

# MICHIGAN PLANNER 'E-dition'



American Planning Association  
Michigan Chapter  
Making Great Communities Happen

A Publication of the Michigan Chapter of the American Planning Association

NOVEMBER 2011

## Is It Time to Amend the Zoning Ordinance?

---

**The ZBA is one of the most important and powerful boards in a municipality.** It makes decisions about whether one or more requirements of the zoning ordinance do not apply to a particular property in a given situation (variance), or that a municipal zoning official made a possible error (appeal). The ZBA's decisions are final and can only be appealed to the court.

The zoning board of appeals occupies a very unique niche in local government. Specifically, zoning boards of appeals are empowered to allow people to "break the law" by granting variances. This is a tremendous power that is not prevalent elsewhere within local government. Along with that power comes the responsibility and the expectation that the authority will be used wisely, sparingly, and appropriately within the context of the community's planning and zoning framework. Decisions of the zoning board of appeals must grant appropriate relief while maintaining the integrity of the community's plans and policies.

Yet all too often ZBA members feel that the applications that come before them – especially for variances – are trivial. They may see similar requests with increasing frequency, when variance approvals should be rare. These situations could be red flags that signal the need for basic training of board members or increased cooperation and communication between the ZBA and staff. On the other hand, they could indicate that an ordinance amendment is needed.

At least once every year or two, it is valuable for the ZBA to hold a training session, preferably with the community's zoning administrator, planner, attorney, and other supporting staff members, to evaluate the decisions made by the ZBA. The issues should be thoroughly analyzed and a report should be prepared to help inform and focus discussion. After agreement on particular problems, the ZBA may want to convey its findings and recommendations to the Planning Commission or to the municipality's elected officials, as appropriate, in writing and in a joint meeting.

Important questions to consider include:

- Were there similar situations that came up more than once? Were they in the same general vicinity or in different parts of the community? If a variance is not truly unique to the property, but is in fact shared by other properties, it becomes increasingly difficult to meet the criteria set forth in the ordinance and should trigger a review of the ordinance.
- Did the ZBA follow staff recommendations? If not, then why? Was a defensible basis made on the record to explain the board's decision? Were any of the decisions appealed to court? What was the result? If staff recommends approval but the ZBA denies the variance, was it because an adjoining neighbor complained about the

potential impact of the variance, effecting the decision and supplying the ZBA with information that the staff would not have had? Or did staff recommend denial and the ZBA approved the variance? Was it because the setback, height or other dimensional requirements are no longer realistic?

If the annual review of ZBA decisions reveals that numerous variances are made for any number of reasons, further information should be gathered as to how the process and the resulting variances can be avoided.

Remedies may include:

- Rezoning an area to a different zoning district that maintains the area's character but provides a more appropriate set of dimensional requirements;
- Amending one or more dimensional requirements in the existing district to reduce the frequency of variance requests; or
- Amending one or more of the dimensional requirements to permit either a defined range or an average, instead of one fixed number. For example, consider allowing a side setback of 3 to 5 feet instead of just 5 feet, or an average of 5 feet. It may also help to include some simple decision criteria to guide staff and property owners.

Ideally use variances are rarely requested and granted (as the variance essentially rezones the property without going through the legislative amendment process). The typical variance request is initiated by a property owner who would like to use his land in a way not permitted by the current regulations. It is helpful to remember that variance requests usually occur because property owners want to improve their property.

However positive the intentions of a variance request may seem, it is important to remember:

- Variances are not intended to allow property owners to avoid compliance with the zoning ordinance.
- The variance process is provided to recognize that not all properties have the same physical characteristics.
- Granting of unwarranted variances has the long term effect of shifting zoning policy making away from elected officials.

**Additional resources:**

- ❖ **Michigan Zoning Enabling Act**  
<http://legislature.mi.gov/doc.aspx?mcl-Act-110-of-2006>
- ❖ **American Planning Association, *Amending the zoning ordinance***  
<http://www.planning.org/pas/at60/report115.htm>

---

*Author Karen Hart, AICP, has more than 20 years experience working with Zoning Boards of Appeal in her previous positions as the Planning and Development Director for the City of Ypsilanti and the Planning Director for the City of Ann Arbor. This article was additionally inspired by the Michigan Association of Planning's Zoning Board of Appeals Toolkit, copyright 2009.*

---

*The Michigan Association of Planning/APA Michigan Zoning Board of Appeals Toolkit is available for purchase through <http://www.planningmi.org/publications.asp>.*