

PREFACE

This brochure is to assist a citizen attending a public hearing of the Kankakee County Zoning Board of Appeals (ZBA), as an applicant, an objector, or simply to become more informed. It is primarily an instructional device to better prepare individuals in either supporting or objecting to a case set before the ZBA. Since the ZBA is open to the public, this brochure will also clarify the role of those citizens not "officially" involved in a zoning case. Herbert M. Smith, author of several books about zoning, is emphatic on this point: "Everyone with an interest in the community should take part in a public hearing, regardless of whether the matter affects one personally or whether one is for or against the question to be decided. The value of a public hearing is to have diverse points of view presented... Therefore, as a concerned citizen, you should take part in public hearings whenever they deal with a subject that can affect the total community, as does zoning."¹

THE CITIZEN'S ROLL

Smith accurately describes the purpose of the zoning hearing: "In theory before government enacts a measure that affects our lives, we are given an opportunity to review and discuss it and then to present our view to officials, elected or appointed. This is the public hearing technique, and it is extremely important in zoning. Throughout the entire process, one of the key provisions is for the public to have the opportunity to be heard. This is not put in enabling legislation simply to provide an exercise or to provide a meaningless forum. It is intended to indicate the importance of public understanding and support, as well as the necessity of having an expression given, both for and against, to those responsible for framing the ordinance and for its administration... The hearing process has been designed to provide a check and balance system in the adoption of or varying from legislation that directly concerns us. It is our responsibility to be aware of the system, to take advantage of it, and to understand how it should work and when it is not working properly."

¹*Smith, Herbert, The Citizen's Guide to Zoning.

THE ZONING BOARD OF APPEALS

The Zoning Board of Appeals (ZBA) is a seven member citizen board organized under the zoning ordinance to hear several types of zoning issues:

- 1) a request for changes in zoning classification;
- 2) permission for certain uses under zoning, named a special use in the zoning ordinance;
- 3) a request for relief from specific requirements of the ordinance through variation; and
- 4) an appeal of a determination made by the Planning Department.

In some instances the ZBA makes a final decision on a zoning request, but in most instances the ZBA makes a recommendation to the full County Board for their final consideration.

BEFORE THE HEARING

- 1) A citizen who wishes to address one of the above issue may obtain the appropriate application forms from the Planning Department. Fill them out and file them with the appropriate zoning fee, with the County Clerk.
- 2) After the case is set for hearing before the ZBA, the applicant will be notified of the time and place of the hearing. The applicant will be billed for the cost of publication of the required hearing notice. This bill must be paid before any decision is rendered by the Board.
- 3) The applicant/objector may inquire for information at the Planning Department. The staff may not give legal advise but provides a public information service. The office maintains records on all zoning activity and aerial photographs of all tracts of land in Kankakee County. In addition, zoning ordinances are for sale at the department.
- 4) The applicant/objector should seek legal counsel if the case demands legal expertise. Either party may wish to consult a lawyer prior to the hearing and, if necessary, have him/her serve as the party's representative at the hearing. According to Smith, "The question is primarily whether you are denied the right to do something because of a peculiar circumstance or an unusual situation. If, in attempting to prove this, you decide to present an elaborate case, you will probably have more reasons to be represented by an attorney, who, in turn, will perhaps suggest that you use the services of an expert in real estate, engineering, or planning and zoning."

5) The objector may organize as many supporters as he/she desires. A collaborative approach may strengthen the party's argument by generating an influx of ideas. However, Smith warns. "Remember, too, that the board is not running a popularity poll. A zoning decision is not something that can be made on the basis of how many people are for or against a particular issue."

6) The applicant/objector should attend a hearing before the case is scheduled in order to become familiar with the procedure and etiquette. Call the Planning Department to verify a date, time, location, and subject of the next hearing. In addition, the applicant/objector may wish to consult books and other material dealing with zoning, planning, and land use.

THE HEARING PROCEDURE

The applicant and/or his/her representative are required to appear at the scheduled hearing. The objector's case will carry more weight if he/she appears in person as opposed to submitting only correspondence. The following is an outline of a typical hearing procedure of the Kankakee County ZBA:

1. Introduction of the application by the Chairman.
2. Applicant presents case.
3. Board, staff, and public have opportunity to ask applicant questions only.
4. Objectors present evidence.
5. Board, staff, and applicant have opportunity to cross-examine objector's evidence.
6. Rebuttal by applicant.
7. Rebuttal by objectors.
8. Closing of public comment portion by Chairman.
9. Compilation of findings of fact.
10. Recommendation by Board.

In the interest of an orderly and impartial hearing, it is requested that the above procedures be observed. Each person giving testimony shall do so under oath or affirmation. A record of the proceeding is required by law;

therefore each person asking questions or giving testimony must give his/her complete name and address. Statements will not be heard during the time reserved for questions. Everyone will be given the opportunity to be heard at the proper time.

Please be courteous during the entire hearing. Regardless of whether you agree or disagree with someone's testimony, the opposing party and board members deserve respect and understanding. Most importantly, be considerate to whoever has the floor. Any interested parties should avoid talking until the appointed time for questions.

MEETING THE STANDARDS

The evidence presented must address the standards for the case in question, whether it be a special use, variation, or map amendment. The applicant must prove that his/her case meet all the standards. The objector must prove why the applicant's case doesn't meet one or more of the standards. In either example, the premise for the argument must be based on the specific points listed next, although it is your decision as to the proper approach (i.e., following a sequential order or addressing the most relevant points first).

Standards for Special Uses

The Board of Appeals shall make findings based upon the evidence presented to it in each specific case regarding the following matters:

- a) That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;
- b) That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood;
- c) That the establishment of the special use will not substantially impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;
- d) That adequate utilities, access roads, drainage, or necessary facilities have been or will be provided;
- e) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and,

f) That the special use will, in all other respects, conform to the applicable regulations of the district in which it is located except as such regulations may, in each instance, be modified by the board.

Standards for Variations

Neither the County Board, nor the Board of Appeals will vary the application of the regulations created by this ordinance unless the Board of Appeals shall have made findings based upon the evidence admitted in each specific case that:

a) Because of the particular existing use physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result as distinguished from a mere inconvenience, if the letter of the regulations were to be carried out;

b) The conditions upon which a petition for a variation is based are unique to the property for which the variation is sought and are not applicable generally, to other property with the same zoning classification;

c) The granting of the variation will not be detrimental to the public welfare, nor injurious to other property or improvements in the neighborhood in which the property is located; and,

d) The proposed variation will not impair an adequate supply of light and air to adjacent property, nor substantially increase the congestion of the public street, nor increase the danger of fire, nor endanger the public safety, nor substantially diminish or impair property values within the neighborhood.

Standards for Rezoning/Amendments

The Board of Appeals shall make findings based upon the evidence presented to it in each specific case, upon, among others, the following matters:

For all districts other than the A2:

a) The proposed amendment is consistent with the purpose and intent of the zoning ordinance;

b) The proposed amendment is consistent with the goals, objectives, and policies of the Comprehensive Plan;

c) All required utilities, such as water and sanitary facilities,

drainage, access to public rights-of-way, recreational facilities, educational facilities, and public safety facilities have been or will be provided, and posses or will possess adequate capacity and/or manpower to accommodate the permitted uses within the zoning classification be requested;

d) Compatibility with existing use of property and the zoning classification of property within the general area of the property in question;

e) The permitted use in the zoning classification being requested will not substantially increase the level of congestion on public rights-of-ways;

f) The suitability of the subject property for the uses permitted under the existing zoning classification;

g) The suitability of the subject property for the uses permitted under the proposed zoning classification;

h) The trend of development, if any, in the general area of the property in question, including changes, if any, which have taken place since the day the property in question was placed in its present zoning classification

i) The proposed map amendment is within one and a half miles of a municipality; (NOTE: The most restrictive requirement(s) apply); and,

j) That the LESA report reflects the suitability of the site for the proposed map amendment requested and uses allowed therein.

For the A2 District:

a) The proposed amendment is consistent with the purpose and intent of the zoning ordinance;

b) The proposed amendment is consistent with the goals, objectives and policies of the Comprehensive Plan;

c) compatibility with existing uses of property and the zoning classification of property within the general area of the property in questions;

d) The permitted uses in the zoning classification being requested will not substantially increase the level of congestion on public rights-of-way;

e) The suitability of the subject property for the uses permitted under the existing zoning classification;

f) The suitability of the subject property for the uses

permitted under the proposed zoning classification;

g) The proposed map amendment is outside of the one and one-half mile jurisdiction of a municipality with an adopted Comprehensive Plan;

h) The suitability of the soils on the site must be of the type capable of supporting residential use; and,

i) Whether the proposed amendment is in the public interest.

PRESENTING TESTIMONY

1) Be clear and concise in presenting evidence and testimony. Testimony supported by fact is much stronger than testimony supported by opinion. As Smith states, "The fact is, only facts count. The decision of the board must be based upon information that can be supported and is accurately and carefully presented. They are not...interested in emotional arguments or extraneous statements regarding the reasons you think your ought to do what you would like to do" or why you think the applicant should not be able to do what he/she wants to do. There should also be an explicit connection between the evidence and the facts of the case. For example, using the standards of another county's ordinance may not be considered strong evidence since such an ordinance may not be applicable to the specific of the present case.

2) Use discretion in selecting reliable evidence. For example, a technical document is usually more authoritative than a popular magazine article, although the witness must set up a valid basis for using the document. In other words, textual evidence of any kind must be supported by a logical correlation to the case in question. Likewise, experts are more credible than non-experts in presenting specific evidence. Smith notes "These may be specialists in engineering, real estate, or in planning and zoning. As experts, they are entitled to present information and to express opinions based on conclusions drawn from that information and their study. Their role is to provide a background of technical knowledge and data that can help the zoning board reach a considered opinion in their final decision. Any expert presented to the board should be well qualified," and prepared to present " proper credentials or experience records."

This brochure is intended as a brief guide to the ZBA and should not be relied on for a thorough understanding of the hearing procedure. Official documents may be obtained at the Planning Department, but an attorney should be consulted for legal advice.

KANKAKEE COUNTY'S

Citizen's Guide to the Zoning Board of Appeals



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Hours: 8:30 a.m. to 4:30 p.m. Mon-Fri