

**MARION TOWNSHIP PLANNING COMMISSION &  
ZONING BOARD OF APPEALS SPECIAL MEETING  
AGENDA**

SPECIAL MEETING  
October 27, 2020  
6:30 p.m.

CALL TO ORDER    ZBA:  
                          PC:

PLEDGE OF ALLEGIANCE:

INTRODUCTION OF MEMBERS:

APPROVAL OF AGENDA FOR:                    October 27, 2020 Special Meeting

CALL TO THE PUBLIC:

New BUSINESS:

- 1) Training Workshop with John Enos from Carlisle Wortman covering ZBA and PC topics.

CALL TO THE PUBLIC:

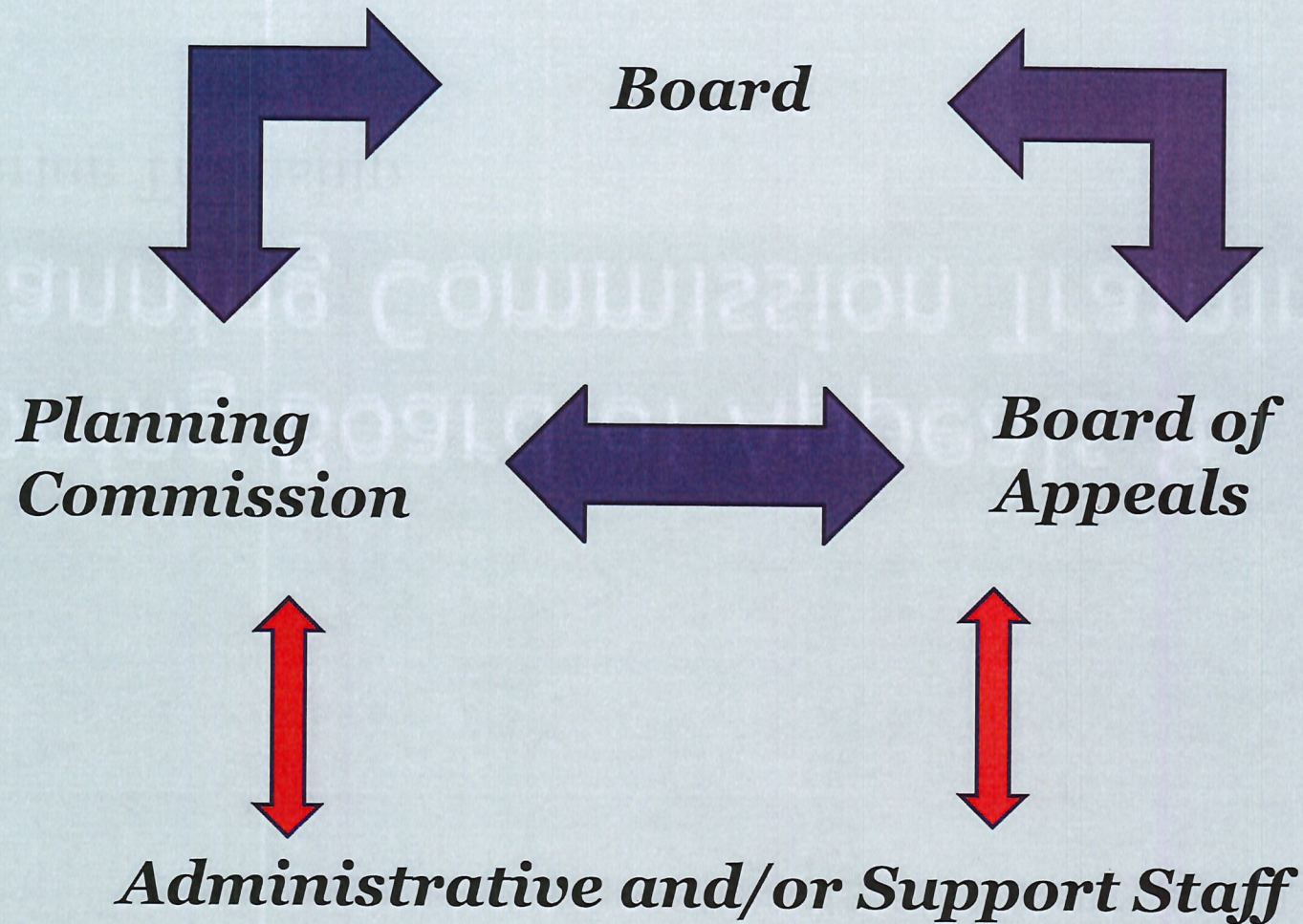
ADJOURNMENT:



# Zoning Board of Appeals & Planning Commission Training

Marion Township

# Land Use Decisions DO NOT Operate in a Vacuum



# Land Use Decisions do not Operate in a Vacuum

## *Legislative Body*

- Appointments
  - Ordinance Adoption
  - Zoning Reviews
  - Budgets / Personnel
  - Master Plan (Optional)
  - Other Policy Decisions
- 

## *Planning Commission*

- Master Plan
- Zoning Ordinance
- Subdivision
- Zoning Reviews

## *Board of Appeals*

- Variances
- Appeals
- Interpretations
- Other Duties

*Administrative and/or Support Staff*

# Statutory Authorities

## *Planning*

- ~~Township Planning Act, 168 of 1959~~
- ~~Municipal Planning Act, 285 of 1931~~
- ~~County Planning Act, 282 of 1945~~
- Regional Planning Act, 281 of 1994
- Planning Enabling Act, Public Act 33 of 2008

## *Zoning*

- Zoning Enabling Act, Public Act 110 of 2006

# The Planning Process

## *The Three “Whats”*

- What? What is important to our community?
- So what? Why are these issues important?
- Now what? What do we need to do?

# Why Do We Plan?

- Anticipate change
- Create predictability
- Use physical, natural, social and fiscal resources wisely
- Create a vision for the future
- Protect the environment and quality of life



# Site Plan Review

- Site design/building arrangement
- Drainage
- Natural areas
- Buffering
- Emergency access
- Services/utilities
- Vehicle/pedestrian access

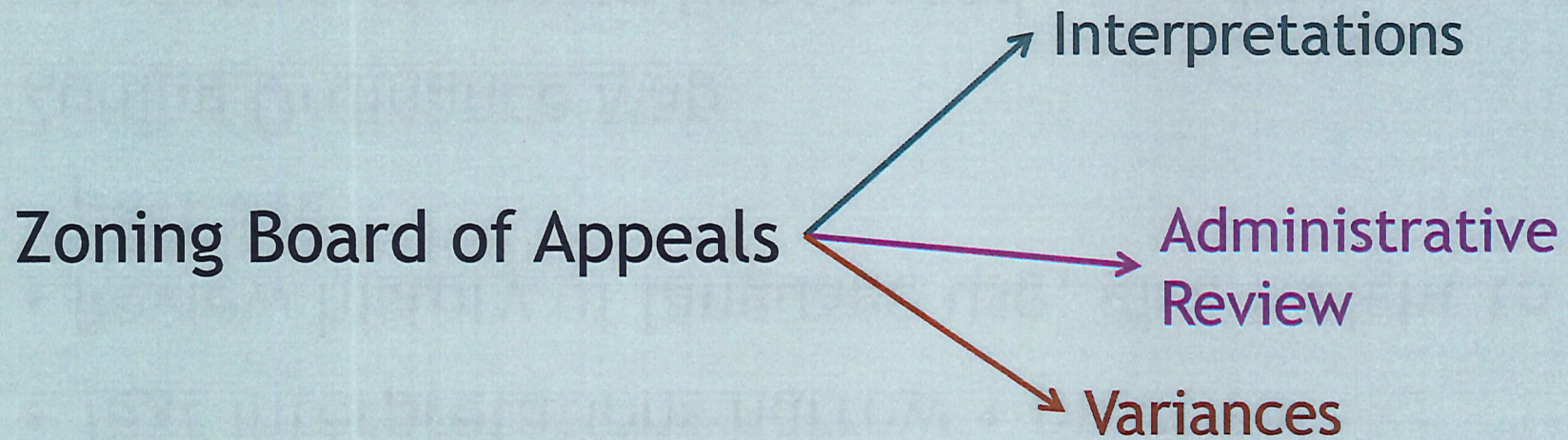
# Site Plan Review

## *Decision Guidelines*

- Are all review standards and ordinance requirements met?
- Does plan represent reasonable/workable site arrangement?
- The approval may lapse. Extensions may be granted.

If all standards are met:  
Approval **MUST** be given!

# ZBA Duties + Powers = Appeals



# Interpretations

## Zoning Ordinance Text

- Text interpretations narrow + practical
- Review history of language use, give weight to past use

## Zoning Ordinance Map

- Location of zoning lines based on ordinance rules.
- ZBA cannot rezone property by moving zoning boundaries.

# ADMINISTRATIVE REVIEW

## Administrative Appeals

- From PC decision on site plan reviews
- From ZA on administrative decisions

## Decision Guidelines

- Decision has been made; ZBA must first determine if decision was reached following proper procedures and facts.
- If so - decision must be upheld.
- If not - ZBA becomes decision maker.
- ***Appeals regarding special land use & PUD's are directed to the ZBA only on non-discretionary standards.***

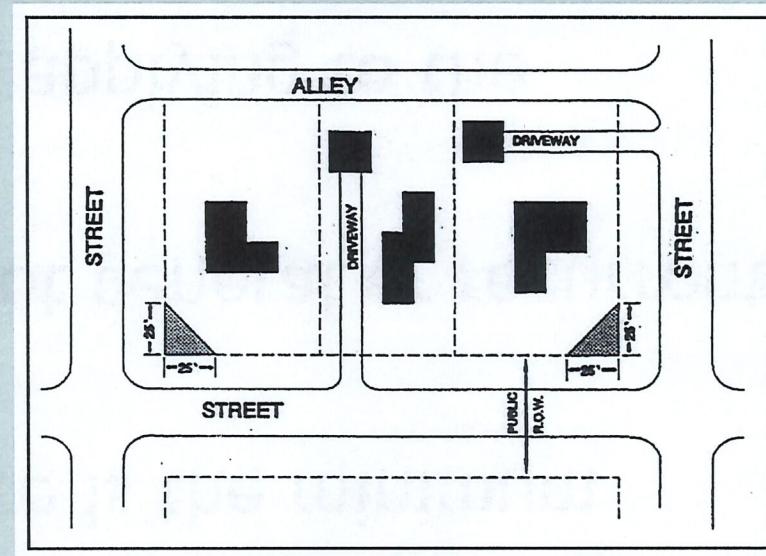
# Variations

## Dimensional (Non-Use) Variance

- Vary the requirements of the Ordinance.
- Requires evidence of *Practical Difficulty* related to the property.

# Dimensional Variance

- Yard setbacks
- Building height
- Floor area
- Lot width or area
- Number of trees
- Sign face area
- Other similar issues
- Appellant must demonstrate practical difficulty



# Practical Difficulty

- Does not adversely affect adjacent properties.
- The requested variance is the minimum necessary.
- The circumstance is not general or recurrent in nature.
- Unique circumstances applying to the property.
- The need for the variance is not self-created.



# Common Incorrect Reasons Used to Grant Variances

- No one came to object
- It's the only sign they make
- The Ordinance is too strict
- We have to give it to them or they will leave
- We gave this variance before
- It's already built
- We know he will do a good job/He's a good neighbor
- It's only a small variance
- It will make the area better

# Membership + Voting

- Ordinance requires at least 5 ZBA members.
- One (1) member shall be a member of the PC
- One (1) member may be a member of the TB
- Terms = 3 years (or same as PC/TB)
- Two (2) alternates allowed
- ZBA shall not conduct business unless a majority of members are present.

## Alternates

- Act in the absence of a member for 1 or 2 meetings - or conflict of interest
- Stay with the case until finalized
- Act as a regular member when serving

# Membership + Voting

Appeals and Non-Use (Dimensional)

Variations require a simple majority vote of the membership, regardless of the Board attendance at the meeting.

*NOTE: Except for administrative actions (approval of minutes, etc.), votes are based on total board membership, not just those who are present.*

# Decision Principles

*What is the function of the ZBA?*

The job of the ZBA is to uphold the requirements of the zoning ordinance, except in unusual circumstances related to the condition of the property.

It is NOT the job of the ZBA to help applicants *find a way around* the requirements of the ordinance because compliance is inconvenient, or because of the personal circumstances of the property owner.

# Decision Principles

- Variances were NOT intended to allow property owners to avoid compliance with the zoning ordinance.
- The variance process was provided to recognize that not all properties have the same physical character.
- Variances granted with little or no justification may have the effect of encouraging others to avoid compliance with the ordinance.
- Granting unwarranted variances has the long-term effect of shifting zoning policy making to the ZBA and away from elected officials.

# Decision Principles

Section 505.C standards for review of a variance

- 1.** That the restrictions of the Township Zoning Ordinance would unreasonably prevent the owner from using the property for a permitted use.
- 2.** That the variance would do substantial justice to the applicant and a lesser relaxation than that requested would not give substantial relief to the owner of the property.
- 3.** That the request is due to the unique circumstances of the property.
- 4.** That the alleged hardship has not been created by a property owner.
- 5.** The difficulty shall not be deemed solely economic.

Following review and consideration of the above and in order to grant a variance, the Board of Appeals:

1. Shall find that the reasons set forth in the application and as explained above justify the granting of the variance and that it is the minimum variance that will make possible the reasonable use of the land, building or structure.
2. Shall further find that the granting of the variance will be in harmony with the intent of this ordinance and will not be injurious to the neighborhood or otherwise be detrimental to the public interest.
3. The ZBA shall not approve an application for a variance unless it has found positively that a practical difficulty exists under the five preceding criteria.
4. If any criteria does not apply, the Zoning Board of Appeals shall justify why it does not apply. Use variances are strictly prohibited.
5. A variance shall not permit the establishment, within any district, of any use, which is not permitted by right, special use permit or by a temporary land use.

# Decision Principles

*The next time you feel badly about turning down a request...*

Think about:

- The hundreds of property owners who *did* comply with the ordinance.
- The amount of *time and effort* the drafters of the ordinance spent in developing this language.
- The *effectiveness* of your ordinance if it is commonly known that all you need to do is ask for a variance and it will be granted.



# Making a Motion

- ZBA motions should contain the following information:
  - Sections of the Ordinance that will be waived/modified.
  - The specific modification to be allowed, i.e. a reduction in a 20-foot setback to 15 feet.
  - The findings of fact which resulted in the approval or denial of the variance request.

# Pre-Meeting: Site Visits

- Permission to enter site
- Avoid “ex parte” contacts
- What to look for...
- Review Materials
  - Planner and other professional reports
  - Application and plans
  - Ordinance requirements

## During Meeting:

- Follow a consistent order and structure
- Ensure Applicant and Staff provide complete information
- Deliberate properly
- Document decisions

## During and Post Meeting:

### Documentation

#### **Record Keeping**

- Minutes
- Staff notes
- Application/materials
- Site plan
- Correspondence
- Affidavits of mailing/publication

#### **Post-Decision Documentation:**

- Signed site plans
- Copy of minutes and approval/denial letters to applicant

# Deliberation

## **Rules for Speakers**

- Degree of formality
- Comments through the Chair
- Limit speaking time
- Limit number of times speaking
- Spokesperson if necessary

## **Rules for Decision Makers**

- Comments through the Chair
- Deliberate in the open
- Express opinions
- Use ordinance standards for decisions

# Role of Chair

- Announce each agenda item
- Outline the rules of the hearing
- Facilitate meeting and maintain order
- Ensure that courtesy is maintained and that speakers are not interrupted
- Understand parliamentary procedures

- You CAN'T avoid litigation
- You CAN manage risk & liability exposure by:
  - Using consistent rules and procedures
  - Treating everyone fairly and consistently
  - Avoiding conflicts of interest
  - Keeping accurate and complete records

Questions?