

University of Missouri Extension

DM7614, Reviewed October 1993

Basic Procedures in Administration of Zoning Regulations: Roles of Enforcement Officer and Board of Adjustment

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Role of Enforcement Officer

General

The Zoning Enforcement Officer, who often has the title of Building Inspector, is the key person in the enforcement of the zoning regulations. If he or she does not thoroughly understand and carry out his or her duties, most of the effectiveness of zoning will be lost.

The Zoning Enforcement Officer should read and become familiar with the zoning provisions. The officer should keep track of all amendments enacted by the legislative body, taking care to note them on his or her copy of the regulations, including, when necessary, the zoning district map. The officer should attend the meetings of the Board of Adjustment in order to understand the actions of the Board.

It is desirable that the Zoning Enforcement Officer prepare and keep up to date three maps:

- A map showing the zoning districts
- A map showing the location of all non-conforming uses
- A map showing the location of all variances granted by the Board of Adjustment.

With the assistance of the appropriate legal officer (e.g. prosecuting attorney, city attorney), the Zoning Enforcement Officer should prepare the following forms:

- Application for building permit,
- Building permit,
- Sign to post while construction is going on,
- Notice of appeal from the officer's decision,
- Application for certificate of occupancy,
- Certificate of occupancy, and
- Certificate of occupancy for non-conforming use.

Duties

The Zoning Enforcement Officer (Building Inspector) has the following duties in connection with the Zoning regulations:

- To receive applications for and issue building permits.

On receiving an application for a building permit, the officer (inspector) should:

- Check to see in which district the property is located;
- Check the regulations for the district and see whether they have been complied with;
- If there seems to be no compliance, check to see whether the property is a legal "non-conforming use" (e.g. when at the time of the enactment of the zoning, the property was being used legally in some way not permitted thereafter under the new provisions of the zoning regulations) or whether the Board of Adjustment has granted a variance or an exception for the property; and
- If there is compliance with the regulations, or if the proposed use is authorized under the zoning provisions concerning non-conforming uses, or if the proposed use has been authorized by the Board of Adjustment as a variance or an exception, the officer (inspector) should issue the permit.

In deciding whether or not the proposed construction complies with the zoning regulations, the officer (inspector) must follow those regulations exactly. The officer may not issue a permit for something that is not authorized, nor may he or she deny a permit for something that is authorized. "In the issuing of building permits the building inspector, a purely administrative agent, **must follow the literal provisions of the zoning regulations.**"

Once he or she has issued a permit, the officer (inspector) may revoke the permit:

- If it is discovered that the regulations do not authorize the issuance of the permit
- If it is discovered that the applicant was guilty of fraud or deceit in the application.

If the officer (inspector) refuses to issue the permit or revokes a permit, he or she should furnish the applicant with the appropriate form on which to give **notice of appeal** to the Board of Adjustment.

- To make inspections and issue Certificates of Occupancy.
After issuing a building permit, the officer (inspector) should check for compliance with the zoning regulations during construction of the structure. If the completed building meets the requirements of the zoning, the officer should issue a Certificate of Occupancy authorizing use of the building for stated purposes.

Where the use of a building or piece of land is later changed, the property owner must apply for a new Certificate of Occupancy. This should be issued only after a new inspection of the premises to check conformance with the zoning regulations.

If the officer (inspector) refuses to issue a Certificate of Occupancy, the property owner may appeal to the Board of Adjustment.

- To issue Certificates of Occupancy for Non-conforming Uses.
Most zoning regulations permit property uses existing at the time the order is adopted to continue under stated conditions even though they violate the zoning provisions. Some zoning regulations require the owners of such "non-conforming uses" to secure a certificate describing the property and its use at the time of adoption of the zoning. The purpose of this is to have a record that may be used as evidence in the event of later dispute concerning the property.

The Zoning Enforcement Officer (Building Inspector) should receive applications for these certificates, group them according to location, make inspections, and issue a Certificate of Occupancy for Non-conforming Use to each applicant. All such applications, under the usual provisions, must be made within a certain time after the regulations are adopted in order for the owner to be entitled to a certificate.

- To initiate action to prevent or correct violations of the zoning order.
Where the Zoning Enforcement Officer (Building inspector) learns of a zoning violation, he or she should first give all interested parties notice of the violation and an opportunity to correct it. If the violation is not corrected, and if no appeal from the officer's notice is taken to the Board of Adjustment, the Enforcement Officer should request the prosecuting attorney to commence the appropriate legal action. This action may either be **criminal** (e.g. leading to a fine) or **civil** (e.g. leading to an order by the court restraining the owner against further violations).
- To keep records.
To provide for adequate public information, to serve as a basis for future decisions, and to supply evidence for the Board of Adjustment or for other litigation, the Zoning Enforcement Officer (Building Inspector) must keep complete, accurate and well-organized records.

Properly maintained records should permit easy assembly of a complete history of all zoning actions taken relative to a parcel of land. By making records fit with the Assessor's system, it should be possible to locate, for any given property, such matters as:

- Non-conforming uses, if any
- Applications for permits and certificates
- Building and structures completed
- Permits issued, refused or revoked
- Actions of the board of adjustment
- Petitions for changes of zoning
- Zoning changes.

Files of information may be organized under headings of this kind. Noting the various actions on maps is helpful for making good use of information.

Accurate recording of the dates of all actions is important. The sequence of actions often is critical to understanding the situation.

Reliable, convenient records are necessary for fair and smoothly operating zoning administration. The Zoning Enforcement Officer (Building Inspector) should give considerable attention to setting up a system of records. He or she should consult with other officials as to their needs for information and get their advice on record maintenance. Coordination among several officials and bodies will be needed to establish and maintain an effective record system. The Zoning Enforcement Officer has to devote considerable time to recording once the system is established. He or she should expect that experience using the records will indicate a need to revise the system from time to time.

Role of Zoning Board of Adjustment

General

The Board of (Zoning) Adjustment is a quasi-judicial administrative body whose decisions affect private property rights to the same extent as court decisions. For that reason, the Board's procedures must be regular and properly judicial, and its decisions should accord with the recognized body of law in its field.

The Board of Adjustment is not a legislative body. It must enforce the meaning and the spirit of the zoning regulations as enacted by the legislative body. Where particular provisions of the regulations seem to lead to consistent injustices, the Board should recommend to the legislative body that they be amended. It should not attempt a "back-door" amendment by a series of its own decisions.

The Board should remember that it is the only representative, in most cases, of the public interest. It is not merely adjudicating the rights of two contending parties. In all of its decisions it should keep foremost in its mind the question of, "What will be best for the community?"

Rules of procedure

One of the first steps that the Board of Adjustment should take after its creation is adoption of rules of procedure for itself. At least the following provisions should be considered.

- The Board should fix the time within which notices of appeal from the Zoning Enforcement Officer's decision must be filed by the property owner.
- The Board should make provision for the giving of notice prior to hearing the appeal. The appeal should be heard within a reasonable time.
- The quorum for the purpose of hearing cases should be not less than four members. The concurring vote of four members should be required in order to
 - Reverse any "order, requirement, decision or determination" of the Zoning Enforcement Officer
 - Grant an exception authorized by the zoning regulations
 - Grant a variance from the literal terms of the regulations
- The Decision should be given within a reasonable time.
- Any application for a re-hearing should be denied if there is no substantial change in facts, evidence or conditions.
- A complete set of minutes should be kept. These should show, as to all cases heard by the Board:
 - The evidence presented
 - The Board's findings of fact
 - The Board's decision

In order for the Board's actions to have validity, it must comply with the formal requirements set forth in its rules — particularly the provisions outlined above.

Powers and duties

The Board of Adjustment has three main powers and duties:

- The power to hear appeals from the Zoning Enforcement Officer's decisions as to matter of interpretation of the zoning provisions.
- The power to grant "exceptions" in cases specifically provided for in the zoning regulations.
- The power to grant "variances" in cases where "practical difficulties or unnecessary hardship" would result from literal enforcement of the order.

In addition, the Board should give constant consideration to the need for zoning amendments and, where such need appears, it should make recommendations to that effect to the legislative body or Planning Commission.

Interpretation

The Board's power of interpretation consists merely of

- Determining the true facts in a case
- Applying to those facts what it conceives to be the true meaning of the regulations.

The point to remember in exercising this power is that the Board must apply, not vary, the terms of the regulations. Any variation must come as a variance (discussed below) and must meet the requirements for a variance. The Board's interpretation of the meaning of the regulations should remain uniform; the application to different fact situations, however, may lead to different decisions.

Exceptions

In certain situations, the regulation authorizes the Board to permit a given type of property use when it finds that particular conditions are met. When the Board does this, it is granting an "exception." The Board must exercise this authority just as it exercises its power of interpretation: It must follow the language of the provisions exactly and be sure that all the conditions specified have been met.

Variations

The best known power of the Board is the authority to grant "variances" from the literal terms of the regulations in hardship cases. The first rule for the Board to remember in exercising this function is that it must not be too liberal with its grants, for otherwise the whole zoning law may be subverted.

To grant a variance, the Board should make certain findings (which must, of course, be supported by the facts). A summary of the findings that should be required before a grant of a "variance" is issued follows:

- There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the regulations.

In order to support this finding, the property owner must prove:

- That if he or she complies with the provisions of the order, he or she can secure no reasonable return from, or make no reasonable use of, his or her property. (This is a very strict requirement. It is not enough to show that greater profits could be secured from the property if the variance were granted, for this could be shown by almost any applicant at the expense of neighbors. Ordinarily, some physical problem preventing development of the property in an authorized manner should be shown.)
- That the hardship results from the application of the regulations. (The fact that a deed restriction, the charter of a corporate property owner, or some similar factor limits the use of the property should not be considered by the Board; it may consider only hardship created by operation of zoning.)
- That the hardship is suffered by the property in question. (The fact that there is no grocery store in the neighborhood might create hardship for the households, but it does not create hardship bearing directly on the property of the person seeking to erect such a store.)
- That the hardship is not the result of the applicant's own actions. (Where the property owner has, knowingly or unknowingly, violated the regulations by erecting a forbidden type of building, he cannot cite his expenses as hardship that he will suffer if he is not permitted to continue; otherwise no one would ever comply with zoning. Similarly, it seems to be the rule that where a person buys property, knowing of zoning restrictions that prohibit the use he or she wants to make of it, he or she cannot be said to suffer hardship if those restrictions are enforced; such hardship would be self-imposed.)

- That the hardship is peculiar to the applicant's property. (Where the conditions cited as hardship are neighborhood-wide, the proper remedy is not a variance, but rather an amendment. Courts have held that the Board is not authorized to grant a variance in such a situation.)
- The "variance" is in harmony with the general purpose and intent of the zoning regulations and preserves their spirit.
- Ordinarily, the courts have ruled that a Board should deny a variance as a violation of this finding
 - Where the applicant attempts to extend a legal "non-conforming use" or to make it more permanent
 - Where the application is for a "use variance" (e.g. a variance authorizing the property to be used in a way prohibited by the regulations, as distinguished from a variance in the lot area, yard size, building height or other "dimensional requirements.")
- In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done.
In making this finding, the Board must determine:
 - That the interests of the community as a whole have been preserved
 - That granting the variance will not result in greater hardship upon the neighbors than benefit to the applicant

Condition on exceptions and variances

In granting an exception or variance, the Board is entitled to impose conditions on the permit that will make the proposed property use less objectionable to its neighbors and to the community. The conditions must be "reasonable."

Related MU Extension publications

- DM7612, Basic Procedures in Administration of Zoning Regulations: Making Applications
<http://extension.missouri.edu/p/DM7612>
- DM7613, Basic Procedures in Administration of Zoning Regulations: Appeals
<http://extension.missouri.edu/p/DM7613>

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