this is to be concise and avoid future abstract
99 request of the ZBA members.

100
101 Mr. Darton made a motion, supported by Mr. Kuebler to approve a subcommittee to review
102 ZBA Rules and Procedures and to provide recommendations for updating rules to better
103 serve the public, township staff and the members of the ZBA with respect to matters
104 coming before us.

105 Yeas: Doug Kuebler, Bruce Deckinga, Rex Greenslade, Tom Darnton, and Janice Vender-
106 Whipple.

107 Nays: None

108 **Motion Carried**

109
110
111 **ADJOURNMENT:** Mr. Deckinga made a motion, supported by Mr. Kuebler, to adjourn at
112 11:25 am.

113 Yeas: Doug Kuebler, Bruce Deckinga, Rex Greenslade, Tom Darnton, and Janice Vender-
114 Whipple.

115 Nays: None

116 **Motion Carried**

117
118
119
120 Respectfully Submitted,

121
122 Kristin Baranski

123 Hayes Township Clerk/Recording Secretary

Hayes Township ZBA Training Session
January 24, 2024
1 pm

1. What is the ZBA?
2. ZBA's role in enforcing the zoning ordinance
 - a. Interpretation or provisions and maps.
 - b. Granting of variance.
 - i. Use variance.
 - ii. Dimensional variance.
3. Rules/Statutes governing ZBA.
 - a. Zoning Enabling Act
 - b. Bylaws/rules of procedure.
 - c. Zoning ordinance.
 - d. Open Meeting Act
 - i. Be careful of email communications.
 - ii. No field trips.
 - e. Freedom of Information Act.
4. Handling an appeal or variance request.
 - a. Application.
 - i. Who may apply.
 - ii. Time for appeal.
 - b. Site visit.
 - c. Notice to public.
 - d. Hearing
 - e. Different voting requirements
5. Appeals to Circuit Court
 - a. Time.
 - b. Who may appeal.
 - c. Role of the court.
 - i. Focuses on process more than outcome.
 - ii. Cannot substitute its judgment for yours.
 - iii. So long as there is some evidence to support decision it will be upheld.
 - iv. Record of your decision is extremely important.

Michigan Compiled Laws Annotated
Chapter 125. Planning, Housing, and Zoning (Refs & Annos)
Michigan Zoning Enabling Act (Refs & Annos)
Article VI. Zoning Board of Appeals

M.C.L.A. 125.3601

125.3601. Creation of zoning board of appeals; members; conduct of business

Effective: December 21, 2010

Currentness

Sec. 601. (1) A zoning ordinance shall create a zoning board of appeals. A zoning board of appeals in existence on June 30, 2006 may continue to act as the zoning board of appeals subject to this act. Subject to subsection (2), members of a zoning board of appeals shall be appointed by majority vote of the members of the legislative body serving.

(2) The legislative body of a city or village may act as a zoning board of appeals and may establish rules to govern its procedure as a zoning board of appeals.

(3) A zoning board of appeals shall be composed of not fewer than 5 members if the local unit of government has a population of 5,000 or more or not fewer than 3 members if the local unit of government has a population of less than 5,000. The number of members of the zoning board of appeals shall be specified in the zoning ordinance.

(4) In a county or township, 1 of the regular members of the zoning board of appeals shall be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission. In a city or village, 1 of the regular members of the zoning board of appeals may be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission, unless the legislative body acts as the zoning board of appeals under subsection (2). A decision made by a city or village zoning board of appeals before February 29, 2008 is not invalidated by the failure of the zoning board of appeals to include a member of the city or village zoning commission or planning commission, as was required by this subsection before that date.

(5) The remaining regular members of a zoning board of appeals, and any alternate members under subsection (7), shall be selected from the electors of the local unit of government residing within the zoning jurisdiction of that local unit of government or, in the case of a county, residing within the county but outside of any city or village. The members selected shall be representative of the population distribution and of the various interests present in the local unit of government.

(6) Subject to subsection (2), 1 regular or alternate member of a zoning board of appeals may be a member of the legislative body. Such a member shall not serve as chairperson of the zoning board of appeals. An employee or contractor of the legislative body may not serve as a member of the zoning board of appeals.

(7) The legislative body may appoint to the zoning board of appeals not more than 2 alternate members for the same term as regular members. An alternate member may be called as specified in the zoning ordinance to serve as a member of the zoning

board of appeals in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. An alternate member serving on the zoning board of appeals has the same voting rights as a regular member.

(8) A member of the zoning board of appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties.

(9) A member of the zoning board of appeals may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

(10) The terms of office for an appointed member of the zoning board of appeals shall be 3 years, except for a member serving because of his or her membership on the zoning commission or legislative body, whose term shall be limited to the time he or she is a member of that body. When members are first appointed, appointments may be for less than 3 years to provide for staggered terms. A successor shall be appointed not more than 1 month after the term of the preceding member has expired.

(11) A vacancy on the zoning board of appeals shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(12) A zoning board of appeals shall not conduct business unless a majority of the regular members of the zoning board of appeals are present.

(13) 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.

Credits

P.A.2006, No. 110, § 601, Eff. July 1, 2006. Amended by P.A.2008, No. 12, Imd. Eff. Feb. 29, 2008; P.A.2010, No. 330, Imd. Eff. Dec. 21, 2010.

M. C. L. A. 125.3601, MI ST 125.3601

The statutes are current through P.A.2023, No. 321, of the 2023 Regular Session, 102nd Legislature.

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Michigan Compiled Laws Annotated
Chapter 125. Planning, Housing, and Zoning (Refs & Annos)
Michigan Zoning Enabling Act (Refs & Annos)
Article VI: Zoning Board of Appeals

M.C.L.A. 125.3602

125.3602. Meetings; record of proceedings

Currentness

Sec. 602. (1) 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. The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses.

(2) 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.

Credits

P.A.2006, No. 110, § 602, Eff. July 1, 2006.

M. C. L. A. 125.3602, MI ST 125.3602

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Article VI. Zoning Board of Appeals

M.C.L.A. 125.3603

125.3603. Matters heard and decided by zoning board of appeals; voting requirements

Currentness

Sec. 603. (1) The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The zoning board of appeals shall also hear and decide on matters referred to the zoning board of appeals or upon which the zoning board of appeals is required to pass under a zoning ordinance adopted under this act. It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance adopted under this act. For special land use and planned unit development decisions, an appeal may be taken to the zoning board of appeals only if provided for in the zoning ordinance.

(2) The concurring vote of a majority of the members of the zoning board of appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance, or to grant a variance in the zoning ordinance.

Credits

P.A.2006, No. 110, § 603, Eff. July 1, 2006.

M. C. L. A. 125.3603, MI ST 125.3603

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Article VI. Zoning Board of Appeals

M.C.L.A. 125.3604

125.3604. Appeals to zoning board of appeals; procedure;
hearings and proceedings; authority to grant variances

Effective: February 29, 2008
Currentness

Sec. 604. (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board.

(2) An appeal under this section shall be taken within such time as prescribed by the zoning board of appeals by general rule, by filing with the body or officer from whom the appeal is taken and with the zoning board of appeals a notice of appeal specifying the grounds for the appeal. The body or officer from whom the appeal is taken shall immediately transmit to the zoning board of appeals all of the papers constituting the record upon which the action appealed from was taken.

(3) An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed. However, if the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, proceedings may be stayed only by a restraining order issued by the zoning board of appeals or a circuit court.

(4) Following receipt of a written request for a variance, the zoning board of appeals shall fix a reasonable time for the hearing of the request and give notice as provided in section 103.¹

(5) If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3).

(6) At a hearing under subsection (5), a party may appear personally or by agent or attorney. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.

(7) If there are practical difficulties for nonuse variances as provided in subsection (8) or unnecessary hardship for use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may

grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as otherwise allowed under this act.

(8) The zoning board of appeals of all local units of government shall have the authority to grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance.

(9) The authority to grant variances from uses of land is limited to the following:

(a) Cities and villages.

(b) Townships and counties that as of February 15, 2006 had an ordinance that uses the phrase "use variance" or "variances from uses of land" to expressly authorize the granting of use variances by the zoning board of appeals.

(c) Townships and counties that granted a use variance before February 15, 2006.

(10) The authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of $\frac{2}{3}$ of the members of the zoning board of appeals to approve a use variance.

(11) The authority to grant use variances under subsection (9) is permissive, and this section does not require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

Credits

P.A.2006, No. 110, § 604, Eff. July 1, 2006. Amended by P.A.2008, No. 12, Imd. Eff. Feb. 29, 2008.

Footnotes

1 M.C.L.A. § 125.3103.

M. C. L. A. 125.3604, MI ST 125.3604

The statutes are current through P.A.2023, No. 321, of the 2023 Regular Session, 102nd Legislature.

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Article VI. Zoning Board of Appeals

M.C.L.A. 125.3605

125.3605. Finality of decision; appeal to circuit court

Currentness

Sec. 605. The decision of the zoning board of appeals shall be final. A party aggrieved by the decision may appeal to the circuit court for the county in which the property is located as provided under section 606.¹

Credits

P.A.2006, No. 110, § 605, Eff. July 1, 2006.

Footnotes

1 M.C.L.A. § 125.3606.

M. C. L. A. 125.3605, MI ST 125.3605

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M.C.L.A. 125.3606

125.3606. Review by circuit court; scope; procedure; powers

Effective: December 21, 2010

Currentness

Sec. 606. (1) Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:

(a) Complies with the constitution and laws of the state.

(b) Is based upon proper procedure.

(c) Is supported by competent, material, and substantial evidence on the record.

(d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

(2) If the court finds the record inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented, the court shall order further proceedings on conditions that the court considers proper. The zoning board of appeals may modify its findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary record and decision shall be filed with the court. The court may affirm, reverse, or modify the decision.

(3) An appeal from a decision of a zoning board of appeals shall be filed within whichever of the following deadlines comes first:

(a) Thirty days after the zoning board of appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson.

(b) Twenty-one days after the zoning board of appeals approves the minutes of its decision.

(4) The court may affirm, reverse, or modify the decision of the zoning board of appeals. The court may make other orders as justice requires.

125.3606. Review by circuit court; scope; procedure; powers, MI ST 125.3606

Credits

P.A.2006, No. 110, § 606, Eff. July 1, 2006. Amended by P.A.2008, No. 12, Imd. Eff. Feb. 29, 2008; P.A.2010, No. 330, Imd. Eff. Dec. 21, 2010.

M. C. L. A. 125.3606, MI ST 125.3606

The statutes are current through P.A.2023, No. 321, of the 2023 Regular Session, 102nd Legislature.

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M.C.L.A. 125.3607

125.3607. Nonconforming uses and structures; review by circuit court

Currentness

Sec. 607. (1) Any party aggrieved by any order, determination, or decision of any officer, agency, board, commission, zoning board of appeals, or legislative body of any local unit of government made under section 208¹ may obtain a review in the circuit court for the county in which the property is located. The review shall be in accordance with section 606.²

(2) Any person required to be given notice under section 604(4)³ of the appeal of any order, determination, or decision made under section 208 shall be a proper party to any action for review under this section.

Credits

P.A.2006, No. 110, § 607, Eff. July 1, 2006.

Footnotes

1 M.C.L.A. § 125.3208.

2 M.C.L.A. § 125.3606.

3 M.C.L.A. § 125.3604.

M. C. L. A. 125.3607, MI ST 125.3607

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HAYES TOWNSHIP ZONING BOARD OF APPEALS

RULES OF PROCEDURE

Section 1.0 Purpose. The following rules of procedure are hereby adopted by the Hayes Township Zoning Board of Appeals to facilitate the performance of its duties as outlined in Hayes Township Zoning Ordinance.

Section 2.0 Officers

2.1 Selection. At the regular meeting in January of each year, the Zoning Board of Appeals shall select from its regular membership a Chair and Vice-Chair. All officers are eligible for reelection. The Township Board member and the Planning Commission member may not serve as Chair or Vice-Chair.

2.2 Tenure. The Chair and Vice-Chair shall take office upon their selection and shall hold office for a term of one year or until their successors are selected and assume office.

2.3 Duties of Officers. The Chair shall preside at all meetings and perform such other duties as may be ordered by the Zoning Board of Appeals. The Vice-Chair shall act in the capacity of Chair in his/her absence and in the event the office of Chair becomes vacant, the Vice-Chair shall succeed to this office for the unexpired term and the Zoning Board of Appeals shall select a successor to the office of Vice-Chair for the unexpired term.

1. **2.4 Recording Secretary.** It is anticipated that the Township Board will hire a Recording Secretary for the Zoning Board of Appeals. The Secretary or designate shall execute documents in the name of the Zoning Board of Appeals and perform the duties hereinafter listed. The Secretary or designate shall assure that the minutes of all meetings of the Zoning Board of Appeals are properly recorded and that notices for all meetings are duly given. He or she shall also perform such other duties as may be assigned by the Chair or the Appeal Board.

2.5 Duties of all members. Whenever possible, Members shall avoid Ex Parte contact (any conversation about the case between board members, or between board member(s) and the applicant) about cases where an administrative decision is before the Appeals Board whenever possible. Despite one's best efforts it is sometimes not possible to avoid Ex Parte contact. When that happens, the member should take detailed notes on what was said and report to the Appeals Board at a public meeting or hearing what was said, so that every member and other interested parties are made aware of what was said.

2.6 Accepting Gifts. Gifts shall not be accepted by a member of the Appeals Board from anyone connected with an agenda item before the Appeals Board. As used

here, gifts shall mean cash, any tangible item (including food), or service, regardless of value.

2.7 Training. Each member shall have attended at least four hours per year of training in planning and zoning during the member's current term of office. Failure to meet the training requirements may be grounds for the Township Board to not reappoint the member to the Appeals Board. Training may be provided by one or more of the following organizations: Michigan Association of Planning, Michigan State University Extension, Michigan Townships Association, and Michigan Municipal League, continuing education programs of Michigan State University, University of Michigan, Northern Michigan University, Central Michigan University, or Wayne State University.

Section 3.0 Notice of Appeal

1. 3.1 Filing. Any person aggrieved by an administrative decision under the Zoning Ordinance and any officer, department, board, or bureau of the State of Michigan, or the Hayes Township Board, on behalf of the Township, may appeal an administrative decision to the Zoning Board of Appeals. In addition, any interested person, or the person's authorized agent, may seek a dimensional variance from or seek an interpretation of the zoning ordinance from the Zoning Board of Appeals. Any appeal, variance, or interpretation request shall be filed in writing on an application form provided by the Zoning Administrator and shall be accompanied by the payment of a fee, establish from time to time by the Township Board. Such notice shall be filed with the Zoning Administrator not more than 30 days from the date of the decision being appealed.

3.2 Notification. Within 10 days from the date of the receipt of the completed application form or Notice of Appeal, the Zoning Administrator shall contact the Secretary or designate, who with the approval of the Chair, will set up a date and time for the Zoning Board of Appeals to meet to hold a hearing to consider and act on the case in question. Notice of hearing shall be made by the Secretary or designate to the other members of the Zoning Board of Appeals. The notice sent to the members shall include copies of the application form for a variance; including all additional material submitted by the applicant, all relevant content of the Zoning Administrator's file, and/or other files on the case; other relevant correspondence, permits by other applicable enforcement agencies; and any other information that is relevant. In addition to the above the Secretary or designate will give notice as required in Section 8.06 of the Hayes Township Ordinance.

3.3 Deadline for Action. The above notwithstanding, the Zoning Board of Appeals shall hear the case within forty five (45) days and file it's decision with the Zoning Administrator not more than forty five (45) days after hearing the case, unless a longer period of time is mutually agreed upon by the petitioner and the Zoning Board of Appeals.

3.4 Site Inspection. Members of the Zoning Board of Appeals are required to visit the site in question. This shall be done at their own expense and on an individual and separate basis. Members are not to discuss or deliberate a variance request except during posted open hearings.

3.5 Notice of Decision. The Secretary or designate shall cause a Decision and Order of the Zoning Board of Appeal's decision to be delivered to the Zoning Administrator; to the petitioner, or his/her agent; and to anyone else requesting a copy in writing.

Section 4.0 Meetings

4.1 Regular Meetings. The Zoning Board of Appeals shall meet at least once each year during the month of January. Any other meeting shall be called as needed such as in response to an appeal for a variance or Notice of Appeal. The meeting will be called by the Secretary or the Chair.

4.2 Attendance.

a. If any member of the Zoning Board of Appeals is absent for two or more meetings in a row, then that member may be considered delinquent and may be removed from the board by the Township Board, for nonperformance of duty. The Secretary or designate shall keep attendance records and notify the Township Board when the problem exists.

b. When a petitioner fails to appear at a properly scheduled meeting, the Chair may entertain a motion from the Board to dismiss the case for want of prosecution. In such cases, the petitioner shall be notified, in writing, by the Secretary or designate, and the petitioner shall have seven (7) days from the date of notice to apply for reinstatement of the case. The applicant must file a written request for reinstatement to the Secretary or designate, and upon approval by the Chair for good cause shown; pay the fee as set by the Township Board. In all reinstated cases, a new hearing must be scheduled and all prescribed actions performed.

4.3 Conflict of Interest. Each member of the Appeals Board shall avoid situations that are conflicts of interest. If a member has a conflict of interest such conflict of interest shall be fully stated on the record. If a question exists whether the circumstances actually present a conflict of interest, the Zoning Board of Appeals may, by majority vote of the members present and voting, table the matter under consideration in order to obtain a written opinion from the township attorney. Once the conflict of interest matter is declared or confirmed, the member with the conflict of interest shall do all of the following immediately, upon first knowledge of the case and determining that a conflict exists:

a. Declare a conflict exists.

b. Cease to participate at the Appeals Board meetings.

c. Refrain from engaging with any members of the Appeals Board, its staff or any others on the subject of the matter which gives rise to the conflict of interest.

d. If the conflict is first declared at an Appeals Board meeting, leave the meeting table and not participate during deliberation of or voting on the item before the Appeals Board.

4.4 Incompatibility of Office. Each member of the Appeals Board shall avoid situations giving rise to an incompatibility of office. If a member simultaneously holds two or more incompatible offices, such incompatible offices shall be fully stated on the record. If a question exists whether the circumstances actually present incompatible offices, the Zoning Board of Appeals may, by majority vote of the members present and voting, table the matter under consideration in order to obtain a written opinion from the township attorney. Once the incompatible offices are declared or confirmed, the member of the Zoning Board of Appeals holding the incompatible offices must resign from either the Zoning Board of Appeals or the other office.

4.5 Other Meetings. Meetings shall be called by notifying, all members of the Zoning Board of Appeals at least 48 hours in advance. The notice shall state the purpose, time, location and shall be posted at the Township Hall at least 18 hours prior to the date of the meeting. Meeting notices shall also be published on the township website. The public notice on the website shall be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings and accessible via a prominent and conspicuous link on the website's homepage that clearly describes its purpose for public notification of those non-regularly scheduled public meetings.

4.6 Public Meetings. All meetings, hearings, records and accounts shall be open to the public and posted in compliance with the Michigan Open Meetings Act.

4.7 Quorum. A majority of the regular members of the Zoning Board of Appeals shall constitute a quorum for the transaction of business at all meetings of the Appeals Board. The Zoning Board of Appeals shall not conduct business unless a majority of the regular members are present.

4.8 Order of Business.

1. Chair declares Hearing open.
2. Pledge of Allegiance.
3. Introduction of Zoning Board of Appeals Members.
4. Zoning Administrator introduces case and presents exhibits.
5. Petitioner is recognized and he/she, or his/her agent, puts forth his/her case.
6. Board members report on their site inspections, if any, and ask questions they may have for the petitioner or his/her agent.

7. Discussion may take place between the petitioner and board members.
8. Members of the public, present, may speak.
9. Any correspondence received about the variance, is read or has been included in member's packets.
10. Anyone can ask the board questions regarding the petitioner's presentation or speeches that were given. The board will attempt to obtain the answers. Answers will be directed to the board chair. No discussion, questioning or answering, shall take place between any two or more persons except between board members and whoever has the floor.
11. Close the public comment portion of the hearing. (At this point, all public participation on the issue ends).
12. The Board reviews applicable Sections of the Hayes Township Ordinance.
13. The Board reviews the facts as known and discussion takes place gathering findings of fact until a member puts forth a motion including the findings of fact. Voting shall be by roll call and shall be recorded.
14. The hearing is over and the board may take up any further business it may have pending, prior to adjournment.

Motions dealing with an Appeal or a Variance shall be stated with the following parts:

1. The list of exhibits which is the printed information presented by the applicant and/or the Zoning Administrator.
2. The list of facts which is the information pertinent to making a decision structured as a "Finding of Fact" on the case.
3. The conclusion, decision, of the Zoning Board of Appeals. This motion, or part of a motion, shall include the rationale and/or reason, for why the conclusion was made.

The rationale, reasons, shall at a minimum contain a review of the applicable Section of the Hayes Township ordinance.

Motions dealing with an ordinance interpretation, or an appeal of an administration decision, shall be stated with the following parts:

1. The list of exhibits which is the printed information presented by the applicant and/or the Zoning Administrator.
2. The list of facts which is the information pertinent to making a decision structured as a "Finding of Fact" on the case.
3. The conclusion, decision, of the Zoning Board of Appeals. This motion, or part of a motion, shall include the rationale and/or reason, for why the conclusion was made.

4.9 Voting. Voting shall be by roll call vote and shall be recorded. Members must be physically present to cast a vote. Except as provided herein, an affirmative vote of a majority of the entire Zoning Board of Appeals appointed and serving shall be necessary to grant a dimensional variance, to reverse an order, requirement, decision, or determination of the zoning administrator or other administrative official or body, or to decide in favor of the applicant on any matter before the Appeals Board. Unless the Hayes Township Zoning Ordinance requires otherwise, an affirmative vote of a majority of the Appeals Board members present and voting shall be necessary to make all other decisions.

4.10 Not Voting On the Same Issue Twice. Any member of the Appeals Board shall avoid situations where they are sitting in judgement and voting on an administrative decision which they had a part in making, such as decisions of the Township Board or the Planning Commission.

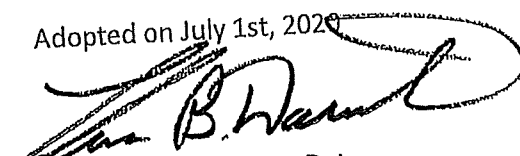
4.11 Alternates. If an alternate is involved in a deliberation on a case the alternate will remain a member of the Zoning Board of Appeals in all deliberations on that case until its conclusion.

Section 5.0 Minute Approval. Copies of the Minutes and Decision and Order shall be distributed to each member of the Zoning Board of Appeals within 8 business days of the meeting. The Secretary or designate will give notice to the members, in writing, of the scheduled date for minute approval.

Section 6.0 Adoption and Repeal. These rules of procedure of the Hayes Township Zoning Board of Appeals shall become effective on the date adopted. All previous rules of procedure, as amended, shall be repealed.

Section 7.0 Amendments. These Rules of Procedure may be added to, amended or repealed in whole or in part. Proposed changes to these Rules of Procedure must be submitted in writing to the regular members of the Zoning Board of Appeals at least one (1) month in advance of the meeting at which the proposed changes will be considered. A majority vote of the entire regular Appeal Board members appointed and serving shall be required to amend these Rules of Procedure.

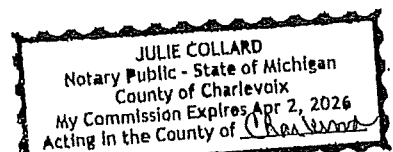
Adopted on July 1st, 2020


Thomas Darnton
Hayes Township
Zoning Board of Appeals Chair

Date
10-13-2021


Kristin Baranski
Hayes Township
Clerk

Date
10-13-2021



Article VIII: Zoning Board of Appeals

SECTION 8.01 ZONING BOARD OF APPEALS CREATION AND MEMBERSHIP

The Zoning Board of Appeals (ZBA) shall perform its duties and exercise its powers as provided in the Michigan Zoning Enabling Act 110, of Public Acts of 2006, as amended, and in such a way that the objectives of this Ordinance shall be observed, public safety secured, and justice done. This Board shall consist of five (5) regular members, appointed by the Township Board.

1. The first member shall be a member of the Township Planning Commission for the term of his/her office.
2. The remaining members must be selected from the electors of the Township residing outside of incorporated cities and villages and shall be representative of the population distribution and of the various interests present in the Township. One (1) member may be a member of the Township Board.
3. An elected officer of the Township shall not serve as chairman. An employee or contractor of the Township Board may not serve as a member or an employee of the Zoning Board of Appeals.
4. The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the Zoning Board of Appeals. An alternate member may be called as specified to serve as a member of the Zoning Board of Appeals in the absence of a regular member if the regular member will be unable to attend one (1) or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which a member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals.

SECTION 8.02 MEETINGS

Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as such Board may determine or specify in its rules of procedure. All hearings conducted by said ZBA shall be open to the public. The Zoning Board of Appeals shall adopt its own rules of procedure and keep a record of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating said fact; and shall file a record of its proceedings in the office of the Township Clerk, and shall be a public record. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance or to effect any variation of this Ordinance.

The Zoning Board of Appeals shall not conduct business unless a majority of the Board of Appeals regular members are present.

SECTION 8.03 JURISDICTION

1. Except for Planning Commission decisions concerning special use permits and Planned Unit Developments, an appeal concerning the administration of the provisions of this Ordinance may be taken to the Zoning Board of Appeals within the timeframe defined in the general rules and procedures adopted by the Zoning Board of Appeals. If such a timeframe is not specified, appeals shall be filed within thirty (30) days of the decision of the official or body from which the appellant seeks relief.
2. The ZBA may hear appeals made by any person who alleges he or she has been aggrieved by a decision of the official or body, except for Zoning Administrator decisions regarding enforcement of this Ordinance.
3. The ZBA may grant variances as provided for in **Section 8.07 Variances**.
4. The ZBA may also interpret the location of Zoning District boundaries and may interpret the provisions of this Ordinance.
5. An appeal may be made by any person, firm or corporation, or by any Officer, Department or Board of the Township. The appellant shall file with the Zoning Board of Appeals, on blanks or forms to be furnished by the Zoning Administrator, a notice of appeal specifying the grounds for the appeal.
6. The Zoning Administrator shall transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The final decision of such appeal shall be in the form of a resolution either reversing, modifying or affirming, wholly or partly, the decision or determination appealed from. Reasons for the decision must be stated.
7. Any person may appear and testify at the hearing either in person or by duly authorized agent or attorney.

SECTION 8.04 EXERCISING POWER

In exercising the above powers, the Zoning Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the official or body from whom the appeal is taken.

SECTION 8.05 APPLICATION REQUIREMENTS

The applicant shall submit seven (7) copies of a completed application, with associated fee, surveys, plans and data as required in **Article V: Site Plan Review**, or other information deemed reasonably necessary for making any informed decision on his or her appeal, not less than thirty (30) days prior to the date of the hearing.

SECTION 8.06 NOTICE REQUIREMENTS FOR ZONING BOARD OF APPEALS PUBLIC HEARINGS

The notices for all public hearings before the Zoning Board of Appeals concerning appeals, interpretations, and variances shall comply with all of the following applicable provisions:

1. For an appeal or a request for an interpretation, the notice shall comply with all of the following:

A. The content of the notice shall include all of the following information:

- 1) A description of the nature of the appeal or interpretation request.
- 2) If the appeal or interpretation request involves a specific parcel, then the notice shall describe the property involved. The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no such street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
- 3) The time, date, and place the appeal or interpretation request will be considered.
- 4) The address where and the deadline when written comments will be received concerning the appeal or interpretation request.

B. The notice shall be published in a newspaper of general circulation within the Township not less than 15 days before the scheduled public hearing.

C. The notice shall be sent by first-class mail or personal delivery to the person filing the appeal or requesting the interpretation and, if the appeal or interpretation request involves a specific parcel, to the owners of the property involved not less than 15 days before the scheduled public hearing.

D. If the appeal or interpretation request involves a specific parcel, then the notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property involved and to the occupants of all structures within 300 feet of the property involved not less than 15 days before the scheduled public hearing, regardless of whether the property or occupant is located in the Township. If the name of the occupant or tenant is not known, the term "occupant" may be used in making notification under this subsection.

2. For a variance request, the notice shall comply with all of the following:

A. The content of the notice shall include all of the following information:

- 1) A description of the nature of the variance request.
- 2) A description of the property on which the requested variance will apply. The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
- 3) The time, date, and place the variance request will be considered.
- 4) The address where and the deadline when written comments will be received concerning the variance request.

- B. The notice shall be published in a newspaper of general circulation within the Township not less than 15 days before the scheduled public hearing.
 - C. The notice shall be sent by first-class mail or personal delivery to the owners of the property seeking the variance not less than 15 days before the scheduled public hearing.
 - D. The notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property on which the requested variance will apply and to the occupants of all structures within 300 feet of the property to which the requested variance will apply not less than 15 days before the scheduled public hearing, regardless of whether the property or occupant is located in the Township. If the name of the occupant is not known, the term "occupant" may be used in making notification under this subsection.
3. After providing the notice required under this section and without further notice, except that as required under the Open Meetings Act, the Zoning Board of Appeals may adjourn from time to time a duly called public hearing by passing a motion specifying the time, date, and place of the continued public hearing.

SECTION 8.07 VARIANCES

The ZBA may grant dimensional variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in practical difficulty. To establish practical difficulty, the applicant must establish all of the following:

- 1. The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area and/or zoning district, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
- 2. The need for the requested variance is not the result of action of the property owner or previous property owners (self-created).
- 3. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for any permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
- 4. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give a substantial relief to the property owner and be more consistent with justice to other property owners.
- 5. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or Zoning District.

SECTION 8.08 CONDITIONS OF APPROVAL

The ZBA may impose such conditions or limitations in granting a variance as deemed necessary to protect the character of the area, as provided for in section 9.03 of this Ordinance.

SECTION 8.09 EXPIRATION OF ZBA APPROVALS

No order of the Zoning Board of Appeals permitting the erection or alteration of a building shall be valid for a period longer than one (1) year, unless a building permit for such erection or alteration is obtained within such period and substantial construction has occurred.

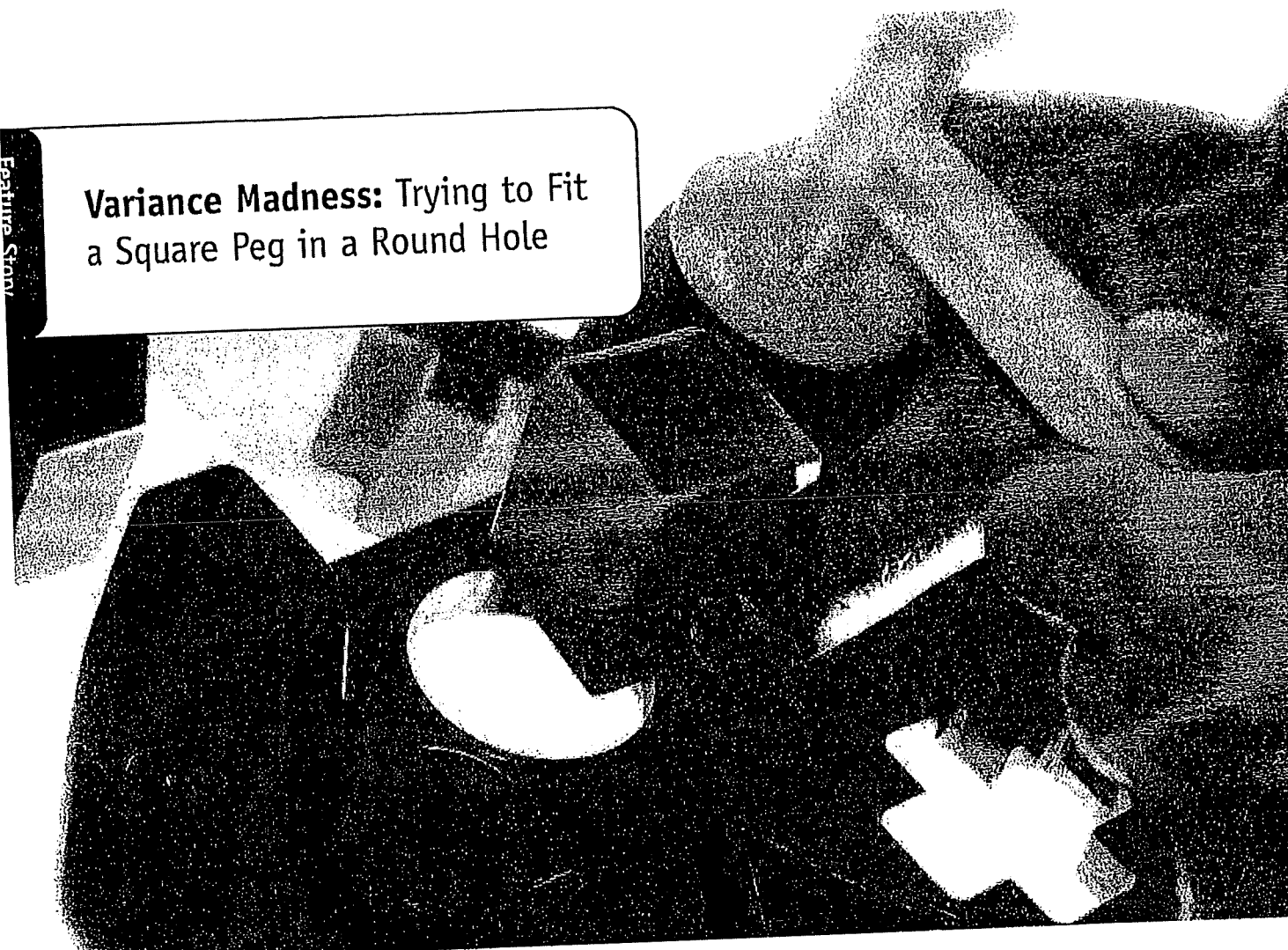
SECTION 8.10 REAPPLICATION

No application for a variance, interpretation, or appeal which has been decided, in whole or in part, by the Zoning Board of Appeals shall be re-submitted for a period of one (1) year from the date of such decision, unless a rehearing is granted pursuant to section 9.04 of this Ordinance.

SECTION 8.11 STAY

An appeal to the Zoning Board of Appeals and an appeal of a decision by the Zoning Board of Appeals to Circuit Court stays all proceedings of the action appealed from, including the effectiveness of any zoning permit issued, unless the Zoning Administrator certifies to the Zoning Board of Appeals after such appeal has been filed that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed, unless ordered stayed by the Zoning Board of Appeals or the Circuit Court.

Variance Madness: Trying to Fit a Square Peg in a Round Hole



The granting of a variance from a municipal zoning ordinance has often been properly characterized as a license to violate the law. As such, a zoning board of appeals (ZBA) is entrusted with potent powers, which are supposed to be exercised in a very deliberative, careful and restrained fashion. The new Michigan Zoning Enabling Act (ZEA) MCL 125.3101, *[et seq.]* (Public Act 110 of 2006) calls the body a "zoning board of appeals," although some townships call the body the board of appeals or the board of zoning appeals, which are all the same thing.

Members of a ZBA should not let their personal opinions or emotions enter into the variance equation—they are only supposed to grant a variance if all of the specified listed standards are met. Why then, are a significant number of Michigan township officials and municipal attorneys increasingly concerned about the ease with which some ZBAs grant variances?

Although there is no rigid formula, a rough rule of thumb is that a ZBA is entering the "danger zone" if it grants more than approximately 30 percent of the nonuse (or dimensional) variance applications or more than about 10 percent of the use variance requests. Amazingly, in many municipalities, it is fairly common for a ZBA to

grant 50 percent, 75 percent, or even over 90 percent of all variance requests. That prospect should be disturbing not only to officials of the municipalities involved, but also to the general communities.

A ZBA is not a "super-fairness board" or a municipal Robin Hood. Instead, it is a quasi-judicial body that is supposed to grant narrowly tailored relief from zoning regulations in certain limited cases. Michigan law mandates that a variance can be granted only if *all* of the standards listed in the local zoning ordinance are met—not if *some* of the standards are met, or *almost all* of the standards are met. Properly drafted variance standards relate to the land or structure itself, not to the individual situation, personal desires, likeability, or desired convenience of the property owner involved. If a ZBA member disregards the standards for a variance or lets emotion govern, he or she is effectively violating his or her oath of office. This is not unlike a jury member who practices "jury nullification," or even judges who disregard the law and simply do what they want.

No one ever said it is easy to be a ZBA member. In fact, it is often quite difficult to look an applicant in the eye—particularly if the

applicant is someone you know—and deny the applicant's request for something he or she desperately wants based upon standards which at times appear to be esoteric, heartless or overly technical. Everyone wants to be Santa Claus. However, granting variance requests where the standards do not warrant a variance is not only legally and ethically wrong, but it can create many practical problems as well.

THE NEW MICHIGAN ZONING ENABLING ACT

The new ZEA became effective on July 1 of this year. Although it did change prior law somewhat for township ZBAs, overall the prior law (including Michigan case law) remains intact. The most significant changes regarding ZBAs include clarification as to who can appeal (and when an appeal must occur), when a decision is "final" for purposes of an appeal to circuit court, issues regarding alternate ZBA members, hearing notice procedures, and court action. A resource toolkit on the act can be found at www.michigantownships.org/resource/toolkits.asp.

WHY SHOULDN'T VARIANCES BE LIBERALLY GRANTED?

What is the harm in granting a variance in a particular situation, even though the variance standards might not be fully met? First and foremost, it undercuts the legitimacy and effectiveness of the zoning ordinance involved. What right does a ZBA have to cavalierly thwart the often time-consuming and expensive efforts spent by the planning commission and township board in drafting and adopting the zoning ordinance at issue?

Second, word gets out fairly quickly in the community if a given ZBA is "easy," which not only undermines confidence in the zoning ordinance (as well as makes a mockery of the idea of impartiality), but also breeds an increased number of variance requests ("I want the same deal that the ZBA gave to my neighbor.").

Third, although the granting of a particular variance does not set a legal precedent *per se* as to later cases, it does set an effective practical precedent—just try turning down a similar variance request later, as the applicant will throw the earlier variance approval in your face.

Fourth, granting an undeserved variance is a slap in the face to all of the other property owners in similar situations who fully comply with the zoning regulations.

Fifth, granting a variance where all of the standards are not met reflects poorly on the ZBA involved. Finally, granting too many variances tends to diminish the stature of the zoning administrator and make that official's job more difficult. ("Don't worry about what the zoning administrator says. Just go to the ZBA, since it approves everything.")

WHAT NOT TO DO

The following are reasons that should *never* be used to justify a variance:

- The applicant is a good person or a "good guy."
- The variance request is "reasonable."
- The variance makes "common sense."
- The applicant needs the variance to grow a business and compete.
- To deny the variance would have an adverse economic impact upon the business or the community (or it will cost jobs).
- The applicant has been a good corporate citizen and has paid taxes.
- The variance will help the business, and thus, the property tax base.
- In these troubling economic times, we should not impede the expansion of a good business.
- Let's not add to red tape or the bureaucracy.
- The ordinance provision makes no sense.
- We have to do justice and help fairness prevail.
- We have always granted this type of variance request.
- The variance will not hurt anyone.
- We have to help the applicant out.
- We must look out for the "little guy."
- Complying with the ordinance would be too expensive for the applicant.
- The ordinance provision is too tough and should be changed.
- The property owner should be able to do what he or she wants with his or her property.

Height variance requests constitute a good case study. If you think about it carefully, there are probably only one or two height variance requests out of 100 that should ever be granted. Almost always, the request for a height variance (particularly in the context of a residential dwelling or accessory building) is based on the applicant's personal desire or situation, as opposed to the land involved. Typical height variance requests can include a desire for a taller residential accessory building for storage needs (for example, the applicant's new motor home is so tall as to require higher garage doors and roof trusses) or taller residential dwellings on lakes for better views. Every one of such variance requests should be denied, since they all relate to personal desires, "toys" or individual situations.

One of the rare times that a height variance might be justified is in the commercial or industrial setting, where government-mandated safety features, HVAC units on the roof, and similar situations require a slightly taller building.

REINING IN RUNAWAY BOARDS OR MEMBERS

How can municipal officials place a wayward ZBA back on the straight and narrow path? ZBA members should be urged—or even be required—to attend variance-related seminars every year or two. Also, a township board or planning commission should make their displeasure clear to a ZBA that is granting too many variance requests. Municipal officials should tally all of the variance requests over a multiple-year time period for the particular ZBA involved together with a calculation of how many variances were granted. Those statistics should then be presented to the ZBA. If the ZBA is granting more than about 30 percent of its dimensional variances or more than 10 percent of its use variances, it should be explained to the members why that constitutes a problem. In addition, the standards contained in the zoning ordinance should be placed in an outline or checklist form, and the ZBA members should be required to go through that form or checklist each time a variance is considered. Finally, the ZBA should adopt detailed rules of procedure which cover meeting rules, conflict of interest situations, *ex parte* communications, and similar matters.

It is often prudent to have the ZBA hold a joint meeting with the planning commission—and sometimes with the township board

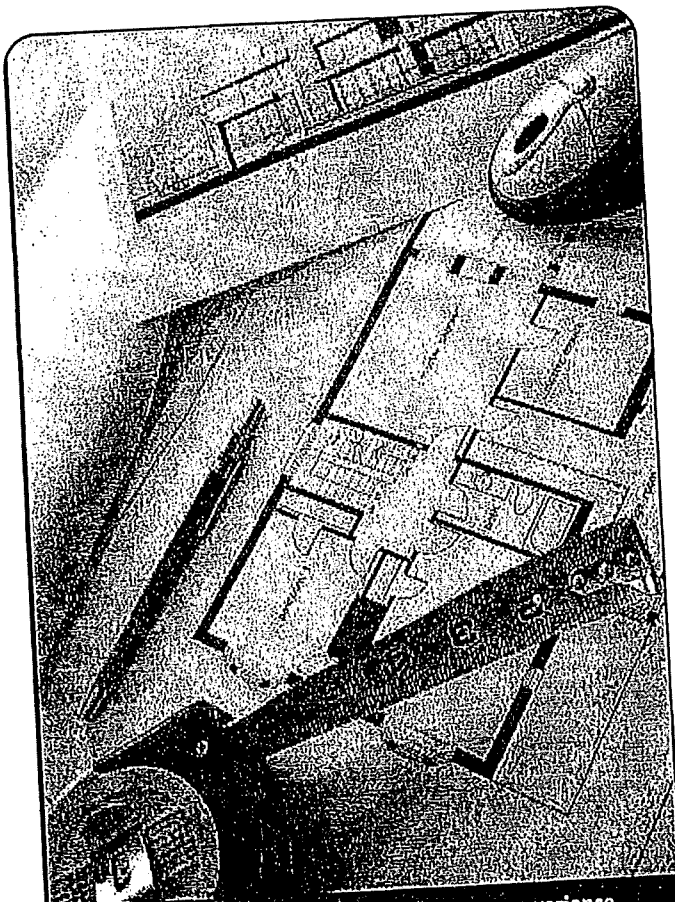
included—once a year to discuss the variances that were granted, whether or not changes should be made to the zoning ordinance, and similar matters. Of course, if such a meeting is held, it must properly be posted under the Open Meetings Act for each municipal body involved.

USE VARIANCES

What about use variances? This has always been a controversial topic, particularly for Michigan townships. The ZEA does not appear to have squelched the controversy. While the new act specifies when and under what conditions a township ZBA can grant a use variance, the language contained in the act regarding use variances has been the topic of considerable debate since it was passed by the Legislature last winter.

The ZEA provides as follows with regard to use variances: (MCL 125.3604) ...

- (7) *If there are practical difficulties for nonuse variances as provided in subsection (8) or unnecessary hardship use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance*



ZBA members should never vote to approve a variance request unless all of the standards for a variance have been met. Period.

Who has the
experience and expertise
to serve your township?

Miller Canfield.

For over 150 years, organizations and individuals have turned to Miller Canfield for guidance and sound legal counsel. Today, we have the largest number of attorneys in Michigan and rank among the nation's leading firms.

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shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as is otherwise allowed under this act.

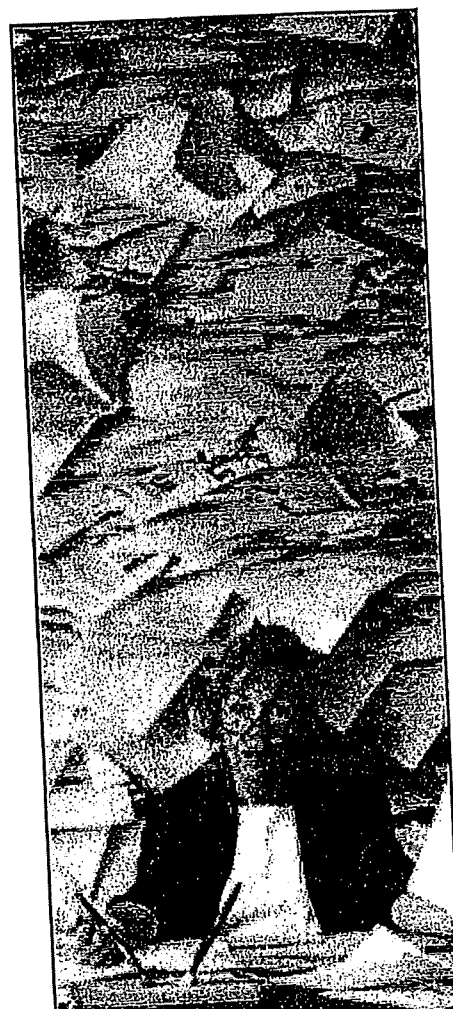
- (8) The zoning board of appeals of all local units of government shall have the authority to grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance.
- (9) The authority to grant variances from uses of land is limited to the following:
 - (a) Cities and villages.
 - (b) Townships and counties that as of February 15, 2006, had an ordinance that uses the phrase 'use variance' or 'variances from uses of land' to expressly authorize the granting of use variances by the zoning board of appeals.
 - (c) Townships and counties that granted a use variance before February 15, 2006.
- (10) The authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of two-thirds of the members of the zoning board of appeals to approve a use variance.
- (11) The authority to grant use variances under subsection (9) is permissive and this section shall not be construed to require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

In a nutshell, if a township either authorized the granting of use variances in its zoning ordinance at any time prior to February 15, 2006, or, regardless of what its ordinance provided, actually granted a use variance prior to that date, that township has the ability under the ZEA to authorize use variances under its zoning ordinance after February 15, 2006. If a township neither authorized use variances in its zoning ordinance nor granted a use variance prior to February 15, 2006, under the ZEA, the ZBA for that township cannot hereafter ever consider or grant a use variance, even if it desires to so provide in its zoning ordinance. Although a "qualifying township" can provide for use variances through its zoning ordinance under the act, it need not do so and can, if it so chooses, expressly prohibit the consideration or granting of a use variance by its ZBA.

IF IN DOUBT, ADJOURN THE DECISION

ZBA members should keep in mind that if there is significant uncertainty as to whether or not a particular variance should be granted, more information is needed, or it is necessary to verify one or more claims made by the applicant or an opposing neighbor at a public hearing, it is normally entirely appropriate to adjourn the decision for a month or until the next meeting. It is also sometimes preferable to permit ZBA members to ponder an apparent "close call" for a while, which can be greatly assisted by an adjournment of the decision. As with everyone else, ZBA members are more apt to make mistakes if uncertain or they are under pressure to make a snap decision.

Generally, the only time a tabling would not be appropriate is if the zoning ordinance itself places a shorter time limit on when a ZBA must make a decision. However, such a provision should not be inserted into a zoning ordinance in the first place. If it appears that a variance request will be unusually complicated, controversial or contentious, it is also appropriate to have the township planner, the township attorney, or even both present to assist the board. Furthermore, a well-crafted zoning escrow fee policy can assist in funding the presence of those experts.



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Properly drafted variance standards relate to the land or structure itself, not to the individual situation, personal desires, likeability, or desired convenience of the property owner involved.

VARIANCES THAT SHOULD GENERALLY NOT BE GRANTED

The following variance requests should *almost never* be granted, since the standards can almost never be met:

- Any use variance.
- Building height variances.
- A variance to permit a land division to occur where one or more of the resulting parcels would not meet the minimum lot size, width, road frontage, or other dimensional requirement.
- A variance to allow a building, yard or other dimensional matter to accommodate a vehicle or recreational item of the property owner.
- A variance to allow outdoor storage.
- A variance which will allow an increase-in density.
- A variance involving the height or size of a sign or the number of signs.
- A variance to validate something that was done illegally (for example, building without a building permit, building something that is sited differently than was shown on the approved site plan, etc.).

RELATIONSHIP TO THE ZONING ADMINISTRATOR

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administrator is the only township official who has the authority to render binding or determinative interpretations or decisions regarding the municipality's zoning ordinance. Unless a decision of the zoning administrator is overturned pursuant to a formal appeal to the ZBA, the zoning administrator's zoning decision stands. Contrary to popular misconception, apart from the ZBA, the decision of a zoning administrator (when acting within his/her scope as arbiter of the local zoning ordinance) cannot be overturned by a township supervisor (or any other elected township official), the planning commission or even the township board.

A ZBA should not issue advisory or speculative decisions regarding the interpretation of any provision of the local zoning ordinance. Accordingly, the zoning administrator should not seek advice from the ZBA (or the planning commission) regarding the meaning of a particular word, phrase or section of the zoning ordinance unless an aggrieved party has formally appealed the interpretation or determination by the zoning administrator to the ZBA (and the proper hearing is held with prior notice).

THE STANDARDS

ZBA members should never vote to approve a variance request unless all of the standards for a variance have been met. Period. Furthermore, the burden is on the applicant to prove that each and every standard is met.

For a nonuse (i.e., dimensional) variance, the applicant must prove that he or she has "practical difficulty" in complying with the zoning ordinance provision at issue. Of course, the applicant must also meet any and all additional standards specified in the local zoning ordinance. Conversely, to obtain a use variance, the applicant must prove "unnecessary hardship" in addition to the other standards specified in the ordinance. It is much more difficult to prove unnecessary hardship than practical difficulty. The burden of proof necessary to justify a use variance is similar to the test required before a property owner can demonstrate that a "taking" of property has occurred. In essence, a use variance applicant must prove

that his or her property is virtually unusable as currently zoned. If the unnecessary hardship standard is properly applied, it becomes obvious why use variances should almost never be granted.

Perhaps the best way of ensuring that ZBA members carefully consider all standards is to have a pre-printed checklist form available at all meetings (which incorporates the variance standards of the local zoning ordinance) for ZBA members to go through publicly before a variance decision is reached. It is also helpful to have one checklist sheet for nonuse/dimensional variances and another for use variances, since the standards are not identical.

FUNCTIONS OF THE ZBA

Everyone knows that a ZBA decides variance requests. However, it also has the power to determine the boundary line of a given zoning district, settle issues regarding nonconforming structures or uses, and decide appeals from an interpretation or determination of the zoning administrator regarding a provision of the zoning ordinance. In fact, it has become increasingly common for an applicant to join an appeal regarding a zoning interpretation with a request for a variance on the same application. In those cases, the applicant effectively gets "two bites at the apple."

For example, suppose a property owner desires to build an outdoor deck within the side yard setback area. The zoning ordinance is unclear as to whether a deck is a "structure" for purposes of setback requirements. For setback purposes, the zoning administrator determines that the proposed deck is a structure. Pursuant to an appeal, the property owner could request that the ZBA reverse the zoning administrator's determination and hold that a deck is not a structure for purposes of setback requirements, and in the alternative, can also request that the board issue the appropriate variance. If the ZBA determines that the proposed deck is not a structure, the variance request becomes moot.

When exercising any of the above-mentioned powers (including hearing the appeal of an interpretation or determination by the

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zoning administrator), the ZBA should act formally and only pursuant to a public hearing. In fact, even with the appeal of an interpretation or determination, it is recommended that not only should the newspaper public hearing notice be utilized, but every occupant/property owner within 300 feet of the property at issue should also receive a hearing notice. Why? Because the decision by the ZBA regarding the appeal of an interpretation or determination regarding a zoning ordinance provision will set a true precedent and will be binding on all properties throughout the township unless the zoning ordinance is otherwise amended. By giving all property owners/occupants within 300 feet notice of the hearing, a public hearing will likely prompt a more vigorous public debate and will help "sharpen" the issue.

WHO CAN APPEAL?

Essentially, there are two levels of appeal regarding the ZBA. The first involves who can appeal a decision of the zoning administrator. The second level involves who can appeal a decision by the ZBA with which they disagree to the circuit court. In both cases, the ZEA provides that an appeal can be made only by a "party aggrieved." Typically, the landowner who is the subject of the zoning issue (and on occasion, a tenant, option purchaser or other person with an interest in the property) is the party aggrieved. However, in some cases, an objecting neighbor or governmental unit might have standing to appeal as a "party aggrieved." It should be noted that the ZEA made appeals slightly more difficult for anyone other than the property owner directly involved and changed the appeal language from an "affected party" to a "party aggrieved."

Few people realize what a significant role an aggrieved neighbor can play with regard to the zoning interpretation process. For example, if a zoning administrator makes an interpretation or determination which permits a property owner to commence construction or a use on the property at issue, an aggrieved neighbor

can appeal that interpretation or determination to the ZBA (if, in fact, the neighbor is even aware that the zoning administrator has taken such action). In such an instance, the construction or commencement of the use must generally cease until after the ZBA has made its decision. Thereafter, if the aggrieved neighbor does not prevail at the ZBA level, the neighbor can appeal the ZBA's decision to the circuit court.

COURT ACTION

An aggrieved party, as defined above, can appeal the denial or approval of a variance (or any other decision of a ZBA) to the county circuit court where the property is located. Although such court action is referred to as an "appeal," it actually resembles a conventional lawsuit, but with some differences. Pursuant to such an appeal lawsuit, the review powers of the circuit court involved are very limited and the court review is very narrow. The law states that the court must be very deferential to the ZBA and municipality involved. The court's review is limited to determining whether a ZBA's decision meets the following:

- Complies with the Constitution and laws of Michigan.
- Is based upon proper procedure.
- Is supported by competent, material and substantial evidence on the record.
- Represents the reasonable exercise of discretion granted by law to the ZBA.

In actuality, a court is supposed to be less concerned about the ultimate or substantive decision made by the ZBA than with *how* the decision was made (i.e., Were the standards properly applied? Were the proper procedures utilized?). In fact, the court's review is limited to "the record" established at, and prior to, the time of the decision of the ZBA. New evidence generally cannot be introduced or considered during the court proceedings. Accordingly, it is always important for the township and ZBA to make a good record

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in case an appeal occurs. That means keeping all relevant documents (including any application, letters, notices, a township planner's recommendation, etc.) and taking good minutes.

How does a nonprofessional ZBA properly document its decision, particularly when litigation appears likely? The courts require a ZBA not only to make a decision on a variance (or other requests before that body), but also to properly apply the standards and make appropriate findings of fact. If that is done pursuant to an oral approval or denial motion, that motion could end up being five to 10 minutes long or even longer! It is not enough to simply "parrot" the standards—an individualized finding must be made for each standard.

In general, there are three techniques available for making a "good" record regarding a decision made by the ZBA, particularly in a complex or contentious case. First, if the township has a professional planner who is significantly involved with the variance process, the township planner makes a recommendation for denial or approval and the ZBA happens to follow the township planner's recommendation, the ZBA can often adopt the planner's written report as its findings of fact (which often incorporates specific conditions of approval if the variance is approved).

Second, the township planner can write out detailed approval and denial motions ahead of time (which would include application of the standards, findings of fact and any possible conditions if a variance is approved), which can be utilized (and modified) by a member of the ZBA who desires to make a motion. However, such motions can still be time-consuming and unwieldy.

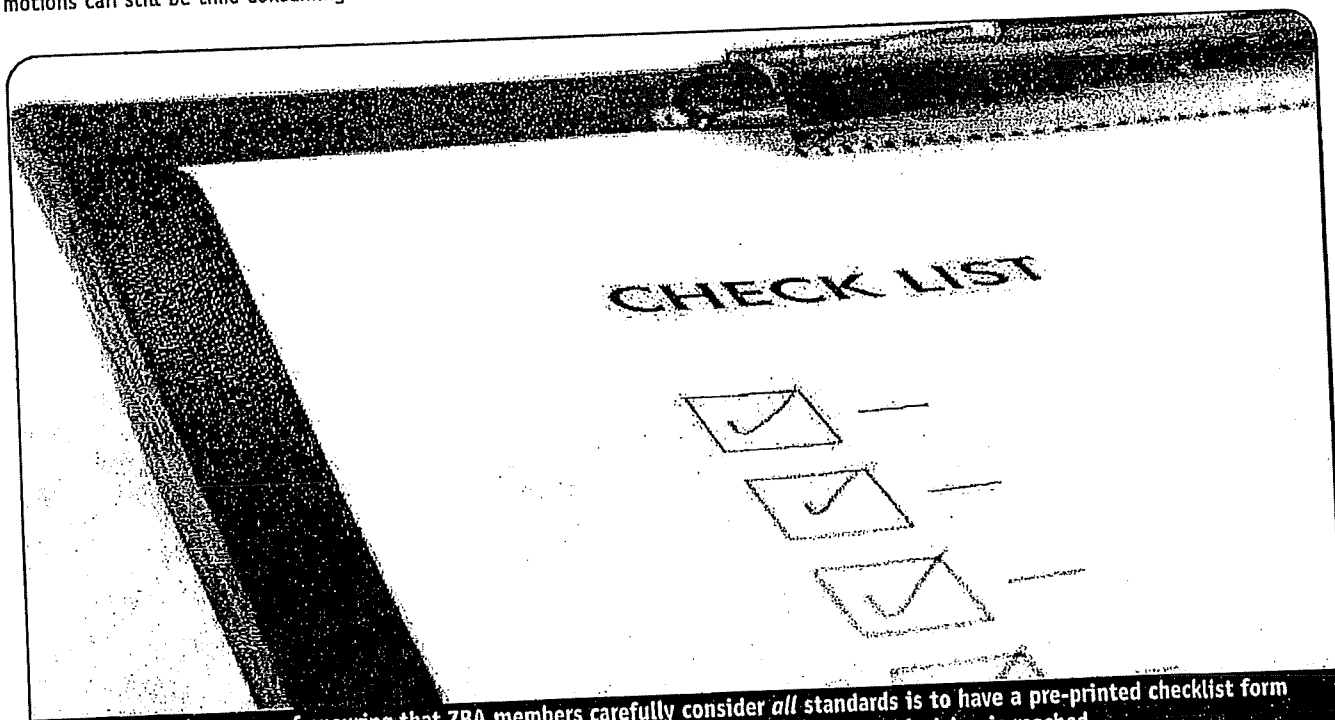
Finally, the ZBA can direct the township attorney and staff to draft the proper approval or denial resolution. Procedurally, however, this can be difficult. To have the township attorney and staff draft separate approval and denial resolutions before the meeting can be time-consuming, expensive and wasteful.

Alternately, if the township attorney and staff simply draft either an approval or denial resolution before the meeting at which the ZBA makes its final decision, it can appear that matters are preordained and that the board made its mind up ahead of time. In some municipalities, the ZBA makes a tentative decision at a meeting, thus giving the township attorney and staff the ability to draft the final resolution for the next meeting. For example, a member of the ZBA could make the following motion:

I hereby move to tentatively [approve/disapprove] the requested dimensional variance contingent upon the township attorney and township staff drafting the appropriate written resolution of decision for our next meeting and the ZBA adopting that resolution with any modifications at its next meeting.

THE NEGATIVE MOTION MYTH

There is a common myth regarding motions by ZBAs which should be cleared up once and for all. Some township officials mistakenly believe that a ZBA cannot or should not make a motion in the negative—that is, a motion to deny a variance or other request. Accordingly, under that view, all motions must be motions to approve, and if a variance does not receive sufficient votes to pass, it is *de facto* denied, and the ZBA is done with the matter and moves on.



Perhaps the best way of ensuring that ZBA members carefully consider *all* standards is to have a pre-printed checklist form available at all meetings for ZBA members to go through publicly before a variance decision is reached.

However, the notion that a ZBA cannot or should not entertain a negative motion is absurd. In fact, at times, this misconception can get a township into a great deal of trouble. If a ZBA is inclined to deny a variance, a negative motion should be utilized, and it should also properly incorporate all findings of fact and application of the standards. If only approval motions are utilized and the ZBA moves on after an approval motion has failed to pass, there is no formal decision for a circuit court to review and no adopted findings of fact, application of standards, etc.

This notion about not utilizing negative or denial motions appears to have arisen based on someone's fear that members of a ZBA would misunderstand or would get mixed up when voting "yes" on a denial motion or resolution. With respect, if a ZBA member could be so easily confused, he or she should not be on that body! Also, it is perfectly appropriate for a ZBA member to ask that a motion be read a second time (or more) before a vote occurs if anyone is confused.

TIPS FOR YOUR ZONING ORDINANCE

It is very important to have a well-drafted chapter in your local municipal zoning ordinance regarding the ZBA, variances, interpretations and similar matters. The following are some of the provisions that should be contained within such a chapter, but are often overlooked or poorly drafted:

1. A clause that requires the property owner or aggrieved party to file a written appeal to the ZBA within a relatively short period of time (for example, 14, 21 or 30 days) of when the zoning administrator makes a determination or their appeal rights are barred. This can greatly assist the township in litigation.
2. List very specific and clear standards for the granting of a variance. Ideally the standards for a nonuse/dimensional variance versus a use variance should be spelled out separately. It

should also be made clear that a variance cannot be granted unless the ZBA finds that all of the listed standards are met.

3. The township board should carefully consider whether or not use variances should be available (if, in fact, the township involved even qualifies). If the zoning ordinance provides for use variances, then, in addition to the two-thirds membership vote of the ZBA required to grant a use variance (which should be expressly stated in the ordinance), the township involved may desire to add an additional clause indicating that before the ZBA can grant a use variance, the matter must be referred by the ZBA to the planning commission which would produce a recommendation to the ZBA regarding whether or not the use variance should be granted.
4. For the appeal of an interpretation or determination by the zoning administrator, it should be made clear that not only should a notice of public hearing regarding that matter be put in the newspaper, but that the hearing notice should also be mailed to all property owners/occupants within a 300-foot radius of the property where the issue arose.
5. If the township involved has a zoning escrow fee policy (or the equivalent), the written policy and/or the zoning ordinance should expressly allow the township to require a zoning escrow fee (or fees) for certain cases before the ZBA that are particularly complex, contentious or extensive.

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FINAL DECISION OF THE _____ TOWNSHIP
ZONING BOARD OF APPEALS

For an appeal by right of this decision to be timely, it must be made
to the circuit court for the county in which the property is located
within 30 days of the date of this order. (MCL 125.3606)

Appeal Number: _____

Hearing Date: _____

Applicant: _____

Address: _____

Phone / Fax: _____

Type of Request to ZBA (*variance, interpretation of zoning map, administrative appeal,
other—please specify*): _____

ZBA Findings of Fact: _____

ZBA Decision: _____

Reasons for Decision: _____

Votes of ZBA Members:

(Yes) (No) _____
(Yes) (No) _____
(Yes) (No) _____
(Yes) (No) _____
(Yes) (No) _____

Signature(s) of Designated ZBA Member(s):

I, _____, Secretary of the _____ Township
Zoning Board of Appeals, certify that on this date I witnessed the signatures set
forth above and attest to the accuracy of this final decision report.

HAYES TOWNSHIP ZBA ADMINISTRATIVE MEETING

Meeting Date: January 24, 2024

Location:

Hayes Township Hall

[illegible]