



Michigan State University Extension
Land Use Series

How to Participate in the Zoning Process

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Appeals and Variances

This flyer provides tips and suggestions for effective public participation in a zoning decision involving an appeal or a variance. Your participation in a public hearing is an important element of the decision-making process.

With just a little prior knowledge of zoning and zoning decisions, you can increase your effectiveness in providing verbal and written comments. This flyer will help you prepare for a Zoning Board of Appeals (ZBA) or Board of Zoning Appeals (BZA) hearing on an appeal or variance.

Educate Yourself on the Proposed Appeal/Variance.

Before the public hearing/meeting on the appeal, request a full copy of the demand for appeal, or variance application and a copy of the standards of zoning ordinance applicable to the variance or appeal.

Material you present should focus on “standards.” There are different standards used, depending on the type of appeal being requested. If the issue is the Appeals Board deciding where a zoning boundary is, often there are standards on zoning map interpretation in the zoning ordinance. Often there are not any standards for zoning ordinance text interpretation. If the issue is for a use variance or dimensional variance, the standards are established by several court cases listed below.

Next review the appeal against the standards and the facts of the application. The standards for map interpretation are found in the zoning ordinance. Standards for a dimensional variance show that a [*practical difficulty*](#) exists. A dimensional variance is when one is seeking an exception to a zoning regulation that is measured (setback, building height, parcel size, etc.).

While the standards for granting a variance vary slightly among communities, the fundamental practical difficulty standards are:

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

Standards for use variances are to show that an *unnecessary hardship* exists. A use variance is when one wants a land use that is not normally permitted in the zoning district. Some communities do not issue use variances, but rather handle such requests as a zoning amendment. The standards for *unnecessary hardship* are:

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

After careful review of the standards against the application, prepare a submission for the hearing/meeting. This can be oral or written. In the submission you should focus on facts and the standards. In your testimony answer the questions “Does the proposed zoning appeal meet the standards?” and “Does the proposed zoning appeal fail to meet one or more standards?” Be sure you only use the standards for the particular type of appeal: map boundary, text interpretation, dimension variance, or use variance.

These zoning standards, found in the zoning ordinance and supported by facts, *are the basis of a Board of Appeal’s decision* to approve or deny a variance request or appeal.

Attend the Public Hearing/Meeting

Provide each member of the ZBA or BZA, recording secretary, and planning staff, a copy of your submission in writing. The public notice for the hearing/meeting may include directions on how to submit your comments. Everyone who wishes to speak about the application will be given a chance to do so. Some communities limit public comments, such as to 3 or 5 minutes per person. It may be helpful to call the local unit of government to ask if comments are time limited and prepare your testimony accordingly.

When at the hearing/meeting, always wait for the chair to acknowledge you before speaking. Always speak to, or address, the chair. Begin by stating your name for the record. The chair may direct you to provide additional details about your address or place of residence (such as the city or township). Orally summarize the major points in your written submission. A written testimony can be longer, or more detailed, than an oral testimony.

After everyone who wishes to speak has had the opportunity to do so, the public body will move onto their deliberation on the matter. This is the time for the appointed officials to discuss the application and go through their own review of the application against the standards. During this part of the meeting, the role of the public is to observe the proceedings and any decisions made.

Additional considerations

Protect your credibility

Your credibility is one of your most important resources. Make sure statements made are true and can be verified. Focus on the facts. Do not make this personal with specific board members, audience members, the applicant, or staff. Cite your sources (use footnotes or attach a copy or summary).

When doing research, it is important to make sure you are using quality information and sources. There are good and bad research/studies. The [University of California Berkeley Library guide to evaluating resources](#) can help you determine the quality of a resource. Michigan State University library also has [this video](#) on evaluating information sources.

Government staff

Planning staff working for government should remain professional and unbiased. That means it is okay to seek help from the zoning administrator and/or staff planner and/or consulting planner. However, keep in mind that what these people say or do should reflect their legal obligation to follow the ordinance from a place of neutrality. The ordinance standards or a board's decision may not necessarily reflect their personal view. You should not criticize staff at a personal level. Focus your comments on the issue, not the person.

Zoning regulates the use of land

Zoning is supposed to be about regulating the *use of land*. Zoning is designed to weigh and consider the impact of a proposed land use on the subject property and adjacent land uses. Zoning is **not meant**:

- to promote/oppose economic, racial, or religious views,
- to enforce private deed restrictions,
- as a solution for neighborhood feuds or personal quarrels,
- as a development promoter (it merely permits it),
- as a political tool to reward some and punish others, or
- as a public popularity contest – zoning decisions are designed to be based on facts, not majority votes of the audience present, petitions, or social media.

Local zoning does not (and cannot) regulate every land use

The State of Michigan and the federal government can take away (or preempt) local control of certain land uses. Several examples below illustrate various levels of zoning preemption. Refer to the article [Restrictions on Zoning Authority](#) for more information.

Zoning cannot regulate: Local zoning is preempted by state and federal government from regulating hazardous waste, solid waste facilities (landfills), utility lines, certain pipelines, prisons, oil and gas wells, surface coal mining, water pollution, fertilizer application, certain trails, Michigan State Police radio communication system, nuclear power facilities, military facilities, Native American (Indian) tribe activity on tribal land, public schools, certain colleges and universities, county buildings, commercial farming activities such as caring for animals or the use of pesticides.

Limited zoning authority (partial preemption): design of mobile home parks, open space/cluster development, state licensed residential facilities, craft/fine art home occupations, certain daycare facilities, sand and gravel mining, farm markets.

Zoning can regulate, but not prohibit: religious activities/land uses; adult entertainment/sexually oriented businesses; cellular telephone towers.

For marijuana, it depends on the details: Michigan law regulating marijuana include the Michigan Medical Marihuana Act ([MMMA, Initiated Law 1 of 2008](#)), Medical Marihuana Facilities Licensing Act ([MMFLA, Act 281 of 2016](#)), and Michigan Regulation and Taxation of Marihuana Act (MRTMA, [Initiated Law 1 of 2018](#)). Zoning regulation of marijuana-related facilities depends on the licensure type, the extent of local control specified in the Act, and local legislative decisions to allow or prohibit certain marijuana licenses. For more information, visit the [Michigan Cannabis Regulatory Agency](#).

More Information

To find more information on citizen participation in the zoning process visit the MSU Extension Citizen Education web page: http://msue.anr.msu.edu/topic/planning/citizen_education.

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