

Zoning Boards & Planning Commissions

by Michael Chandler

This article will provide an overview of the purpose and functions of boards of zoning appeals (“BZA”).¹ All too often, planning commissioners are unfamiliar with the important role BZAs play and its relationship to the planning process.

THE ADVENT OF ZONING AND THE BZA

Zoning can trace its roots to the 1920’s and the work of then Secretary of the U.S. Department of Commerce, Herbert Hoover. In 1922, the Commerce Department published a model “Standard Zoning Enabling Act,” for consideration by the states. The model Act outlined the rationale and methodology localities could use to designate zoning districts in which compatible uses would be allowed and incompatible uses excluded.

The drafters of the model Zoning Enabling Act also realized that some “relief” mechanism would be necessary to ensure that zoning ordinances, when applied, were fair to property owners and not unconstitutional. Accordingly, the model Act set out a mechanism for granting administrative relief from articulated zoning standards. This was to be through the creation of a board of adjustment (i.e., the BZA), empowered to grant variances in cases when the strict applications of ordinance requirements would unfairly limit or preclude a person’s ability to utilize their property.

Following the Supreme Court ruling in the 1926 *Euclid v. Ambler Realty* case,

¹ While in many states, decisions on zoning variances are made by what is called the “board of zoning appeals,” comparable bodies in other states may be referred to as “zoning boards of adjustment,” or other like names. In most states, BZA members are appointed by the local governing body, though in some states (like my home state of Virginia) members are appointed by the judiciary (reflecting, in part, the quasi-judicial functions BZAs engage in).

upholding the constitutionality of local zoning, zoning ordinances were rapidly adopted across the nation – based on state zoning enabling laws typically following the framework of the Department of Commerce’s model Act.

CONSCIENTIOUS ZONING BOARDS, IN DOING THEIR JOB, CAN AID THE PLANNING COMMISSION BY SPOTTING PROBLEM AREAS WITHIN THE COMMUNITY’S ZONING ORDINANCE.

ZONING BOARD FUNCTIONS

Local zoning ordinances typically set out criteria by which the zoning board is authorized to grant variances from one or more of the dimensional standards (e.g., setback requirements, minimum lot size) contained in the ordinance. The variance is limited to a specific piece of property, and does not act to amend the ordinance’s dimensional standards. In other words, the ordinance standards will still apply to all other property in the zoning district – unless another property owner can make the case that he is entitled to a variance for his property. *Editor’s Note: A review of typical criteria for granting a variance is included in attorney Robert Widner’s companion article on page 5 of this issue.*

As just noted, the most significant function of most zoning boards is to act on requests for variances from the dimensional or area standards contained in the zoning ordinance. In some states, however, zoning boards are also authorized to grant “use variances,” allowing an otherwise prohibited use, based, in

part, on a showing of hardship – similar to the criteria for dimensional variances.

In many states, zoning boards act on requests for “conditional uses” (also sometimes called “special uses” or “special exceptions”). These are uses which may be allowed in one or more zoning district provided they meet criteria listed in the ordinance. Conditional uses are commonly employed to allow uses which might, in certain circumstances, generate substantial amounts of noise or traffic, or otherwise be incompatible with the neighborhood.

Unlike use variances, conditional uses are specifically listed in the zoning ordinance. Different zoning districts often have different lists of conditional uses. Criteria for the granting of conditional uses also do not involve an examination of the financial “hardship” to the property owner if the use is not allowed, as is the case with use variances. Instead, as noted, the review criteria focus on ensuring that a proposed use will not have an adverse impact on neighboring uses. Given the variations, I encourage your commission to ask for a briefing on these procedures from your staff or from your municipal attorney. *Editor’s Note: For more on this topic, see “Special Permits: What They Are & How They Are Used,” in PCJ #3 (available at: www.plannersweb.com/specialpermits.html).*

Zoning boards are also often responsible for hearing and deciding appeals from a decision made by the zoning administrator. Most commonly, these involve questions of how to interpret definitions contained in the zoning ordinance. As an example, many zoning boards today review requests for home occupation permits, determining whether the applicant for a home occupation meets the zoning ordinance’s definition (and criteria) for what constitutes

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an allowable home occupation.

Many zoning boards also hear appeals where there is any uncertainty as to the location of a zoning district boundary. In exercising this authority, the zoning board, however, does not have the power to change substantially the location of district boundaries as established by ordinance.

Again, bear in mind that the legal authority by which a zoning board can discharge any or all of the functions outlined above are spelled out in your state's zoning enabling statute.

THE BZA AND PLANNING

So what does any of this have to do with planning and the job of the planning commission? As *PCJ* readers know, the entire planning process, beginning with the preparation of the local comprehensive plan and ending with the adoption of a zoning ordinance designed to implement the plan, is the special province of the planning commission and the local governing body. The zoning board is not directly involved in this process. Nevertheless, the BZAs' actions can have a significant bearing on the degree to which adopted land use policies are implemented.

Unfortunately, some BZAs will vote to grant virtually any variance request before them, ignoring the ordinance's strict criteria for the granting of variances. In doing so, these BZAs (knowingly or unknowingly) chip away at the integrity of their community's zoning ordinance by allowing one or more individuals to function outside the purview of the adopted community zoning standard. As one commentator has noted, "granting indiscriminate variances ... can eat the heart out of good zoning quicker than any other action."²

Conscientious zoning boards, in doing their job, can aid the planning commission by spotting problem areas within the community's zoning ordinance. For example, frequent requests

for variances from a particular provision (or provisions) of the zoning ordinance may well indicate a need to re-examine this portion of the ordinance. The zoning board and planning commission should be sharing this kind of information.

Let me briefly mention several strategies which you might consider to strengthen the linkage between the planning commission and zoning board:

1. *Sharing of Annual Reports.* Some states or communities mandate that planning commissions and BZAs alike prepare annual reports. If reports are prepared they should be exchanged so each will be aware of what the other is doing. The BZA should view the annual report as a vehicle through which it can report on the type (and frequency) of variance requests and approvals. As already noted, numerous variance requests could mean the zoning ordinance might need to be changed or modified. By sharing their report with the planning commission, the BZA is sending an important message the commission will hopefully respond to.

2. *Joint Work Sessions.* Just as the planning commission should meet with the local governing body periodically, a similar meeting might be warranted with the BZA. Such a meeting would allow the planning commission and BZA to discuss issues of common concern as well as learn more about their respective duties and responsibilities.

3. *A Planning Commissioner on the BZA.* In Virginia, it is permissible for one member of the planning commission to also sit on the BZA. This double duty has yielded many positive benefits including greater awareness on the part of both bodies regarding their particular powers and responsibilities. Check your state code to determine if such an arrangement is possible in your locality. The benefit could be substantial.

4. *Attend BZA meetings.* If your state code precludes the possibility of a commissioner serving on the BZA, then consideration should be given to the idea of having one member of the planning commission attend BZA meetings as an observer. This strategy will allow the

commissioner to report and comment on the actions taken by the BZA at a subsequent meeting of the planning commission. To ease the burden of one commissioner having to go to extra meetings, the BZA assignment could be rotated among all commissioners.

5. *Training Upon Appointment.* The idea that new planning commission appointees should receive training upon appointment has taken hold in many localities, as well as many states, over the past decade. The benefits to be gained from such an investment are multiple and far reaching. A similar commitment and training effort should be made for new BZA appointees. The training does not have to be extensive or elaborate. Even an evening work session would allow time for new, as well as veteran, BZA members to gain knowledge regarding their powers and duties, as well as some perspective concerning their role in the planning process. ♦

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² Herbert H. Smith, *The Citizen's Guide to Planning*, 3rd Ed. (APA Planners Press, 1993), p. 118.