

Since the mid-1990s most communities, such as Chicago, have moved their zoning map online, often adding layers of linked data.

City of Chicago Department of Zoning

However, the ZBA and the elected body should communicate on other topics on a regular basis. For example, unpopular decisions of the ZBA will come—often forcefully—to the attention of the elected body. It is a good idea for the ZBA and the elected body to periodically discuss hot topics (or potentially hot topics) as well as the routine work of the ZBA. The elected body should have confidence in decisions made by the ZBA. Even though periodic discussions will not lessen the intensity of complaints to the elected body about ZBA decisions, the elected body should have the opportunity to better understand why the decisions are made.

The Planning Commission

The roles of planning commissions vary across the country. While a fundamental responsibility of the planning commission is preparing plans, there are many other responsibilities as well. The planning commission may adopt the comprehensive plan and may be authorized to adopt subdivision regulations or other land development regulation. In other situations, the planning commission makes recommendations to the elected body about adopting plans and regulations.

It often happens that the planning commission has more frequent or more formal interaction with the elected body than is the case for the ZBA. This comes from the planning commission's role in making recommendations to the elected body

about plans and development. However, the ZBA is still the body charged with the responsibility for considering variances from the standards that apply to development and hearing requests for conditional use approvals. Because the planning commission has a key role in the adoption of the standards and procedures that apply to variances and conditional uses, it is important for the ZBA and the planning commission to communicate on a regular basis.

The grant of variances and conditional use approvals is part of the process to implement the plan. When the ZBA encounters the same situation on a regular basis, it should be brought to the attention of the planning commission. In the example described above, where the same variance to a rear yard setback is requested and granted repeatedly, the planning commission must be part of the discussion that takes place between the ZBA and the elected body. This discussion will help in several ways:

- The ZBA will be better informed about the rationale for the regulation. The ZBA does not have a formal role in the process to adopt a comprehensive plan. Therefore, the ZBA may not understand the relationship between the variance sought for a particular regulation and the plan provisions that are implemented by that regulation.

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- The planning commission will gain understanding of how some regulations apply in a wide variety of specific situations. It is easy to adopt a regulation that clearly implements the plan, but much harder to identify the impacts of that regulation on potentially thousands of individual lots.
- The elected body will also gain understanding of the relationships between plans, regulations, and variances, strengthening their position in adopting and amending plans and regulations.

When all parties better understand these relationships, the planning process as a whole is improved. Vocal opponents crowd the meeting chambers when a controversial project is considered, whether through the conditional use process, a variance request, or the approval process through the planning commission or the elected body. However, meaningful participation by citizens of the community will be improved when the elected body, the planning commission, and the ZBA have routinely discussed the relationships between their various roles. When these discussions occur in public workshop settings, the public has an opportunity to better understand how all the pieces of the development process fit together. Will this stop the crowded chambers? Of course not. But understanding the process is always useful and improves overall communication. It often helps focus all partners on the real issues rather than misunderstandings that arise when people do not understand roles and responsibilities in the process.

Local Government Staff

Not all local governments have a planning staff to assist in planning and development matters. However, whether the ZBA interacts with a planner, city clerk, building official, or other person assigned the typical staff responsibility, there are important issues to consider in the relationship of the ZBA to the staff person. In some small communities, there is no staff person available to provide support to the ZBA. In this case, a board member may be designated to act as staff for the purpose of carrying out the responsibilities described below. Communication with this person in his role as staff to the ZBA is as important, maybe more so, than communication with local government staff.

Do Zoning Boards of Appeal Act with Bias?

Two researchers recently explored that question in a study of Iowa and Oregon ZBAs. They looked at bias in terms of board members having a vested interest in development in the community. They presumed that some groups who worked in professional, technical, and managerial occupations might have a greater interest in seeing new development in the community, whereas those working in agriculture or labor may have a less pro-development outlook. Whether this assumption is actually borne out in the decisions that ZBAs and planning commissions make has not been documented. However, the authors found that of the five occupational categories that ZBA members fell into, professional/technical/managerial dominated; in large cities as high as 74 to 81 percent. The tables on page 9 show the results. The authors strongly encourage communities to aim for a better balance of representation by occupation on ZBAs.

Jerry L. Anderson and Erin Sass Eastman, "Reducing Bias on Zoning Boards," *Zoning Practice*, October 2005.

What are staff roles and responsibilities?

- To discuss potential applications with a property owner. In this role, a staff person provides information to a potential applicant about the process to be followed for variances, conditional or special uses, and appeals. Providing information on the standards and criteria that form the basis for evaluating the application should be a key part of this meeting. The staff person cannot substitute his opinions for the ZBA decision-making process, but should ensure that the applicant has all of the information he needs to submit a complete application and that he understands the process that will follow from application to decision.
- To receive applications. The applicant submits the application package to a government staff person. Depending on the requirements set forth in the ordinances, the staff person may be charged with making sure the application is complete, meaning that all required attachments to the application package are provided. If this is not part of your local procedures, consider adding this step, often called a determination of completeness. This determination is not about the quality of the application or the compliance of the application with standards and criteria. Rather, this determination ensures that review and consideration of the application does not begin when information necessary to perform the review and consider the application is missing.

- Search out facts and evaluate the application to determine whether it complies with the standards and criteria set forth in the ordinance. This evaluation should also consider whether the application is consistent with the local government comprehensive plan. Often the local ordinance has a list of standards and criteria. This list can form the basis of a checklist to guide the evaluation—how does the application address each required standard? What are the facts that the ZBA needs to know in its consideration of the application?
- Depending on the customs and directions from the elected body and the ZBA, the staff person may provide proposed conclusions and recommendations regarding approval. Where approval with conditions is recommended, the staff person may propose conditions to be attached to the approval. While the opinions of the staff person may be figured out from the written analysis describing whether the application complies with standards and criteria, it is helpful if the staff person prepares a conclusion in the report.
- Attend meetings and provide testimony. The ZBA should make decisions based on the evidence. What is evidence? The written staff report, the verbal testimony of the staff person, the application and its attachments, testimony of the

applicant and the applicant's experts, and testimony of members of the public. The ZBA typically relies on the staff person to present the case and summarize the facts and conclusions described in greater detail in the written report.

- Perform administrative functions to support the ZBA. There are many details that require careful attention: proper public notices, meeting arrangements, scheduling, coordination with the ZBA and other boards and commissions, and records management. A staff person should be responsible for ensuring that the form and timing of required notices adhere to the standards in the zoning ordinance. An applicant is entitled to due process; proper notice is a key part of ensuring due process. Meeting arrangements—audio visual equipment, sound equipment, lighting, temperature, provisions for special needs of audience members, copies of agendas and other materials—are essential to well-run meetings. Managing the documents related to each case is extremely important. The record must be accurate and complete. Local government staff is typically assigned the responsibility of ensuring the accuracy and completeness of the record.

This may include coordination with the local government attorney, the city or county clerk, and others.

As this summary illustrates, the relationship between the ZBA and staff should be the cornerstone of the overall process for variances, conditional uses, and variances. To enhance this relationship, there are three principles that should guide the ZBA:

1. A ZBA member should not assume that a staff person can read his mind or determine what he needs and when he may need it. This can happen if communication is limited, as if often the case, to presentations and answering questions during public hearings and workshops. One way to improve the situation is to include time on the regular meeting agenda for discussion of ZBA procedures and needs. If members of the ZBA feel that

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TABLE 1: OCCUPATIONS OF ZBA MEMBERS BY CITY SIZE (PERCENTAGE)

	Total	1,000–2,499	2,500–4,999	5,000–9,999	10,000–24,999	25,000+
Professional/Technical/Managerial	54	41	58	64	70	74
Clerical/Sales	17	22	10	21	8	13
Service	7	8	8	3	6	3
Agricultural	4	4	6	4	3	0
Labor/Processing/Trades	17	25	18	8	13	10

TABLE 2: OCCUPATIONS OF P&Z MEMBERS BY CITY SIZE (PERCENTAGE)

	Total	1,000–2,499	2,500–4,999	5,000–9,999	10,000–24,999	25,000+
Professional/Technical/Managerial	61	50	65	64	75	81
Clerical/Sales	16	17	14	22	13	8
Service	6	8	5	6	6	4
Agricultural	3	4	4	4	1	1
Labor/Processing/Trades	13	22	12	5	5	7

Jerry L. Anderson and Erin Sass Eastman, *Zoning Practice*, October 2005

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additional information is needed in order to consider applications, this need must be communicated to the staff ahead of time. If additional types of information are routinely needed, the ZBA should discuss with staff what types of information would be useful in order to allow staff adequate time to collect and provide the information.

2. A fundamental role of staff is to help the ZBA be more productive. If a staff person evaluates the application, searches out facts, and identifies issues, the ZBA will have a better application package when the hearing takes place. Such actions by staff are an important part of building a complete record to support the eventual decision by the ZBA. If you are able to have professional planning staff to support the ZBA, it is advisable to use their expertise—allow staff persons to do what they are trained to do.

3. The further role of staff is to support and assist the ZBA in carrying out its responsibilities. The ZBA is a decision-making body. While the ZBA may ultimately adopt findings, the ZBA can rely on the support of staff to generate the information for considering during a hearing. Recognizing the division of roles and responsibility will help avoid due process problems.

Citizens

Participation by the community’s citizens is essential to an effective planning process. This participation is not, and should not be, limited to creating the comprehensive plan or engaging in the planning process. Citizens should be heard on development matters as well. However, when the only communication between the ZBA and citizens occurs in the public hearing when citizens appear to support—or, more often, object to—a proposed variance or conditional use, the process is not working well. The ZBA should provide opportunities for education about development issues, how variances work, and why conditional uses are “conditional.” The citizens should have an opportunity to express their expectations for the future of their community. Because the ZBA is one among many partners in the planning and development process, the ZBA should engage in regular communication with citizens to build a better relationship. This will allow the ZBA to better balance two competing motivations—responsibility to the requirements of the regulations and responsiveness to the wishes of the citizens.

The ZBA is a key component of planning and development and must maintain good relationships with all of the partners in the process—the elected body, the planning commission, the local government staff, and the citizens of the community. Good relationships among these partners will result in a better community for all. □

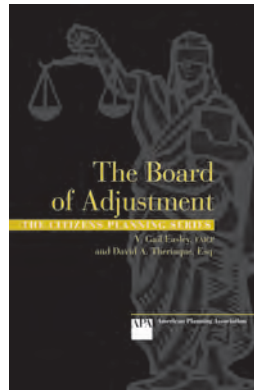
A Zoning Board of Appeals

n informed board is a successful board.

APA Planners Press Books

The Board of Adjustment

*V. Gail Easley, EAICP,
and David A. Theriaque, 2005*



Compatibility, ethics, hearings, record keeping, variances, appeals. There are so many things board of adjustment members must consider—and so few sources to guide them. Novice members gain insight into the board’s unique role, while veterans find tips and strategies that makes their work go more smoothly.

With checklists, sample reports, real-world examples, and easy-to-understand prose, the book demystifies waivers, conditional uses, legal issues, and more. It also covers bylaws, record keeping, and day-to-day operations. www.planning.org/bookservice.

CD-ROM Training Products

Zoning Variances and Findings of Fact: Zoning Clinic 2005

APA Education and the Lincoln Institute of Land Policy

Defines variances and findings of fact and provides guidance on how boards of adjustment or appeals should utilize them. Hear about which practices result in litigation, how to develop defensible findings of fact, and how to prepare a solid record for decisions. www.planning.org/bookservice.

Conducting the Zoning Board of Appeals Hearing: Zoning Clinic 2004

APA Education and the Lincoln Institute of Land Policy

How can the zoning board of appeals function better? Discover the board’s purpose, how it should approach decision making, and the use of an alternative structure—a hearing examiner. Gain insight into how to conduct administrative hearings, make findings of fact, and ensure your decisions can survive legal challenges. www.planning.org/book-service.

Legal Foundation for Planning Commission and Zoning Board Decisions

APA Education, 1995

Which procedures help you avoid being sued as a planning commissioner? How do Supreme Court decisions affect your actions? Find out what’s relevant and necessary to promote sound planning and zoning practices in your community. Questions from commissioners around the country supplement the prepared presentation. www.planning.org/bookservice.

Other Resources

Planning Commissioner Training Resource Center

This web resource contains information on training available for appointed and elected officials across the country. www.planning.org/pctc.

Personal Liability of Planning and Zoning Officials

Michael M. Shultz, 1994

As a planning or zoning official, you can be sued for the land-use decisions you make. This report tells you what you can do to prevent a personal lawsuit—and how to handle one if it is brought against you. The author provides an overview of personal liability issues in land-use cases and analyzes state and federal claims that can be filed against planning and zoning officials. www.planning.org/bookservice.