

Preface

This brochure is intended to assist a citizen attending a public hearing of the Ogle County Zoning Board of Appeals (ZBA) as an applicant, a witness, an objector, 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 ZBA hearings are open to the public, this brochure will also clarify the roles 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.”*

The Citizen’s Role

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.”

*Smith, Herbert. *The Citizen’s Guide to Zoning*

The Zoning Board of Appeals

The Zoning Board of Appeals (ZBA) is a five 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 as special uses in the zoning ordinance;
- 3) a request for relief from specific requirements of the zoning ordinance through variation;
- 4) an appeal of a determination made by the Zoning Administrator.

In the case of a variation or an appeal, the ZBA makes the final decision on the matter; however, in all other instances the ZBA makes a recommendation to the County Board for their final consideration.

Before the Hearing

1) A citizen who wishes to address one of the above issues may obtain the appropriate application form at the Planning & Zoning Department and pay a filing fee.

2) After the case is set for hearing before the ZBA, the applicant will be notified of the time and place of the hearing.

3) The applicant/objector may inquire for information at the Planning & Zoning Department. The staff may not give legal advice, but provides a public information service. The office maintains records on all zoning and subdivision activity and aerial photographs of all tracts of land in Ogle County. In addition, zoning and subdivision 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 reason 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. The ZBA holds hearings basically as need, with a maximum of five hearings per night. Contact the Planning & Zoning Department to find the 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 Ogle County ZBA:

A) Staff states purpose of hearing, acknowledge publication, posting of property and written notifications; acknowledge comments received from the County departments and other public agencies.

B) Presentation of evidence by the petitioner or designated representative(s).
-Opening statements.
-Testimony by petitioner’s witness(es).
-Questioning/cross-examination of each witness by the members of the Board.
-Questioning/cross-examination of each witness by any interested party that has filed an appearance with the Board office no later than five (5) business days prior to the hearing. **Note: This is an opportunity only to question the witness, not to make statements or offer personal testimony.**
-Close of petitioner’s evidence.

C) Presentation of evidence by the objectors or their representative(s).
-Opening statements.
-Testimony by objector’s witness(es).
-Questioning/cross-examination of each witness by the members of the Board.
-Questioning/cross-examination of each witness by any interested party that has filed an appearance with the Board office no later than five (5) business days prior to the hearing. **Note: This is an opportunity only to question the witness, not to make statements or offer personal testimony.**
-Close of petitioner’s evidence.

D) Presentation of statements by any person attending the hearing.

E) Closing statements and rebuttal by the petitioner or designated representative, if desired.

F) Closing statements and rebuttal by the objectors or designated representative, if desired.

G) Closing of public testimony.

H) Findings of fact by the Board.

I) Recommendation or decision (where the Board’s action constitutes a final administrative decision) by the 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 proceedings is required by law; therefore each person asking questions or giving testimony must give his/her complete name and address. 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 whomever has the floor. Any interested parties should avoid talking until the appointed time for questions.

Suggested Reference Resources

Blair, Frederick H., Jr., *The Zoning Board Manual* (American Planning Association, 1984)

Forest, Clyde W., *County Growth Management Regulation* (University of Illinois, 1979)

Ogle County Amendatory Zoning Ordinance (1996)

Ogle County Amendatory Comprehensive Plan (1996)

Smith, Herbert, *The Citizen’s Guide to Planning* (American Planning Association, 1979)

Smith, Herbert, *The Citizen’s Guide to Zoning* (American Planning Association, 1983)

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 meets all the standards. The objector must prove why the applicant's case does not 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:

No special use shall be recommended by the ZBA unless such Board shall find:

1. That the proposed special use will not be unreasonably detrimental to the value of other property in the neighborhood in which it is to be located or the public health, safety, morals, comfort or general welfare at large.

2. That the location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to:

- a. The location, nature and height of building, structures, walls and fences on the site; and,
- b. The nature and extent of proposed landscaping and screening on the proposed site.

3. That off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations.

4. That adequate utilities, ingress/egress to the site, access roads, drainage and other such necessary facilities have been or will be provided.

5. That the proposed use can be operated in a manner that is not detrimental to the permitted developments and uses in the zoning district; can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area; and is deemed essential or desirable to preserve and promote the public health, safety and general welfare of Ogle County.

6. That the proposed special use complies with all provisions of the applicable district regulations.

Standards for Variations:

The ZBA shall not recommend that the County Board vary the regulations of this Ordinance unless it shall make findings based upon the evidence presented to it in each specific case that, 1) The plight of the owner is due to unique circumstances; and, 2) The variation, if granted, will not alter the essential character of the locality.

In determining whether the strict application of the Zoning Ordinance creates practical difficulties for, or imposes a particular hardship on, an applicant for a variation, the Board shall consider the extent to which the following facts have been established by the evidence:

1. The particular physical surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;

2. The conditions upon which the petition for a variation are based unique and would not be applicable, generally, to other property within the same zoning classification;

3. The purpose of the variation is not based exclusively upon a desire to obtain a higher financial return on the property;

4. The alleged difficulty or hardship has not been created by any person presently having an interest in the property;

5. The granting of the variation will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located; and

6. The proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

Standards for Map Amendments:

The ZBA considers the following in making recommendations to the County Board regarding map amendments:

1. That the proposed amendment will allow development that is compatible with existing uses and zoning of nearby property.

2. That the County of Ogle and other service providers will be able to provide adequate public facilities and services to the property (including, but not necessarily limited to, schools, police and fire protection, roads and highways, water supply and sewage disposal), while maintaining adequate public facilities and levels of service to existing development.

3. That the proposed amendment will not result in significant adverse impacts on other property in the vicinity of the subject site or on the environment, including air, noise, stormwater management, wildlife and natural resources.

4. That the subject property is suitable for the proposed zoning classification.

5. That the proposed zoning classification is consistent with the trend of development, if any, in the general area of the subject property including changes, if any, which have taken place since the day the property in question was placed in its present zoning classification.

6. That the proposed amendment is consistent with the public interest and not solely for the interest of the applicant, giving due consideration to the stated purpose and intent of the Amendatory Zoning Ordinance as set forth in Division 1 therein, the Land Evaluation and Site Assessment (LESA) findings (if applicable), and the recommendation(s) of the Ogle County Regional Planning Commission with respect to the *Ogle County Amendatory Comprehensive Plan*.

In addition to the standards contained herein, the Illinois courts have established additional factors (i.e. "The LaSalle Factors") that should be given consideration in all amendment (rezoning) cases, as follows:

- The existing uses and zoning of nearby property.
- The extent to which property values are diminished by the particular zoning restrictions.
- The extent to which limitation or destruction of property

values of plaintiff promotes the general health, safety and welfare.

-The relative gain to the public as compared to the hardship imposed upon plaintiff.

-The suitability of the particular property for the purpose for which it is now zoned.

-The length of time that the property has been vacant as zoned considered in the context of land development in the area in which the property is located.

-The care with which the community has undertaken to plan its land use development.

-The evidence or lack of evidence of community need for the use proposed by the property owner.

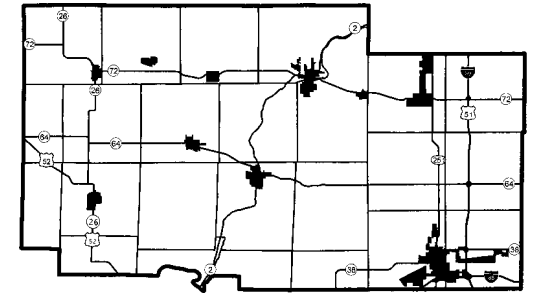
Presenting Testimony

Be clear and concise in presenting evidence and testimony. Testimony supported by facts 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 you 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 evidence since such an ordinance may not be applicable to the specifics of the present case.

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 to be a brief guide to the Zoning Board of Appeals and should not be relied upon for a thorough understanding of the hearing procedure. Official documents may be obtained at the Planning & Zoning Department, but an attorney should be consulted for legal advice.

Citizen's Guide to the Zoning Board of Appeals



Ogle County, Illinois

Note: This brochure incorporates new standards for map amendments and special use permits that were adopted by the Ogle County Board May 20, 2003. These new standards will be implemented by the Zoning Board of Appeals beginning July 24, 2003.

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