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Michigan Township Zoning Boards of Appeals Members' Perceptions of Their Authority

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THE CARL AND WINIFRED LEE HONORS COLLEGE

CERTIFICATE OF ORAL EXAMINATION

Mark Magyar, having been admitted to the Carl and Winifred Lee Honors College in Fall 1999 successfully presented the Lee Honors College Thesis on April 23, 2003.

The title of the paper is:

"Michigan Township Zoning Boards of Appeals Members' Perceptions of their Authority"

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Michigan Township Zoning Boards of Appeals Members' Perceptions of Their Authority

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Dr. Susan Hoffmann, Faculty Chair

Carl and Winifred Lee Honors College

Honors Thesis

04/23/03

Michigan Township Zoning Boards of Appeals Members' Perceptions of Their Authority

Mark J. Magyar, Western Michigan University

Executive Summary

With the following investigation I seek to answer the questions: How aligned are the perceptions of Michigan township zoning boards of appeals (ZBAs) members' regarding their authorities with the authorities expressly and implicitly prescribed for them by state statute? If they are not aligned, do ZBA members need further education in the statute? ZBA members are not formally educated in the statute but are guided by secondary sources. While these sources are crucial to the proper administration of ZBAs' objectives, there is often an element of bias in interpretation to varying degrees. I want to determine whether or not education in the statute is needed for ZBA members so that they may make their own interpretations of the law, thus enabling them to better assess the interpretations they encounter in their guiding sources instead of simply accepting them.

With the consultation of two attorneys, I constructed a questionnaire comprised of questions relating to the basic functions of ZBA members. Some of the questions had factual answers while others did not; the latter type questioned participants' interpretations of implicit concepts of the law. After receiving the completed questionnaires, I tabulated the responses and performed an analysis of the results.

I was not surprised to find that the respondents' correctly knew or made good interpretations to many of the questions. As was also expected, respondents had difficulty with certain major concepts. Respondents' answers to questions in three broad categories resulted in my need to address their implications. These categories were: Use v. nonuse variances, the perception that variances should be rarely granted, and certain procedural regulations.

After conducting an analysis of the questions and their responses as well as addressing the implications to the three categories listed above, I concluded that ZBA members do in fact need some form of education that deals directly with the statute. While secondary sources were offered as possibly influencing ZBA members in their decisions, I was not attempting to answer this question. Secondary sources were offered merely to illustrate that ZBA members' perceptions of their authorities may be influenced by sources other than the statute. The main concern is ZBA members' knowledge of the statute. So, regardless of where their influence comes from, the conclusion that ZBA members need education in the statute is a direct result of the analysis of their responses to the questionnaire.

INTRODUCTION

Township zoning boards of appeals members in Michigan are typically average citizens with a sense of civic duty to see to the proper administration of the zoning ordinance within their community. There are no formal educational requirements to attain a seat upon a township zoning board of appeals (ZBA); however, ZBA decisions are usually quite high in impact, at least to the citizens whose appeals are on the agenda of the ZBA and especially when a variance is the issue at hand. The nature of the ZBA is quasi-judicial in that it involves the interpretation and implementation of the legislative intent of zoning regulations. The authority to make such interpretative, citizen-impacting decisions is granted to ZBAs by state statute.

The question that arises is: with no formal education or training required to act as a ZBA member, how aligned are ZBA members' perceptions of their authority (mainly regarding the granting of variances) with the authority expressly and implicitly granted to them by state statute? ZBAs do in fact have sources of information aside from formal education and training. Zoning ordinances, township attorneys, associations such as the Michigan Township Association (MTA) and their publications, as well as others, serve in various ways to guide ZBAs in their decisions. Are these sources, however, proper alternatives to education regarding the statute, the authority on ZBA powers that cannot be superseded by any of the aforementioned sources? Does the influence of these sources coincide with the prescriptions made by the statute? The following investigation seeks to examine ZBA members' perceptions of their legal authority to identify whether there is need for further education in their duties.

BACKGROUND

Despite the clear need for zoning in America's late industrial society, property rights advocates strongly resisted early attempts to control the location of buildings and construction and the debate remains unsettled. Property rights considerations continue to form the greatest

challenge to the legality of zoning ordinances and regulations (MTA, 2000). Since the issue has been so controversial, a number of zoning enabling acts have been implemented to ensure the legality of zoning practices. There are six enabling acts that permit townships, cities, villages, and counties to undertake planning and zoning in Michigan. Townships receive their authority under the Township Planning Act (TPA) and the Township Zoning Act (TZA).

Township Planning & Zoning Enabling Acts

The TPA and the TZA are referred to as enabling acts and they allow townships to perform planning and zoning functions. Townships may enjoy full advantage of the tools available to them under these state statutes, but must be mindful not to abuse or exceed that authority (MTA, 2000).

The TPA (Public Act 168, 1959) authorizes townships to plan, create a planning commission, and regulate and subdivide land. Its purposes are specified in the Michigan Compiled Laws under 125.322, and include the following:

- a.) promote public health, safety and general welfare;
- b.) encourage the use of resources in accordance with their character and adaptability;
- c.) avoid overcrowding land by buildings or people;
- d.) lessen congestion on public roads and streets;
- e.) facilitate a transportation system, sewage disposal, safe and adequate water supply, recreation and other public improvements, and
- f.) consider the township's character and suitability for particular uses

(MTA, 2000) (Michigan Compiled Laws [MCL] 125.322).

The TZA (Public Act 184, 1943) authorizes townships to zone. It permits the township board to:

- a.) establish zoning districts within which the proper use of land and natural resources may be encouraged or regulated by the ordinance;
 - b.) adopt provisions for those districts designating the district's location and size, allowable uses, minimum open spaces and sanitary, safety and protective requirements;
 - c.) adopt provisions for those districts designating the maximum number of families that may be housed in dwellings, buildings and structures, including tents and trailer coaches, that are erected or altered, and
 - d.) designate the use of certain state licensed residential facilities
- (MTA, 2000) (MCL 125.271).

A limitation prescribed by the TZA is that the township cannot create a zoning ordinance provision or make a zoning decision that has “the effect of totally prohibiting the establishment of a land use” (MTA, 2000) (MCL 125.279a). Furthermore, townships are required to consider all land uses when the following three conditions apply:

- 1.) the need for that use can be demonstrated,
- 2.) the location proposed for the use is appropriate and
- 3.) the use itself is legal

(MTA, 2000. p. 27).

ZBA Overview

The TZA dictates that a township choosing to exercise the authority granted to it by the act must appoint a township zoning board of appeals. When disputes arise concerning the enforcement of the zoning ordinance, the ZBA is the mediator, taking into account the spirit and intent of the zoning regulations. No other township authority has the power to alter the requirements of the zoning ordinance. Unless caution is used, the ordinance could become amended or have its intent violated by the decisions of the ZBA. The ZBA is to function solely

as a provider of relief for situations in which conformity with the zoning ordinance is either impossible or represents extreme difficulty (MTA, 2000).

ZBA Membership

The TZA defines membership provisions for the ZBA. When a township has a population of 5,000 people or more, the ZBA must have at least five members. A population of less than 5,000 people requires at least three regular members. The first regular member of the ZBA must be a member of the township zoning board or planning commission and the remaining members must be appointed by electors of the township (the township board) and be representative of the population's distribution and interests. At no time may a township employee or contractor serve as a ZBA member (MCL 125.288(1)).

The term for a ZBA member is three years unless the member is serving because of his/her membership on the zoning board, planning commission, or township board in which case the term is limited to the period of other membership. Appointments of less than three years are possible as well to provide for staggered terms. A successor cannot be appointed more than a month after the expiration of a predecessor's term and vacancies for unexpired terms must be filled for the remainder of the term (MTA, 2000).

ZBA members may be removed for nonperformance of duty or misconduct while in office. This removal is executed by the township board and requires written charges and a public hearing. A member must disqualify him/herself from a vote if there is a conflict of interest present otherwise it is grounds for misconduct (MCL 125.288(4)).

ZBA Meetings

ZBA meetings can be called by the chairperson and at any time as long as these times are specified in its rules of procedure. Oaths may be administered and witnesses may be compelled to attend by the chairperson. All ZBA meetings must be made public and public records of the

meeting must be kept and filed with the township clerk (MCL 125.289). Business cannot be conducted by the ZBA if there is not a majority of the regular members present (MCL 125.288(6)).

The decisions arrived upon at meetings are regulated. A majority concurring vote is necessary to reverse a requirement, decision, order, or determination of an administrative official or body. The same requirement applies if a ZBA is to decide in favor of an applicant in any matter that requires the ZBA to pass under, or to effect any variation in, an ordinance adopted under the TZA (MCL 125.290). Further, "...if a ZBA motion to approve a request fails, then another motion to deny must be approved by the majority of the ZBA membership to decide the matter. Otherwise, the matter is still pending" (MTA, p. 75).

ZBA Functions & Responsibilities

The ZBA acts on all questions concerning the zoning ordinance and its administration. Interpreting the zoning map is a function of the ZBA as well and the ZBA may establish rules for its procedures. "The ZBA must hear and decide appeals from and review any order, requirements, decision or determination made by an administrative official or body charged with enforcing an ordinance adopted pursuant to the TZA." Furthermore, "the appeal may be taken by any person aggrieved or by any officer, department, board or bureau of the township, county or state and the ZBA must state the grounds of each determination" (MTA, 2000. p. 75; MCL 125.290). Finally, a ZBA may decide upon a special land use or planned unit development, but such provision must be made in the zoning ordinance (MTA, 2000).

Variances – A Major ZBA Function

One of the most important functions of a township's ZBA is the consideration of variances. According to Hotaling and Moffat (1986), a variance is "permission to build on land in violation of the requirements of the zoning ordinance" (p. 191). A nonuse variance is

requested when the requested use is proper for the requested zone but does not conform to dimensional requirements, (e.g.) a house in a residential zone requested 2ft. taller than allowed by the zoning ordinance. Alternatively, a use variance is requested when the requested use of land is not even a proper use for the particular desired zone, (e.g.) a sports bar in a residential zone. Only the ZBA may hear and grant variance applications and the applicant must show that strict compliance with the zoning ordinance presents “practical difficulty” [for nonuse variances] or “unnecessary hardship” [for use variances] (p. 191).

“Practical difficulty” refers to the ill effect that requirements for lot area, width and coverage, building height and setback, yards, etc. have on the use of land. “Such ‘difficulties’ may be caused by odd-shaped lots, onsite natural features such as water, rock outcrops, precipitous topography, special vegetation, or the location of structures according to earlier regulations or zoning,” but even when such circumstances apply, any variance granted should be the minimum necessary to accommodate the requested development (Hotaling & Moffat, 1986, p. 191). The existence of practical difficulty does not guarantee the granting of a variance; the ZBA may decide to require a change in the requested development in order to comply with the zoning ordinance.

“‘Unnecessary hardship’ may refer to the modification of a permitted use but excludes uses not permitted by the ordinance...Modification of a permitted use may include the expansion of the use to include other permitted uses as accessory to the permitted use, the combination of two principal permitted uses, or any other modification that would still keep the intent and purpose of the variance within the limit of permitted uses” (p. 191). As one can see, township ZBAs are expected to, even when granting variances, keep the zoning ordinance in mind first and foremost.

There are certain considerations that must be kept in mind when examining practical difficulty and unnecessary hardship issues. “Experience and case law indicate that ‘practical difficulty’ and ‘unnecessary hardship’ include the following considerations:”

- 1.) The land cannot be reasonably built upon in conformance with the zoning ordinance.
- 2.) A hardship may not be self-imposed.
- 3.) Unique circumstances must exist.
- 4.) A variance should not alter the character of a neighborhood. (p. 191).

Once all considerations are taken into account and a ZBA decides to grant a variance, the variance may not include the exact stipulations requested by the applicant. The ZBA may impose conditions on a granted variance; “The conditions must be reasonable and designed to ensure the adequacy of public facilities, services, the protection of the environment, and compatibility with adjoining uses” (MCL 125.293, p. 192). All conditions imposed by the ZBA must be recorded and no changes to them are permitted without consent of both the landowner and the ZBA.

To conclude this examination of variances, let us examine the MTA’s “A note on granting variances.” “The ZBA should grant a variance from the township’s zoning laws only after the property in question meets stringent tests described in the zoning ordinance. Only the rarest situations should qualify for relief from the zoning ordinance’s requirements because the zoning regulations are ultimately intended to protect the *general* health, safety and welfare of the township...Each time a variance from those regulations is granted without meeting the prescribed tests, it erodes the integrity of the township’s zoning regulations and their ability to consistently protect all township residents” (MTA, 2000, p. 76).

Conclusions

The background presented allows for a better understanding of the administration of ZBAs. The information also provides some insight as to how other sources besides statute may guide/influence ZBAs. The most heavily cited source, the MTA's *Guide to Planning & Zoning* illustrates this point in that it is a publication that is distributed and serves to guide ZBAs with their duties. Hotaling and Moffat's *Michigan Townships Planning and Zoning Handbook* also serves this purpose. These documents present a great deal of factual information to assist ZBAs in their duties, often citing the Michigan Compiled Laws, but they also very obviously have their "own voice."

These voices are just two of the influences on ZBAs that contribute to the question posed in the introduction: will the influence of these other sources always coincide with the prescriptions made by the statute? If biases are in fact inherent in secondary sources, ZBA members must have the benefit of education in the statute to empower them in making their own interpretations. This is not to say that secondary sources are not useful, they certainly are, but a ZBA member is forced to accept the interpretations of these sources if they have no basis to compare to and make their own.

METHOD

To measure individual ZBA members' perceptions of their authority, a questionnaire was constructed and approved by Western Michigan University's (WMU) Human Subjects Institutional Review Board (HSIRB). This type of interviewing is referred to as survey research which has four key elements: 1) Writing the questions, 2) Drawing the Sample, 3) Asking the questions, and 4) Analyzing the results or interpreting the responses.

Writing the Questions

I constructed the questionnaire to obtain the participants' responses to questions that relate to the basic duties and authorities of ZBA members. I consulted two attorneys who assisted in drafting the questions. One of the attorneys currently represents one of the townships that participated in this study and formerly represented another participating township. The other attorney serves as counsel for the MTA.

The questionnaire is included as Appendix A. A combination of open-ended and close-ended questions comprised the questionnaire. Furthermore, some questions were questions of fact, with correct and incorrect answers. Others dealt with the participants' opinions or feelings on certain matters. This combination of fact vs. interpretive question type was used because it parallels the nature of most statutes. Laws often spell-out certain regulations while leaving other concepts open to interpretation. When assessing ZBA members' perception of authority as granted by state statute, it is important not only to assess their knowledge of hard-and-fast regulations, but also obtain a sense of their interpretations of the implicit concepts of the law.

Drawing the Sample

Drawing the sample refers to how the participants of the research are selected. This investigation attempts to generalize, from a sample of participants, ZBA members' perceptions of their authority. Therefore, the population I am attempting to generalize about, since I am dealing with Michigan state statute, is necessarily all Michigan Township zoning boards of appeals members. Ideally, every member of this population would be a participant. Since this was neither time nor cost effective, a sample of this population was drawn.

With the consultation of the attorney who is counsel for the MTA, it was decided that a Southwestern Michigan tier sample would be useful. ZBA members of twenty-two townships in Southwestern Michigan were designated as the sample; members of eighteen of the townships

ultimately participated. Not all members of the twenty-two designated townships' ZBAs can actually be considered the sample. Two townships corresponded by informing that the townships did not have ZBAs, thus no ZBA members (these townships were viewed as ineligible as there were no members to include in the sample). Appendix B is a Michigan map that is sectioned by county and township. The counties containing the townships whose members are the sample are indicated by outline. Outlining a county does not mean that every township ZBA and its members were part of the sample; it means that at least one township's ZBA members in that county were sampled.

The sample used for this research is described as a non-probability sample because not every unit of the population (all Michigan Township ZBA members) had an equal opportunity to participate. Only those members of the twenty townships that were offered the questionnaire had the opportunity to participate. Generally it is believed that non-probability samples such as this should not be used to generalize about the population as a whole because it lacks the element of randomness and results of the sample may not be representative of the population; however, I contend that this is an exception under the circumstances as there is no reason to believe that my sample is not representative.

For my research, a regional tier of Michigan ZBA members is used as the sample. Members of ZBAs in other regions of Michigan receive no additional education in performing their duties that is not available to my sample and are similarly guided by ordinances, the MTA, attorneys, and other publications. Having the same sources of guidance and no formal education, ZBA members of all Michigan regions are on a level playing field.

Asking the Questions

I visited the members of one township ZBA at one of their meetings to deliver the questionnaires and mailed them to the other nineteen. The purpose of the visit was to make sure

ZBA members clearly understood the questionnaire before sending the rest in the mail. The ZBA members I visited did not fill out the questionnaires on site. I explained the purpose of my research to them and allowed them to take the questionnaires when they left the meeting. The questionnaires were returned promptly by mail without any indication that the questions were unclear, so I sent the rest to the remaining townships without change.

Six envelopes which included a cover letter describing the research and requesting participation, the questionnaire, and a self-addressed, stamped envelope were placed in a larger envelope and mailed to the township supervisors of each of the townships whose ZBA members were part of the sample. The cover letter also served as the consent form. The six envelopes were to be distributed to the ZBA members, filled out, and returned upon completion. Not all six questionnaires were to be used per township. All of the ZBAs in this sample have either three or five members. By sending six questionnaires to each board, there would always be enough to go around to every regular member with at least one extra.

Typically, mail surveys have the lowest response rate of the major techniques. Face-to-face and telephone interviews usually generate higher response rates. The usual relationship between response rates and techniques used was evident in this study. Of the members of the eighteen participating townships, the ones that were visited directly returned the most questionnaires. Normally, interviewing techniques that result in higher response rates are also more expensive and time consuming as well; there is a tradeoff. This was the case for my research and the mail survey was the most cost-effective method.

ANALYSIS

Response Rate

The response rate is the percentage of the sample that responds. At least one member of a township's ZBA must have completed and returned the questionnaire for that township to be

considered as having a participating member. As stated earlier, township ZBAs consist of 3-5 members depending on the township's population. This means that the total number of individuals in the sample could range from sixty people (20×3 if all twenty ZBAs had only three members) to 100 people (20×5 if all had five members). Of the twenty townships, 15 had five-member ZBAs and five had three-member boards, resulting in 90 possible participants from the sample. Forty-four ZBA members of eighteen townships ZBAs ultimately responded, giving this survey research a response rate of 48.9% ($44/90$). The authors of *An Introduction to Survey Research, Polling, and Data Analysis* offer the following information: "Response rates for mail questionnaires tend to be between 10 and 50%" (Weisberg, Krosnick, & Bowen, 1996). As one can see, a response rate of half the possible sample when dealing with a mail survey is quite good and I considered my response rate a success.

Tabulating the Responses

To tabulate the responses from the questionnaire, the eighteen townships that had participating members were listed horizontally across the top of a page. The question number and possible answers to the question were listed vertically along the left side of the page from top to bottom. For questions that were close-ended, participants' responses were recorded in the table with a mark indicating the answer the respondent chose. For questions that were open-ended, responses were recorded directly into the table as they appeared on the questionnaire or abbreviated. In these cases, no possible answers were listed vertically; only the question number. Although the results of the responses are not reported by members of individual townships in this study, rather aggregated across members of all participating townships for the sake of anonymity, the tabulation was done in this manner for my reference.

Tables 1.1 and 1.2 are illustrations of how the tabulation was done for a close-ended and an open-ended question. Note that these tables are only for the purpose of illustration and do not represent actual data from the study.

Table 1.1 Close-Ended Question Tabulation

	ZBA 1	ZBA 2	ZBA 3	ZBA 4
Q.1 Y	1	11	1	111
N		1	1	
U	1		1	1

Y = Yes, N = No, U = Unsure

Table 1.2 Open-Ended Question Tabulation

	ZBA 1	ZBA 2	ZBA 3	ZBA 4
Q. 16	13, 2	18, 6, 3	15, 9, 12	20, 13, 1, 7

Once the responses were tabulated by township, they needed to be combined for analysis. This was done by listing the possible answers to questions 1-15 horizontally across the top of a page. The question numbers (1-15) were listed vertically on the left side of the page from top to bottom. The total number of responses to each answer choice for the forty-four participants was recorded in the table for each question 1-15. Since this data is aggregated over all the participating township ZBA members the actual results can be displayed rather than offering a hypothetical table as was done above.

Appendix C is the table that shows the number of responses to each choice for questions 1-15. These totals will also be addressed as I assess each question individually. Note that the chart consists of an “opinion” column to the far right of the table in which six responses are

listed for question number fourteen. Question number fourteen on the questionnaire has no opinion option; only “Grant” and “Deny” options. This particular question was written as a close-ended question but became an open-ended question. This will also be addressed as I analyze each question individually.

A final aspect of the tabulation of responses to address is the reason that only questions 1-15 were aggregated across all the participating ZBAs. Questions 1-15 are pertinent to the central research question. Questions 16-20 are informative questions about the individual members, not on their knowledge or interpretations of administrative questions regarding their duties. The important aspects of questions 16-20 shall be addressed separately after an analysis of questions 1-15 has been conducted.

Analysis of Responses for Individual Questions

As previously stated, the questions on the questionnaire were written in such a way that some had correct answers while others dealt with implicit concepts of the law to measure respondents’ interpretations. For this reason, I shall analyze the individual questions based on this distinction rather than analyzing the questions in order from 1-15.

Questions 1, 2, 5, 7, 9, 10, 11, and 15 had correct and incorrect answers; the questions refer to regulations spelled out by statute or case law (precedents). This is not to imply that ZBA members should always be expected to research or know how to find the answers to all regulations, especially those that are a product of case law and not found explicitly in the statute. An objective answer to a question about a regulation simply refers to an answer that can be found explicitly written and has legal authority.

Objective Questions Analysis

Question one is:

1. Can the Zoning Board of Appeals grant a Use Variance?

Yes

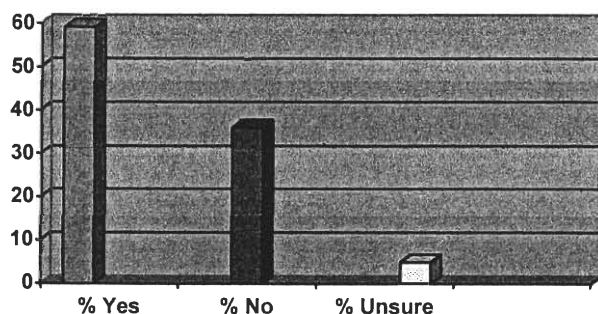
No

Unsure

Of the 44 respondents, 26 (59%) answered “Yes,” 16 (36%) “No,” and 2 (5%) were “Unsure.”

Figure 1.1 is a representation of these responses.

Figure 1.1



N = 44

ZBAs may in fact grant use variances, so “Yes” is the correct answer. MCL 125.293 states “...Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the zoning ordinance, the board of appeals in passing upon appeals may vary or modify any of its rules or provisions...” The unnecessary hardship standard is used for granting a use variance. This concept, on its face, may seem as though it is interpretive rather than objective, however this is not the case. Unnecessary hardship is a term of art, meaning that it does have a specific meaning that has been defined by case law and pertains to use variances.

In *Janssen et al v. Holland Charter Township Zoning Board of Appeals*, the court of appeals upheld the ZBA’s authority to grant a use variance. The unnecessary hardship standard, as pertaining solely to use variances, is defined by rulings in cases such as *Heritage Hill Ass’n*,

Inc. v. City of Grand Rapids and *Nat'l Boatland, Inc v Farmington Hills Zoning Board of Appeals*. Also, in an unpublished opinion in the case *Lemieux v. Ontwa Township* the court stated that "The practical difficulty standard is a lesser standard than the 'unnecessary hardship' standard that must be shown when seeking a use variance."

The fact that responses to question one varied (26 yes, 16 no, 2 unsure) should come as no surprise due to the elaborate measures that must be undertaken to pinpoint the answer. The statute must first be consulted for its language, then, because the language seems loose, case law must be researched. This difficulty in obtaining knowledge of the law is one of the major motivating factors in conducting this study. While the question is objective because the answer has legal authority, coming by the answer is no easy task.

Question two is:

2. If an error committed by the Zoning Administrator results in a house being built too close to the lot line, can a variance be granted?

Yes

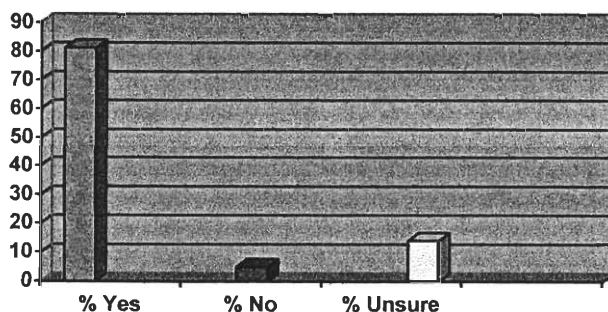
No

Unsure

Of the 44 respondents, 36 (81%) answered "Yes," 2 (5%) "No," and 6 (14%) were "Unsure."

Figure 1.2 is a representation of these responses.

Figure 1.2



N = 44

The correct answer is “yes,” a variance can be granted if an error by the zoning administrator results in a house being built too close to a lot line. There is no language in the zoning statute that either explicitly or implicitly denies the authority of ZBAs to grant variances when the zoning administrator has committed an error. A ZBA may decide within the full range of its authority, even when officials of the township are involved in the matter. MCL 125.290 states that “... (2) The concurring vote of a majority of the members of the township board of appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, or to decide in favor of the applicant any matter upon which the board is required to pass under the ordinance, or to grant a variance...”

Furthermore, case law such as *Lemieux v. Ontwa Township* and *Johnson v. Robinson Township* indicates that an additional consideration in granting a variance is whether the “practical difficulty” arose by actions of the party seeking the variance, a government entity, or the ordinance itself. In *Lemieux v. Ontwa Township* the building inspector had given a permit to place a mobile home in a zone where it was not permitted. The court upheld the variance granted by the ZBA to allow the trailer to remain.

Question five is:

5. Should the Zoning Board of Appeals document in their minutes reasons for granting or denying a variance?

Yes

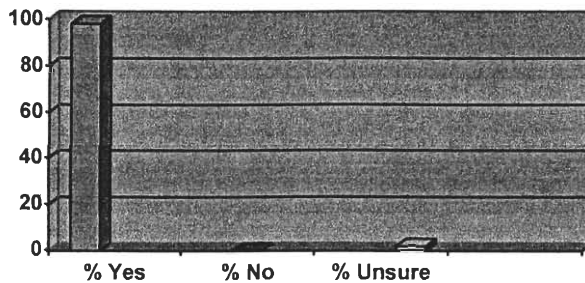
No

Unsure

Of the 44 respondents, 43 (98%) answered “Yes,” 0 “No,” and 1 person (2%) was “Unsure.”

Figure 1.3 is a representation of these responses.

Figure 1.3



N = 44

The correct answer is “Yes,” ZBAs should, in fact must, document in their minutes reasons for granting or denying a variance. MCL 125.290 states “... The township zoning board of appeals shall state the grounds of each determination.” The need for this is crucial because only the record of the board of appeals is reviewed by the circuit court when an appeal of the ZBA decision is brought. If there is no basis for the decision, the case will certainly be sent back to the ZBA on the grounds that there is no record of the ZBA for the circuit court to review.

Question seven is:

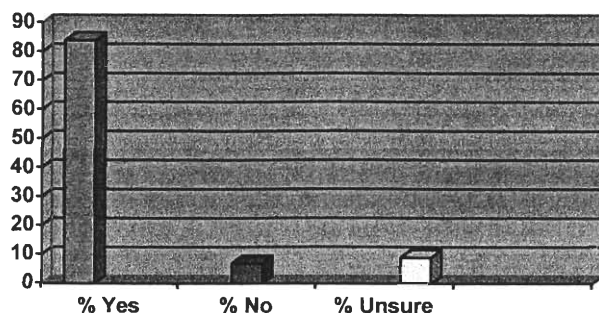
7. Can the Zoning Board of Appeals overturn the decision of the Zoning Administrator?

Yes
No
Unsure

Of the 44 respondents, 37 (84%) answered “Yes,” 3 (7%) “No,” and 4 (9%) were “Unsure.”

Figure 1.4 is a representation of these responses.

Figure 1.4



N = 44

The correct answer is “yes,” ZBAs can overturn the decision of the zoning administrator. This question, while it is different and makes an important distinction between itself and number two, is supported by the same evidence offered for question two. The difference in questions is that, in number two, the township official committed an error while this is not necessarily the case in question seven. In either case, the ZBA’s decision may overrule that of the township official as evidenced by the statutory information offered in question number two’s explanation.

Question nine is:

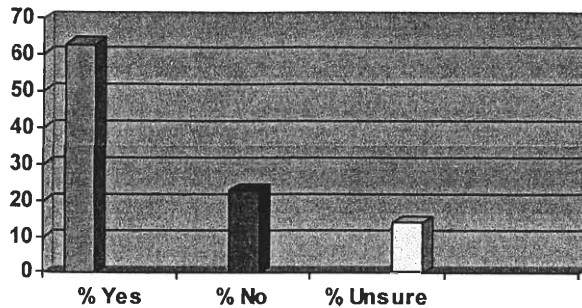
9. Does the Zoning Board of Appeals have different responsibilities in connection with a Use vs. Non Use Variance?

Yes
No
Unsure

Of the 44 respondents, 28 (63%) answered “Yes,” 10 (23%) “No,” and 6 (14%) were “Unsure.”

Figure 1.5 is a representation of these responses.

Figure 1.5



N = 44

The correct answer is “yes,” ZBAs do have different responsibilities when deciding upon a use vs. a nonuse variance. An applicant seeking a use variance must meet a higher standard; an “unnecessary hardship” standard as described in the explanation for question number one. This standard differs from that of “practical difficulty,” the standard required to grant a nonuse variance.

The case entitled *Heritage Hill Ass’n, Inc. v. City of Grand Rapids* states “... (2) Two customary types of variances are use variances and nonuse variances. A use variance, as the name implies, permits uses of land a zoning ordinance otherwise proscribes, while nonuse variances are concerned with changes in a structure’s area, height, setback, and the like...To justify the grant of a nonuse variance there need only be a showing of practical difficulty. It is not necessary, as claimed by the plaintiff, to show unnecessary hardship.” As this case spells-out, there are in fact different standards/responsibilities for the ZBA to consider when deciding on use vs. nonuse variances.

Question ten is:

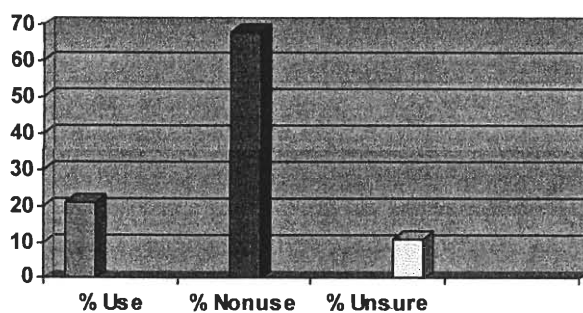
10. If someone wanted to place a garage next to his/her own home for his/her own vehicle closer than what is allowed to the setback lines in a residential zone, would he/she be seeking a Use or a Non Use Variance?

Use
Non Use
Unsure

Of the 44 respondents, 9 (21%) answered “Use,” 30 (68%) “Non Use,” and 5 (11%) were “Unsure.”

Figure 1.6 is a representation of these responses.

Figure 1.6



N = 44

The correct answer for number ten is “Non Use.” This is evidenced by the same case referred to in the explanation for question nine. When a land use conflict is addressed by the ZBA, setback is classified as an issue that should be decided based on practical difficulty, the standard used in deciding on a nonuse variance (Refer to *Heritage Hill Ass’n v. City of Grand Rapids* cited in explanation for question nine.)

Question eleven is:

11. If the decision of the Zoning Board of Appeals were appealed to the Circuit Court, would the entire case be reheard by the Circuit Court or would the Circuit Court only review the record of the Zoning Board of Appeals?

Rehear entire case

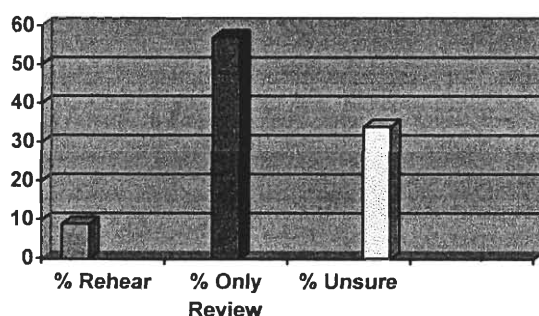
Only review record of Zoning Board of Appeals

Unsure

Of the 44 respondents, 4 (9%) answered “Rehear entire case,” 25 (57%) believed “Only review record of Zoning Board of Appeals,” and 15 (34%) were “Unsure.”

Figure 1.7 is a representation of these responses.

Figure 1.7



N = 44

The correct answer for number eleven is “Only review record of Zoning Board of Appeals,” an appeal to the circuit court will not result in the rehearing of the entire case but a scrutinizing of the ZBA’s record. MCL 125.293a states “... The decision of the board of appeals rendered pursuant to section 23 shall be final. However, a person having an interest affected by the zoning ordinance may appeal to the circuit court. Upon appeal the circuit court shall review the record and decision of the board of appeals...”

Question fifteen is:

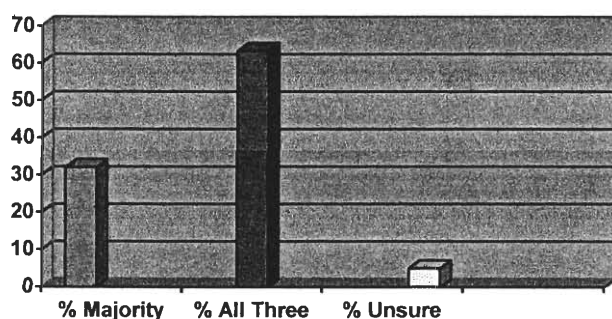
15. On a five member ZBA, only three members are present for a hearing. In order to make a valid decision, can the majority of the quorum provide a decision or does it require all three present members to vote the same way?

Majority of quorum
All three present members
Unsure

Of the 44 respondents, 14 (32%) answered “Majority of quorum,” 28 (63%) believed “All three present members,” and 2 (5%) were “Unsure.”

Figure 1.8 is a representation of these responses.

Figure 1.8



N = 44

The correct answer is “All three present members”; if only three of the regular five members of a ZBA are present, any affirmative decision requires the same vote by all three present members in order for that decision to be valid. MCL 125.290 states “... The concurring vote of a majority of the members of the township board of appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, or to decide in favor of the applicant any matter upon which the board is required to pass under the ordinance or to grant a variance in the ordinance...” If only three of the members are present, the majority of all the members is still three and this is what is needed when a vote is made for a decision to be valid.

Interpretive Question Analysis

Questions 3, 4, 6, 8, 12, 13, and 14 are the questions that were deemed interpretive; questions that did not necessarily have correct or incorrect answers. The questions refer to implicit concepts of the duties of ZBA members. These responses are as important as the responses to the factual questions. Much of what is encountered by ZBA members in real-life circumstances is not defined by statute, leaving an ambiguity to be interpreted.

Question three is:

3. As a general rule, is a variance something that should be rarely granted?

Yes

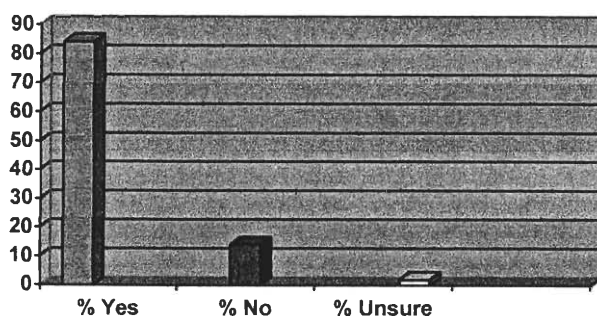
No

Unsure

Of the 44 respondents, 37 (84%) answered “Yes,” 6 (14%) believed “No,” and 1 person (2%) was “Unsure.”

Figure 1.9 is a representation of these responses.

Figure 1.9



N = 44

Nowhere does the statute limit the frequency of granted variances. It simply outlines the process and criteria for performing this ZBA function. Case law then reviews the performance of the ZBA on a case-by-case basis to determine if they abused their discretion. With no hard-

and-fast regulation, why, then, is it that 37 of 44 respondents interpreted the answer to this question as “Yes” a variance should be rarely granted?

A reoccurring aspect of this research has been that ZBAs are possibly influenced by sources other than the statute. As evidenced by the background, the MTA offers guidance on the granting of variances in its 2000 edition of *The Guide to Planning & Zoning*. According to the MTA (2000), “The ZBA should grant a variance from the township’s zoning laws only after the property in question meets stringent tests described in the zoning ordinance. Only the rarest situations should qualify for relief from the zoning ordinance’s requirements because the zoning regulations are ultimately intended to protect the *general* health, safety and welfare of the township” (p. 76). The MTA (2000) goes on to say that “Each time a variance from those regulations is granted without meeting the prescribed tests, it erodes the integrity of the township’s zoning regulations and their ability to consistently protect all township residents” (p. 76).

If this type of publication does indeed influence the attitudes of ZBA members, then the granting of variances will be a rare occurrence. Furthermore, these decisions will be consistently upheld by the courts as long as they have justifiable bases, even if the court would not have reached the same conclusion, as the court sits as an appellate body and not as a court of first impression.

Question four is:

4. If property owners within 300ft. of a requested variance are opposed to granting the variance, should the ZBA deny the variance?

Yes

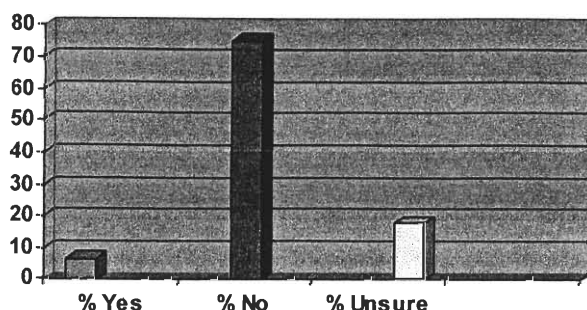
No

Unsure

Of the 44 respondents, 3 (7%) answered “Yes,” 33 (75%) “No,” and 8 (18%) were “Unsure.”

Figure 2.1 is a representation of these responses.

Figure 2.1



N = 44

This question is close to an objective question because the issue of residents within 300ft. of a requested land use variance is addressed in the statute; however, there is one important distinction that results in the question being interpretive. The statute prescribes that those property owners within 300ft. of the requested variance are entitled to notice of the meeting at which the decision on granting the variance is to be made. However, this does not give the property owners the power to veto an applicant's request for a variance. Therefore, a ZBA is within its authority to grant a variance when property owners are opposed to the variance; the weight applied to the property owner's dissent is a matter of ZBA discretion.

Question six is:

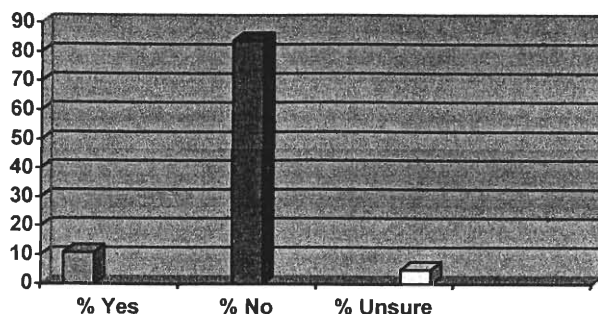
6. If the "undue hardship" or "practical difficulty" is caused by the property owner, should a variance be granted?

Yes
No
Unsure

Of the 44 respondents, 5 (11%) answered "Yes," 37 (84%) "No," and 2 (5%) were "Unsure."

Figure 2.2 is a representation of these responses.

Figure 2.2



N = 44

Recall from the explanation to question two that one of the considerations when granting a variance is whether the “practical difficulty” was caused by the applicant, municipal official, or the ordinance. One particular publication that serves to guide ZBAs in their decisions seems to make this consideration (whether or not the applicant caused the need for a variance) a mandate. In the background section of this investigation, Hotaling and Moffat prescribe criteria for assessing a variance consideration in their 1986 edition of *Michigan Townships Planning and Zoning Handbook*.

The authors of this handbook list four major criteria to be addressed when deciding on variances:

- 1.) The land cannot be reasonably built upon in conformance with the zoning ordinance.
- 2.) A hardship may not be self-imposed.
- 3.) Unique circumstances must exist.
- 4.) A variance should not alter the character of a neighborhood.

Notice that the second of these criteria states “A hardship may not be self-imposed.” This, as we know from case law, should be considered by ZBAs; however, the ZBA is within its authority to grant a variance for an applicant even when the applicant causes the need for the variance. The punitive responses to this question, 37 of 44 responding that a variance should not be granted if

the land use conflict is caused by the applicant, indicates that ZBAs are possibly influenced by sources such as the above noted handbook.

Question eight is:

8. If a particular use is not provided for in the zoning ordinance, is it the duty of the Zoning Board of Appeals to place that use in a specific zone or class?

Yes

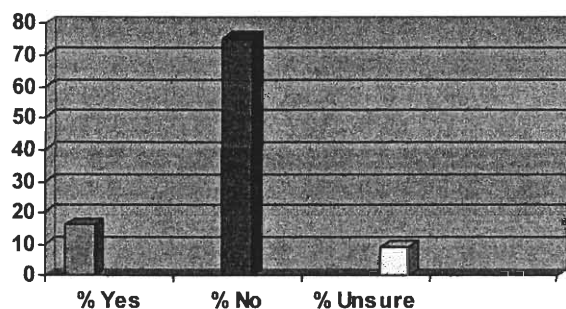
No

Unsure

Of the 44 respondents, 7 (16%) answered “Yes,” 33 (75%) “No,” and 4 (9%) were “Unsure.”

Figure 2.3 is a representation of these responses.

Figure 2.3



N = 44

Some ordinances prescribe whose duty it is to place a use in a specific zone when the zoning ordinance is silent as to that use. However, if the ordinance does not dictate who makes the decision, the zoning administrator would be the first person charged with that responsibility. His decisions can be appealed to the zoning board of appeals.

Question twelve is:

12. Should the Zoning Board of Appeals grant a variance when the following conditions apply: A.) It is a reasonable use of property, B.) Neighboring properties are not adversely affected, and C.) Strict conformity with the ordinance would result in a significant restriction of the use.

Yes

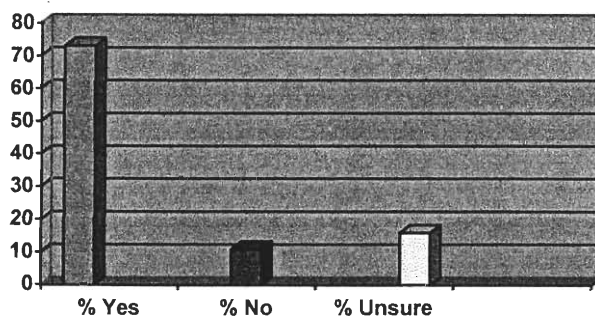
No

Unsure

Of the 44 respondents, 32 (73%) answered “Yes,” 5 (11%) “No,” and 7 (16%) were “Unsure.”

Figure 2.4 is a representation of these responses.

Figure 2.4



N = 44

This question points to the basic conditions to be considered when granting a variance. If these basic conditions are met as indicated in the question and no other information is offered, there should be no reason to deny the variance. The majority of respondents made similar interpretations as indicated by their responses.

Question thirteen is:

13. When making a decision regarding granting a variance, would you insist upon Complying as close as possible with the ordinance, or would you attempt to be flexible to meet township residents' needs?

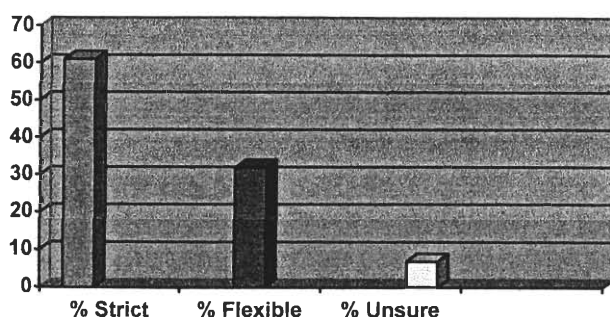
Strict Compliance with Ordinance

Flexible to residents' needs

Of the 44 respondents, 27 (61%) answered “Strict Compliance with Ordinance,” 14 (32%) indicated they would be “Flexible to residents’ needs,” and 3 (7%) were “Unsure.”

Figure 2.5 is a representation of these responses.

Figure 2.5



N = 44

Notice that this question did not have an “Unsure” answer choice. Some respondents wrote in an “Unsure” response while others offered comments on the question that I interpreted as an “Unsure” response. This question was written as a close-ended question but became an open-ended question. The reason is that the question, in my opinion, is flawed and should be discarded as it allows for two appropriate responses (depending on circumstances) and leaves nothing to critique.

Question fourteen is:

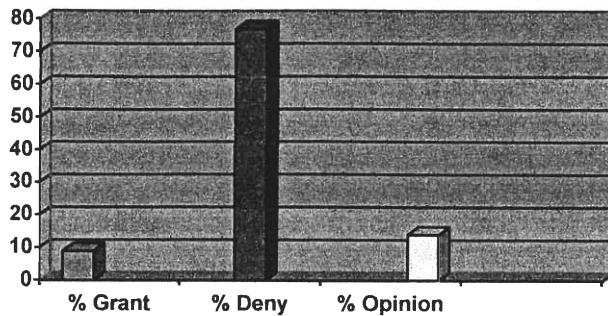
14. If an applicant builds a structure in violation of the ordinance and seeks a variance after the fact, are you more likely to grant the variance or deny the variance?

Grant
Deny

Of the 44 respondents, 4 (9%) answered “Grant,” 34 (77%) “Deny,” and 6 (14%) declined to select an answer but offered their own opinion; resulting in an “Opinion” response.

Figure 2.6 is a representation of these responses.

Figure 2.6



N = 44

Notice that this question did not have an option to offer an opinion; opinions were offered because some respondents felt them necessary. I will address these opinions later in my “Respondents’ Comments” section. Nevertheless, 38 respondents chose one of the two available responses. The majority chose the “Deny” option, apparently recognizing that one consideration when granting variances is who caused the difficulty or hardship. If the property owner does in fact cause the land use conflict, as the question indicates, then that is one consideration that will be to the property owner’s detriment. As I have explained, this does not mean the ZBA cannot grant the variance, but the question asks what is more likely. With only one consideration offered in the question and it being a strike against the applicant, it would be appropriate to respond that a denial of the variance would be more likely. This is not to imply that choosing “Grant” as an answer is incorrect. This is an interpretive question and some respondents may have felt that having to remove or modify an already built structure is a more important consideration.

Implications of Questions 1-15 Responses

The questions I asked addressed basic concepts involved in the duties of ZBA members. It should thus come as no surprise that many of the objective questions were answered correctly

by the majority of respondents. Since all of the concepts are basic to performing ZBA functions, diversity in the answers for even a few of the questions results in interesting implications.

Zoning board of appeals members appeared well-versed in certain objective areas. For example, the vast majority of respondents knew that the ZBA could overturn erroneous decisions of the zoning administrator and that they should document the reasons for their decisions in their meetings' minutes. Furthermore, ZBA members made appropriate interpretations in regard to the presumption of the greater likelihood of denying a variance when a difficulty was created by the variance applicant. In addition, ZBA members appeared to recognize that neighboring property owners did not have veto power when the decision whether to grant a variance was to be made.

Three broad areas in administration and interpretation posed the need for assessment of their implications due to the diversity in respondents' answers. These areas included the distinction between use and nonuse variances, the perception that variances should be rarely granted, and certain procedural regulations.

The respondents seemed to have difficulty differentiating between the concepts of use and nonuse variances. In fact, 18 of 44 respondents (41%) did not realize that they had the authority to grant a use variance (see question 1 analysis) and 16 of 44 respondents (37%) were not aware that a different standard would apply in deciding a use v. nonuse variance request (see question 9 analysis). Also, 14 of 44 (32%) could not identify a use vs. nonuse variance when a specific example of a classic nonuse variance was given in question 10.

There seems to be a perception that a variance should be rarely granted (see question 3 analysis). The integrity of this belief is questionable as a significant percentage of participants are unsure of the distinction between use and nonuse variances and are uncertain as to their responsibilities regarding these two types of variances. A use variance has a more difficult

burden of proof compared to a nonuse variance and if members do not grasp this distinction they may impose the higher burden when considering all variances instead of strictly use variances.

In question twelve, the basic considerations to be addressed when deciding on a variance were offered. Furthermore, the hypothetical basic considerations were written so that all three favored the applicant. Twelve of 44 respondents (27%) did not answer “Yes” that a variance should be granted when the conditions apply. This would appear to coincide with the perception that variances should be rarely granted. A possible implication is that this perception might result in the denial of appropriate variances if the frequency of granting variances is the ultimate condition considered. In other words, if the presented conditions (without knowing any other information) do not warrant a variance, when would these members vote to grant a variance?

The participants appeared somewhat confused regarding basic procedural questions. For question 15, a substantial number of respondents, 16 of 44 (37%), did not realize that they could not make an affirmative decision without a unanimous decision when only three of five regular members are present at a meeting. Nineteen of 44 participants (43%) did not recognize that the circuit court only reviews their record on an appeal.

Other Question Analysis

Questions 16-20 asked about respondents’ behaviors relating to their boards as well as their attitudes. These questions were for my reference. The rationale behind analyzing any of these questions should at least be addressed.

Question sixteen asked respondents how many years they have served as a ZBA member. This information could be cross-tabulated with relevant questions to find out if answering questions correctly had a relationship with length of service; however this was outside the scope of this research.

Question seventeen asked respondents how often their boards meet each year. This information could be cross-tabulated with relevant questions to find out if there is a relationship between the frequency of meetings and responses given.

The responses to question eighteen are important to address because it deals directly with the issue of knowledge in performing ZBA duties.

Question eighteen is:

18. When is the last time you attended a ZBA workshop or seminar?

During the past year

During the past 5 years

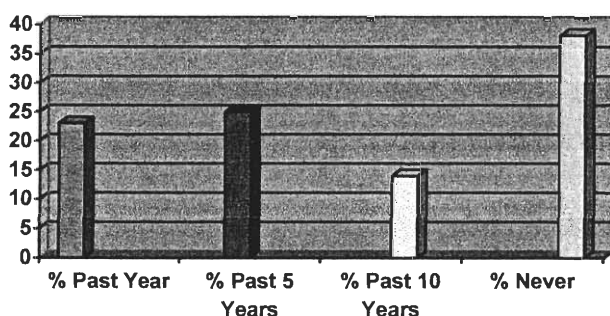
During the past 10 years

Never attended or have not attended within past 10 years

Of the 44 respondents, 10 (23%) answered “During the past year,” 11 (25%) “During the past 5 years,” 6 (14%) “During the past 10 years”, and 17 (38%) indicated that they have “Never attended or have not attended within the past 10 years.”

Figure 2.7 is a representation of these responses.

Figure 2.7



N = 44

While the responses varied markedly, the category with the largest number of responses was that of the “Never attended or have not attended in the last 10 years” variety. This shows a possible deficiency in education on the duties and functions of the position. At the same time,

however, not knowing the content of every workshop or seminar attended by the participants means that I cannot analyze the importance of this education anyway. It could be that these workshops or seminars are also influential sources that have their own voices besides the guidance of statute and case law. Without knowing this, I cannot place a relative importance on attending workshops or seminars, however their guidance is most likely beneficial even if some biases are involved; and least in conveying hard-and-fast regulations.

Question nineteen asked the participants if they felt that attending a workshop or seminar on ZBAs would assist them in better carrying out their duties as a ZBA member. Of the 44 respondents, all but five indicated that “Yes,” workshops or seminars would be of assistance. This is important because this research is exploring the possible need for further education for ZBA members with their duties and the vast majority of the members themselves feel that additional education would be helpful.

Respondents' Comments

Question 20 allowed participants to comment on the questionnaire itself or offer additional information not covered by the questions. Especially noteworthy comments were coded into six broader categories. The six categories of comments include use v. nonuse variances, the rarity of granting variances, the creation of the hardship/difficulty by the applicant, township attorneys' involvement, question number fourteen, and education.

One important note before addressing these opinions deals with the selection of the opinions. Many of the participants' comments that I did not code were insightful interpretations of their duties. Also, many of the comments displayed correct knowledge of statutory requirements. Since I am trying to identify the possible need for further education, I focus mostly, though not entirely, on comments that seemed incorrect or contained flaws in interpretation.

More than one question dealt with the distinction between use and nonuse variances. It should come as no surprise that this distinction incited a number of comments. The comments given are all flawed either by interpretation or knowledge according to the explanations offered for the individual questions. The comments are as follows:

- “Technically no [ZBAs can’t grant use variances], but some use variances have been given and held up in court. This seems like it would override zoning.”
- “The ZBA can but should not grant use variances.”
- Regarding the term “use” in use variance – *“I define “use” as it applies to the permissible use within a given zone. The ZBA does not change zones or grant special exception permits, that’s the planning commission’s job.”*
- “Only in cities and villages [can a use variance be granted], not in rural townships.”
- “Of what is undue hardship in your eyes?”

The second category of opinions concerns the frequency with which variances are granted. Again, more than one question on the questionnaire dealt with the circumstances under which the ZBA should or should not grant a variance. This issue was also addressed by the *Implications of Questions 1-15* section of the analysis. This issue incited a number of comments as well.

When asked questions about whether or not the ZBA should grant variances under given circumstances, many of the participants were uncomfortable answering without more information on all the circumstances. This concern is a responsible and appropriate reason for offering additional comments. It illustrates that members do in fact assess variance applications on a case-by-case basis and not necessarily on the belief that a variance should rarely be granted.

This opinion was not held across the board by participants, however, and one comment was that a variance is “a license to break the law.” This is flawed reasoning because the authority to grant a variance is given to ZBAs by state statute. Assuming that “the law” in this comment

refers to the ordinance, the ordinance cannot limit the powers of ZBAs set forth by statute. In fact, an instance of breaking the law would actually be any ordinance that attempts to restrain the ZBA's statutorily guaranteed powers.

The third category of comments concerned the self-creation of hardship/difficulty by the applicant when seeking the variance. As stated in the explanation for question number six, this is a factor to be considered by ZBAs, but it doesn't necessarily mean the variance cannot be granted. Some of the comments offered by the participants display a belief that the self-creation of hardship/difficulty by an applicant yields an automatic denial of a variance:

- "Self-created hardships are not considered."
- "I need more information on Question number twelve but if the problem is not self-created then yes, the variance should be granted. If it is self-created, no."
- "Yes [to question twelve] but only if the standards are met and the hardship is not self-created."

The fourth category of comments deals with the involvement of township attorneys. Multiple respondents commented that the guidance of attorneys was very important to their functions because they can consult with their attorney when questions regarding regulations and procedures arise. There should certainly be no fault found in these comments as attorneys are educated in the law and seeking their guidance in order to make proper decisions is commendable. However, the questionnaire was drafted to concern central concepts of the duties of ZBAs and it is important that at least these are firmly grasped by board members, rather than relying solely on the guidance of attorneys (they may not always be present).

The fifth category of comments deals with question number fourteen. It was the most commonly addressed. A reoccurring comment was that the question did not give enough information to properly answer and that variance decisions depend on the circumstances of each

case. Again, these comments were appropriate and respectable and I would most certainly agree. Many participants, however, continued to cling to the idea that variances should never be granted when the hardship/difficulty is caused by the property owner.

Finally, the sixth category of comments is that of education. Besides simply answering “Yes” or “No” to question number nineteen, a number of participants included their own opinions on the issue of education in their duties. The comments were as follows:

- “The MTA has provided a seminar called the ABCs of ZBAs. This was a very beneficial workshop and I would recommend this type of workshop/seminar to all ZBA members.”
- “Every member of a planning commission or ZBA should be required to attend and be certified as attending at least one workshop during the year.”
- “[With extensive experience] I am quite familiar with the zoning ordinance and ZBA duties and authority. I’ve read the handouts of the workshops and would not object to attending, but do not feel the need.”
- “Workshops might help but we have such few appeals I am not sure it would be worth it.”
- “Educational opportunities are definitely needed for ZBA members!!”

CONCLUSION

ZBA members are citizens of their respective communities who have interests in the administration of certain goals and policies of the zoning ordinance. They perform a very important and, unfortunately, oftentimes thankless job. There is an abundance of regulations dictating the nature of their positions and decisions they render, however they are not formally educated in the language of these regulations. The background section described that ZBAs are assisted with their duties by the zoning ordinance itself, township attorneys, and publications

such as the MTA's *Guide to Planning & Zoning* and Hotaling and Moffat's *Michigan Townships Planning and Zoning Handbook*.

The influence of these sources has been a constant point of emphasis throughout the investigation. It was in no way my intent to be critical of these sources. Without formal education, guidance for ZBAs in carrying out their duties is of the utmost importance and the sources offered provide this. The realization to be made is that, without formal education, these sources are substitutes for education in statute and case law because, even though they often convey statute and case law, they necessarily bring with them their own interpretations. But why is this significant and why is education in the language and meaning of the statute so important?

The reason is simply that the importance lies in the impact the ZBAs' decisions have on the townships' residents. The circuit court does not review appealed cases' circumstances, only the record of the ZBA. Most ZBA decisions will thus be upheld on appeal as long as records of reasons for making decisions have been kept. Furthermore, if ZBA decisions are being made by false perceptions of authority but recorded in a reasonably proper fashion, these decisions are likely to be upheld on appeal because, again, the circuit court is not a court of first impression when hearing appeals of the ZBA. This aspect of the appeals process gives the ZBA's decision a great deal of finality so it is important that the boards' decisions are informed decisions.

The analysis of the questions revealed that participants, as expected, did in fact perceive correctly the details behind a significant amount of their authorities/duties. The analysis, however, called into question the firmness of the grasp participants had on their core authorities in three major areas - the distinction of the standards to be applied concerning use v. nonuse variances, the perception that variances should be rarely granted as a general rule, and the fine points of certain procedural regulations. These three areas of deficient education and importance in the carrying out of ZBA functions result in the conclusion that formal education of the statute

is needed to serve as a ZBA member. Education is necessary so that the boards' decisions, characterized by high-impact and finality for the residents, may be made with an exercise of authority that is in alignment with the instrument that originally prescribed the authorities to these bodies: the statute.

APPENDICES

APPENDIX A

ZBA Member Questionnaire

Directions: Please answer the following questions by circling your choice or filling in the space provided. Only answer “Yes” or “No” if you are reasonably certain, otherwise please select the “Unsure” answer choice. Please do not seek the opinions of others when completing your questionnaire. Thank you.

*(Any information used in this study will be anonymous)

Please Print: _____
Name Township

1. Can the Zoning Board of Appeals grant a Use Variance?

Yes
No
Unsure

2. If an error committed by the Zoning Administrator results in a house being built too close to the lot line, can a variance be granted?

Yes
No
Unsure

3. As a general rule, is a variance something that should be rarely granted?

Yes
No
Unsure

4. If property owners within 300ft. of a requested variance are opposed to granting the variance, should the ZBA deny the variance?

Yes
No
Unsure

APPENDIX A

5. Should the Zoning Board of Appeals document in their minutes reasons for granting or denying a variance?

Yes

No

Unsure

6. If the “undue hardship” or “practical difficulty” is caused by the property owner, should a variance be granted?

Yes

No

Unsure

7. Can the Zoning Board of Appeals overturn the decision of the Zoning Administrator?

Yes

No

Unsure

8. If a particular use is not provided for in the zoning ordinance, is it the duty of the Zoning Board of Appeals to place that use in a specific zone or class?

Yes

No

Unsure

9. Does the Zoning Board of Appeals have different responsibilities in connection with a Use vs. Non Use Variance?

Yes

No

Unsure

10. If someone wanted to place a garage next to his/her own home for his/her own vehicle closer than what is allowed to the setback lines in a residential zone, would he/she be seeking a Use or a Non Use Variance?

Use

Non Use

Unsure

APPENDIX A

11. If the decision of the Zoning Board of Appeals were appealed to the Circuit Court, would the entire case be reheard by the Circuit Court or would the Circuit Court only review the record of the Zoning Board of Appeals?

Rehear entire case

Only review record of Zoning Board of Appeals

Unsure

12. Should the Zoning Board of Appeals grant a variance when the following conditions apply: A.) It is a reasonable use of property, B.) Neighboring properties are not adversely affected, and C.) Strict conformity with the ordinance would result in a significant restriction of the use.

Yes

No

Unsure

13. When making a decision regarding granting a variance, would you insist upon Complying as close as possible with the ordinance, or would you attempt to be flexible to meet township residents' needs?

Strict Compliance with Ordinance

Flexible to residents' needs

14. If an applicant builds a structure in violation of the ordinance and seeks a variance after the fact, are you more likely to grant the variance or deny the variance?

Grant

Deny

15. On a five member ZBA, only three members are present for a hearing. In order to make a valid decision, can the majority of the quorum provide a decision or does it require all three present members to vote the same way?

Majority of quorum

All three present members

Unsure

16. How many years have you served as a ZBA member?

APPENDIX A

17. How often does your ZBA meet each year?

18. When is the last time you attended a ZBA workshop or seminar?

During the past year

During the past 5 years

During the past 10 years

Never attended or have not attended within past 10 years

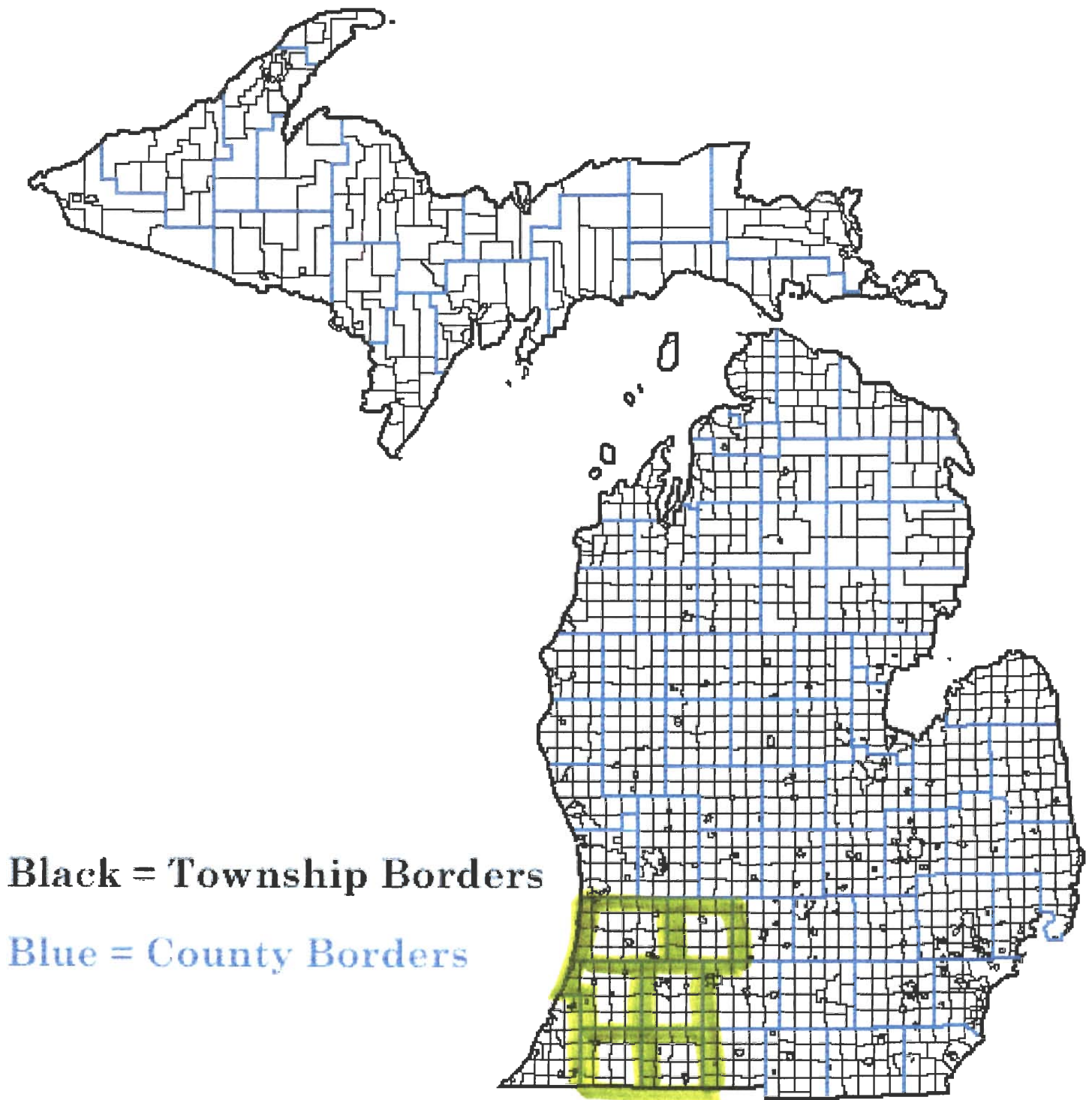
19. Do you feel that attending a seminar or workshop on ZBAs would better assist you in carrying out your duties as a ZBA member?

Yes

No

20. Please feel free to offer any additional comments in the space provided. You may comment on this questionnaire or offer additional information not covered by the questionnaire.

Michigan Townships By County



APPENDIX C

Responses to Questions 1-15 (44 Respondents, 18 Townships' ZBAs)															
Question	Answers:	Yes	No	Unsure	Use	Non-Use	Rehear	Review Only	Strict	Flexible	Grant	Deny	Majority	All Three	Opinion
1		26	16	2											
2		36	2	6											
3		37	6	1											
4		3	33	8											
5		43	0	1											
6		5	37	2											
7		37	3	4											
8		7	33	4											
9		28	10	6											
10				5	9	30									
11				15			4	25							
12		32	5	7											
13				3					27	14					
14											4	34			6
15				2									14	28	

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