The Zoning Board of Appeals and Citizen Participation

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THE ZONING BOARD OF APPEALS AND CITIZEN PARTICIPATION

by

Paul T. Prior

A Thesis
Submitted to the
Faculty of The Graduate College
in partial fulfillment
of the
Degree of Master of Arts

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Consistently increasing urbanization has been a salient characteristic of American society in the 20th Century. As more and more people have moved into cities, suburbs, and metropolitan areas, state and local governments have found it necessary to regulate the use of land through zoning legislation and zoning ordinances. New York City first enacted a comprehensive zoning ordinance in 1916.¹ Since 1926, when the United States Supreme Court upheld the constitutionality of zoning ordinances in the landmark decision of Euclid v Amber Realty Co,² virtually every urban area in the nation has been subjected to zoning.

When New York City adopted its zoning ordinance in 1916, it created a zoning board of appeals to administer the ordinance and thereby "established a pattern for zoning administration in the United States."³ Commonly called boards of appeal, boards of adjustment, or boards of review, these local authorities bear the responsibility

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²272 US 365 (1926).

³Anderson, op. cit., p. 351.
of implementing, administering, and amending zoning regulations.

The board's charge is not an easy one. Indeed, the American jurist Benjamin N. Cardozo stated while serving as Chief Justice of the New York Court of Appeals: "There has been confided to the board a delicate jurisdiction and one easily abused."¹

Numerous zoning commentators have posited the notion that the "delicate jurisdiction" has, indeed, been abused² insofar as the administration of zoning ordinances has been "erratic."³ As one landmark zoning study has pointed out:

> Within the last two decades, observers of the land planning process have suspected that something has gone wrong with the zoning board of adjustment . . . . With increasing vigor critics have charged that the boards of adjustment pay little attention to the legal limitations on their powers and operate without safeguards adequate to assure citizens of equal treatment.⁴

Operating in an informal manner, without procedural safeguards save those of state court case law, it has been put forth that "the board of appeals in many cities has become a device of danger

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¹People, ex rel Fordham Manor Reformed Church v Walsh, 244 NY 280, 155 NE 575, 578 (1927).


³Anderson, op. cit., p. 354.

rather than safety. "¹ As the "essence of justice is largely procedural,"² the zoning board of appeals' failure to follow definite rules of procedure has led to "arbitrary decision-making."³

Michigan's zoning enabling acts allow the zoning board of appeals to alter the provisions of a zoning ordinance where, upon showing, practical difficulties or unnecessary hardships exist. The enabling legislation provides that where a variance from the ordinance is approved, such variance must be within the spirit of the ordinance and, further, that public safety be secured and substantial justice served. The delegation of the variance power to the zoning board of appeals allows the board considerable influence over the effect of zoning regulations. Where the board's authority is used wisely the intent of the variance procedure—to alleviate hardship caused directly by the strict interpretation of the zoning ordinance toward providing equitable treatment to all property owners—is served. Where, however, zoning boards fail to serve such intent and rely heavily upon other factors in their decision-making process,


the purpose as well as the credibility of the zoning ordinance comes into question.

The purpose of this study is to examine one factor, that of citizen participation, and its impact upon the zoning board's decision-making process. The study will attempt to demonstrate: 1) the role of citizen participation in determining a variance request's outcome, e.g., how citizen participation impacts zoning board determination, to what degree and at what level, and 2) the attitude of board members to such citizen participation, e.g., how zoning board members view citizen participation and respond to it.
CHAPTER II
THE STATEMENT OF THE PROBLEM

Despite efforts directed toward the analysis of the Zoning Board of Appeals' decision-making process, little attention has been given to the impact of a concerned public upon the final decision outcome. Though, admittedly, numerous variables are at work within any decision-making process, the zoning board of appeals, by its very purpose, must take into account parameters of relevancy dictated by participants without significance of standing.

Therefore, the concern of this research is that of citizen participation within a board's process of zoning variance grants and denials. First, we shall describe a pattern of citizen participation within which two zoning boards operated during the years of 1971 and 1972. Second, we shall, through questionnaire, ascertain the degree of citizen participation sought by the members of the board. In other words, we shall try to answer the question of how much citizen participation is actually desired by the members. That,


indeed, citizen participation is actively sought or neglected by the individual members of the board would seem to indicate an extant attitude on the part of the board member that may be catalyzed by the presence or absence of an interested public.¹ For example, if an appeals' board member feels that citizen participation is a necessary input into that person's decision-making process and public input is low, will he take the role of the public's advocate?

Thirdly, the study will concern itself with the amount of citizen participation or protestant input in terms of decisions reached by the zoning board of appeals, i.e., Does the presence or absence of active protest or objection have significant effect upon the determination of the board as to whether or not a variance is granted or denied?

The Hypotheses

In addressing the three objectives noted above, the study will test the following five hypotheses:

I IF A VARIANCE IS BEFORE THE ZONING BOARD OF APPEALS, IT IS MORE LIKELY TO BE APPROVED IF CITIZEN PARTICIPATION IS EITHER LOW OR NON-EXISTENT THAN IF PARTICIPATION IS HIGH.

II THE ABSENCE OR PRESENCE OF PROTESTANTS AT A ZONING BOARD OF APPEALS' PUBLIC HEARING WILL HAVE A SIGNIFICANT IMPACT UPON EITHER THE DENIAL OR GRANTING OF AN APPLICATION BEFORE THE BOARD.

III IF A USE VARIANCE IS BEFORE THE BOARD, SUCH VARIANCE IS MORE LIKELY TO BE GRANTED IF CITIZEN PARTICIPATION IS LOW CONCERNING THE PARTICULAR USE VARIANCE THAN IF PARTICIPATION IS HIGH.

IV IF A PETITION RECOMMENDATION IS MADE TO THE ZONING BOARD OF APPEALS BY ITS OWN INSPECTION COMMITTEE THE BOARD WILL BE MORE LIKELY TO APPROVE THE RECOMMENDATION THAN NOT.

V COMMUNITY INPUT WILL BE GREATER WITH RESPECT TO RESIDENTIAL VARIANCES OR EXCEPTIONS THAN TO EITHER COMMERCIAL OR INDUSTRIAL VARIANCES.

The Methods of Research

The research shall be trimodal in nature. The first portion of the study shall concern itself with illustrating the grant/denial patterns for variances and exceptions for the years 1971 and 1972 within the Cities of Grand Rapids and Grandville. Second, the study shall empirically report the participation and grant/denial relationships for the period beginning May 1st and ending August 30th, 1974. And thirdly, through the use of a questionnaire, the study will ascertain the attitudinal make up of the zoning board's membership with respect to citizen participation in the processing of petitions.
Through this empirical reporting the study will test Hypotheses I through V.

The two-year pattern of board grants/denials was obtained through public documents. The major sources were the official minutes of the board, court decisions relating to specific petitions stemming from the board's determinations, annual reports and the zoning ordinances inclusive of amendments adopted by the local legislative body.

Through empirical observation of zoning board of appeals' meetings, we obtained information concerning procedure, protestant activity, board membership and general community participation. Documentation of variances and exceptions granted/denied and the degree of protestant participation in each case gives some indication of the continuity of the 1972-1973 pattern.

Lastly, questioning board members after empirical documentation will hopefully enhance the perceptiveness of the research by allowing comparison between thought and action.

The two samples required for the research are the Grandville Zoning Board of Appeals and the Grand Rapids Zoning Board of Appeals. The two communities were chosen to test whether or not two communities of dissimilar size and age would evince differences in decision outcome when looked at in terms of citizen participation. In other words, would the City of Grand Rapids with a population of
be less receptive to citizen protest due to an older more formalized appeals procedure than the City of Grandville, an adjacent suburb with a population of less than 25,000?  


\[2\] Ibid.
CHAPTER III

BACKGROUND OF THE ZONING BOARD OF APPEALS

The adoption of the first comprehensive zoning ordinance by the City of New York in 1916 inaugurated a new era in public regulation of private property. Formulated upon the concept of common-law nuisance doctrine, zoning resulted in the creation of a new quasi-judicial, quasi-legislative agency—the zoning board of appeals.

Influenced by the New York model and its subsequent federal copy, the Model Standard State Zoning Enabling Act of 1922, state legislatures began enacting enabling legislation for zoning. The Standard Act, followed closely by the majority of states, provides for a zoning board of appeals whose powers were enumerated as follows:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this act or any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provision of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial
The Purpose of the Zoning Board of Appeals

The granting of discretionary power to the zoning board of appeals serves several objectives. These objectives are common purpose elements in all systems of law enforcement. Therefore, the employment of the zoning board of appeals is said to: 1) safeguard the rights of property owners, 2) avoid arbitrary use of the police power, and 3) enhance the "popularity" of zoning via the insurance of fair application of rules.²

Other objectives exist however that are peculiar to the zoning ordinance: 1) the desire to keep zoning out of the courts, 2) to obviate the need for minor amendments to the ordinance, and 3) to perfect the zoning ordinance through the exercise of administrative discretion.

Early proponents of the zoning mechanism stressed the difficulty, if not the impossibility, of drafting a perfect ordinance.³ By and large these early theorists contended that an administrative

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¹Mandelker, op. cit., p. 62.


board, given the power to vary the law's application in hardship cases would, in due time, perfect the ordinance being administered. \(^1\)

The advocates of Euclidian zoning recognized the genius inherent in its division of the community into use districts, but also that such division, by definition, imposes similar limitations upon parcels of property which in fact and in law are unique. \(^2\) This being the case, the ordinance unavoidably places a greater burden upon some owners than on others; indeed, it may well deprive some owners of the total value of their land. \(^3\) Therefore, it was felt that a board of appeals could prevent the inequity of literal application through administrative relief.

Early theorists, such as Edward M. Bassett, believed the primary function of the zoning board was to keep zoning legislation out of the courts. \(^4\) It was believed that if hardship cases were not resolved on an administrative level, the decisions against zoning enactments would become numerous and that in due time the instrument would be destroyed. Feelings were expressed by zoning

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\(^2\) Ibid.

\(^3\) Allen W. Wallace, "Legal Considerations Incident to Zoning." Board of Government Research and Services, University of Wisconsin Information Bulletin No. 164.

theorists that the whole purpose of zoning would be frustrated unless the cases which did reach the courts did so on a record made before an expert administrative body. Further, such theorists felt that they spoke an esoteric language that in the course of enforcement litigation might be misunderstood. And, they perceived that the chance for airing and accurate construction of the ordinance would be improved if an administrative board were interposed between the ordinance and the court.

Mistrust by the early theorists went beyond simply court decisions affecting ordinance legality. Indeed, they envisioned numerous and destructive amendments by local legislators unless such could be forestalled by administrative relief of hardship. Accordingly, the zoning board of appeals was expected, by administrative application, to amend the zoning device. This process was thought to be more expeditious from the standpoint of the landowner and safer from the perspective of those concerned with the integrity of a physical comprehensive plan. It was hoped that the discretionary character of the board would allow for flexibility in an otherwise rigid pattern of use districting and, further, that both the desire as well as the need for legislative change would be minimized.

1Wallace, op. cit., p. 4.
2Bassett, op. cit., p. 1123.
In other words, when zoning was young its most vocal advocates realized its inherent imperfections, its doubtful constitutionality and its imperfectly understood language. However, in spite of the above, early supporters saw the need for controlling land use so urgent as to demand control. Thus, zoning boards were created to interpret, perfect and insure the validity of zoning. It was expected that these objectives would be accomplished as the result of decisions on "hard cases." In such cases new and novel concepts would be articulated and records would be built which would display the construct in a favorable light as the result of its administrative adjudication.

This, then, was the task of the board. If, in fact, the zoning board was able to do all of the above, one commentator has said it would have been a "legal miracle." ¹

The Membership of the Zoning Board of Appeals

The optimism through which the early theorists saw the zoning board of appeals doubtlessly revolved about the membership criteria prescribed by the 1916 New York ordinance. ² This optimism was short-lived, as the Standard Zoning Act negated professionalism


²Ibid.
as a criteria for determining board membership.¹ Thus, the state enabling acts, relying upon the model ordinance for structure as well as standards, created boards which were generally the result of political choice rather than professional expertise.

Generally composed of five members appointed by the local legislative authority of the town, mayor of the city or governing board of the village or township, zoning board members were not and are not encumbered by qualifications of a statutory nature for their position.

The failure to require that the membership of zoning boards appeals be contingent upon training or experience in some occupation or profession related to the regulation of land has resulted in the board's composition being of a multifarious nature. Most commonly the business community furnishes the majority of members.² Ordinarily a board includes an attorney or a realtor and most likely the board will have at least one female member. Usually there will also be a member who is a representative of the labor interest within the jurisdiction. Finally, it is customary for the appointment authority to include on the board members from both political parties.³

¹ibid.

²Mandelker, op. cit., p. 60.

³ibid.
Apparently common sense and some knowledge of the community is all that is needed in servicing the multivariate, oblique and complicated land use requests brought before the board. The unspoken premise is that the zoning board of appeals is a jury designed to adjust conflicts between an imperfect regulatory mechanism and existing property interests and that the essential quality of membership is that of balanced representation of the principal economic and political interests of the jurisdiction. Given that the adjustment of conflict is the main purpose of the board, it would stand apparent that the common expertise of the members is that of compromise.

The Decision-Making Powers of the Zoning Board of Appeals

In order to accomplish the numerous and diverse objectives referred to earlier, the zoning board of appeals must decide controversies of three general types: 1) authorizations to hear and decide appeals addressing prior decisions made by zoning enforcement officers, 2) hearing and deciding matters of substance relegated to them via specific ordinance provision, and 3) entertaining, on appeal in specific cases, applicant requests to relieve "unnecessary hardships by the granting of use variances."

\[1\text{ibid.} \quad 2\text{ibid.} \quad 3\text{ibid.} \]

The board in a township, village, or city which adopts the jurisdictional provisions contained in the relevant state enabling legislation may hear and decide appeals from any order, requirement, decision or determination of any official charged with zoning ordinance enforcement. In discharging said duty the board shall have all of the power that was vested in such enforcement official.\footnote{ibid.}

This legislative authority may delegate to the zoning board power to hear and decide matters other than those specifically mentioned in the enabling statute.\footnote{ibid.} Commonly, the board is given original jurisdiction to deny or grant special exceptions or permits, and to impose reasonable conditions upon uses of land subject to such permits. This particular function has been expanded in recent years and has come to occupy a growing portion of the board's time.

Nearly all zoning boards of appeals have granted to them the power to vary the strict application of the zoning ordinance by permitting either uses of land which do not conform to the use restrictions of the zone in which the land is located or bulk variances which allow for height, area or density variations. Generally variance petitions, whether of the use or non-use variety, command most of the attention of the board.\footnote{Note, Temple Law Review, 26 (1952): 2.}
The power to vary the application of the ordinance is the main tool with which the zoning board is expected to fashion accommodation of land to variant uses. The board, in carrying out this function, must incorporate standards sufficient to guide the discretion of said board and provide a basis for judicial review. Accordingly, the power to grant variances is limited by Michigan law to cases where a literal application of the ordinance will cause "unnecessary hardship or practical difficulties" and where the requested relief shall in all manner observe the "spirit" of the ordinance, secure the public health, safety and welfare and achieve substantial justice.¹

Once again, the original theory for the board's "creative latitude" revolved about: 1) there is no such thing as a perfect ordinance, and 2) experts shall determine the proper application of such ordinance.

¹ibid.
CHAPTER IV

THE STATUS OF THE CITIZEN BEFORE THE ZONING BOARD OF APPEALS

The Issue of Informality

Commentators have frequently assailed the informal nature of board proceedings in varying degrees and, despite statements to the contrary, zoning boards have generally "not operated in such a manner as to assure citizens equal protection of the law." The tolerance of state courts with regard to the question of informality rests primarily upon the fact that a zoning board of appeals... is an administrative body composed primarily of persons without legal knowledge or experience... Most courts apparently have concluded that a lay board cannot be expected to respect the niceties of informative pleading, articulate notice of hearings, minimal standards of proof, accurate recording of proceedings or literate exposition of results.

Indeed, as the Supreme Court of Errors of Connecticut declared with reference to a zoning board in 1954:

It must be borne in mind... that we are dealing with a group of layman who may not always express themselves

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1 Reps, op. cit., p. 280.
2 Dukeminier and Stapleton, op. cit., p. 273.
3 ibid.
with the nicety of a Philadelphia lawyer. Courts must be scrupulous not to hamper the legitimate activities of civic boards by indulging in a microscopic search for technical infirmities in their actions.¹

Thus a zoning board is an "administrative agency"² and a "quasi-judicial body"³ but not a court.⁴ Decisions have held that "zoning boards, in conducting their hearings, are not bound by the strict rules of evidence of a trial at law"⁵ and further that they are permitted "a reasonable discretion in admitting and excluding evidence."⁶ Finally, a New York court has ruled:

The zoning board of appeals does not have the status of a court. There is nothing in the zoning statute to show an intent to vest the board with the judicial attributes of a court. The board is called upon to follow procedure observed generally by courts. In fact, . . . the rules of practice and procedure which govern the courts . . . are not to be rigidly applied to a zoning board of appeals or to those who appear before it.⁷

²Heath v Mayor and City Council of Baltimore, 187 Md 296, 49 A2d 779, 803 (1946).
³Goodrich v Selligman, 298 Ky 863, 183 SW2d 625, 627 (1944).
⁴Reps, op. cit., p. 282.
⁶Ibid.
⁷Ellish v Goldman, 117 NYS2d 867, 869 (S Ct 1952).
The parameters to be served by the board with reference to due process have never been precisely defined.\(^1\) Rather, courts have generally held that "the attitude and conduct of members of the zoning board should be judicial and impartial"\(^2\); they are required to act "intelligently and fairly and within the domain of reason"\(^3\); and, with reference to hearings "they may not so conduct them as to deprive parties thereto of a fair and impartial hearing."\(^4\) Finally, the Court of Appeals in New York has held that "no essential element of a fair trial can be dispensed with . . . ."\(^5\)

Moreover, in public hearings before a board, it "must comply with rules of conduct prescribed by the local legislature acting under the direction or permission of the state legislature."\(^6\) Where the state has failed to provide such procedural rules it is supposed that

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\(^3\)People ex rel Home for Hebrew Infants of City of New York v Walsh, 131 Misc.581, 227 NYS 570, 573 (S Ct 1928).

\(^4\)Tuite v Zoning Board of Review of City of Woonsocket, 191 A2d 155, 157 (RI 1963).

\(^5\)Hecht v Monaghan, 307 NY 461, 121 NE2d 421, 425 (1954).

the board shall create such rules on its own.¹ That such procedural parameters should exist is "a fundamental constitutional rule applicable to all municipal legislation."²

The minimum requirements for such rules have been stated by Professor M. Anderson of the Syracuse University College of Law as the following:

a. Public notice shall be given of all hearings and all hearings shall be open to the public.

b. At any public hearing . . . any . . . interested party may appear in person or by agent or by attorney, offer evidence and testimony and cross-examine witnesses.

c. For each case or matter heard, the board shall cause a record of its proceedings to be prepared. The record of proceedings shall include all documents and physical evidence considered in the case together with stenographic notes of all public proceedings. The stenographic notes should include, but need not be limited to, the verbatim testimony offered by all witnesses in the case . . . . The record of proceedings . . . shall show the ground for each decision . . . . The record of proceedings shall be filed in the office of the board and shall be a public record.³

Elements of a Public Hearing

The underlying canon of zoning law is that any restriction, modification or amendment to a zoning ordinance be preceded by a


²McQuilllin, Municipal Corporations, Sec. 25.216, pp. 203-204.

³Bassett, op. cit., p. 23.
Such hearing is necessary as a "prerequisite to a
decision on the merits."¹

Similar in many respects to other enabling legislation, Michigan
provides, with reference to board of appeals' hearings, that "due
notice [shall be given] to all persons to whom any real property
within 300 feet of the premises in question shall be assessed . . .
and upon hearing, any party may appear in person or by agent or
attorney."²

Notice

Notice of hearing as an "essential requirement of procedural
due process"³ is "regarded as mandatory" by the courts.⁴ Though
tolerance is afforded the board concerning decisions which relate to
"pleadings, rules of evidence and other aspects of . . . procedure
. . . notice and hearings . . . are regarded as essential ingredients
of administrative justice, and substantial or even literal compliance
. . . is required."⁵

¹Bassett, op. cit., p. 23.
²Act 207 of the Public Acts of 1921.
³Robert M. Anderson, Zoning, 4 Vols., Rochester, New York:
⁴Ibid.
⁵Ibid.
Stating that the requirement to give notice of a hearing is "a prerequisite to the exercise of jurisdiction by the board"\(^1\), the Supreme Court of Rhode Island declared:

Giving of such notice is not merely directory, nor a practice, custom or usage of the board, but is an applicable provision of the town ordinances which establish the jurisdiction of the board. In the circumstances herein we are of the opinion that the failure to give the notice prescribed . . . deprived the board of jurisdiction to grant the application.\(^2\)

Rhode Island is not the only state to apply this precept. A Michigan court held, in **Baura v Thomasma**,\(^3\) that notices published in a newspaper as required by the ordinance were defective in that the time of the meeting was omitted from the notice. The court held that, in that the ordinance required the time placed upon notice given, an essential element was, indeed, missing.

Similarly, a 1951 Mississippi tribunal decreed a zoning ordinance invalid in that the notice did not contain the name of the city or the hearing's place. The court, in referring to the enabling statute, stated:

\[
\ldots \text{(t)he holding of a public hearing is a condition precedent to the enactment of zoning regulations, and a lawful public hearing presupposes the giving of requisite}\]

\(^1\)Rodick v Zoning Board of Review of Town of East Providence, 83 RI 392, 117 A2d 84, 85 (1955).

\(^2\)ibid.

\(^3\)321 Mich 139, 32 NW2d 369 (1948).
The Swearing of Witnesses

If the statutory notice is correct when issued, the zoning board of appeals shall assemble in its prescribed place and time. The chairman shall call the meeting to order and the applicant shall present his case for a zoning change. When the applicant has finished with his presentation, the protestants shall have the opportunity to testify. Either applicant or protestant may be represented by counsel. The procedure, of an informal and nontechnical nature, does not require the swearing of witnesses.

Though the failure to swear witnesses is not of issue in most board actions, the lack of so doing has led to procedural problems in some jurisdictions. In a relevant Michigan case, the court noted that an appeal made was not in the form of sworn testimony, but that since the question was not raised the court failed to pass on whether testimony under oath is required. In another case the court based its decision upon a statement made in a board hearing. As far

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1 Brooks v City of Jackson, 211 Miss 246, 253-54, 51 So 2d 274, 277 (1951).


3 Anderson, Zoning, Sec. 16. 30, pp. 221-222.

4 Jones v DeVries, 326 Mich 126, 40 NW2d 317 (1949).

as the opinion shows the germane statement was also unsworn.¹

Contrary in spirit to the above, the Ohio Supreme Court in 1966 overturned the action of a zoning board due to noncompetent evidence placed in the record. Because the board chairman refused to place the witnesses under oath, the Court overturned the action of the board.

A decision regarding the swearing of witnesses comes from the Supreme Court of New Jersey:

The statute does not define rules of procedure for the applicant to follow in the presentation of its case, but the rule-making power given the board . . . contemplates that certain standards of guidance will be promulgated to insure an orderly hearing. A rigid formality is neither practical nor necessary . . . . We make the observation, however, that the regard accorded to proceedings before the municipal body is considerably enhanced where oaths are administered to witnesses for the applicant and for the opposition and a stenographic record is made.²

Minutes

The problem of stenographic record or minutes is a large one. "Explanations of board proceedings are frequently unavailable to the courts, either because records do not exist at all or because they

¹ibid.
²Arcos Bros Builders Inc v Zoning Board of Appeals of City of North College Hill, 7 Ohio St 2d 32, 218 NE2d 179 (1966).
fail to explain the reasoning which underlies decisions." However, the tribunals, if a legitimate case is to be made, must survey board records:

If rights are to be firmly fixed on the basis of board hearings, some records must be kept. If judicial review is to be an efficient bulwark against arbitrary conduct, such records must be accurate and reasonably complete.

A Michigan court has given some notice to record keeping by stating that records should be "reasonably complete." In Homrich v. Stors, the court held that a board of appeals' decision is not valid in the light of insufficient record, i.e., what was done and why. So long as the minutes contain the purpose of the meeting, the positions of the parties to the dispute, the action taken and the basis for that action, the decision shall be rendered valid.

Though enabling legislation usually requires that a public record of the votes of a zoning board be made and that a copy of any ordinance enacted be placed in the municipal records, there exists no requirement for a full verbatim transcript of the proceedings to be made by the board secretary. Connecticut has applied more strin-

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2Anderson, Zoning, Sec. 16.27, p. 218.


4ibid.

5Bassett, op. cit., p. 3.
gent parameters to hearing records in requiring zoning authorities to furnish transcripts of those zoning decisions appealed to the courts. Connecticut's Supreme Court of Errors has declared, with reference to this topic, that "the absence of a transcript deprived the court of a proper record on which to review the proceedings of the board." 1

Evidence

It should be expected that a zoning board is "not bound to the technical common law rule(s) of evidence . . . ." 2 Indeed, one commentator has noted: "While the evidence presented to, or considered by, the board should be competent and relevant, it need not be of the same character as that which would be required for presentation to a court." 3 The courts have looked critically at zoning boards which evince a restrictiveness in admitting evidence. 4

The review parameters, via the Michigan courts, have shown an evolutionary construction. In Beadsley v Bethlehem Evangelical Lutheran Church, 5 the court held that a zoning board of appeals was

1London v Zoning Board of Appeals of City of Bridgeport, 150 Conn 411, 190 A2d 486, 489 (1963).

2Dal Maso v Board of County Commissioners of Prince George County, 238 Md 333, 209 A2d 62 (1965).


5261 Mich 458, 246 NW 180 (1933).
not mandated to furnish the reasons or grounds for its determinations and, further, that no review by certiorari or otherwise was provided for in the law. The appeal concerned a variance which, through an order, purveyed the existence of "unnecessary hardship and practical difficulty." The ruling stated that in the absence of fraud or bad faith the courts could not review board decisions.

The above stance was upheld three years later in two cases, Athletic Assoc v Grand Rapids\(^1\) and Austin v Older.\(^2\) The Austin decision, however, alluded to the notion that a court may set aside a board's decision if it was proven arbitrary. Two years later, upon appeal in Austin v Older,\(^3\) the court held that a board's determination was not arbitrary but failed to state whether the court had the power to declare it so.\(^4\)

The review process takes place in order to ascertain "whether it contains any legally competent evidence that reasonably supports the finding or decision,"\(^5\) or as the Mississippi

\(^1\)274 Mich 147, 264 NW 322 (1936).

\(^2\)278 Mich 518, 270 NW 771 (1936).

\(^3\)283 Mich 667, 278 NW 727 (1938).

\(^4\)See Anderson, Zoning, Sec. 16.31, p. 233.

Supreme Court has stated:

In the final analysis the scope of inquiry by a court upon appeal from the legislative acts of the zoning authority is limited to a determination of whether its decision is reasonable and proper according to the facts before it, or in other words, whether its decision is supported by substantial evidence.

Determination of whether an appeals' board decision is supported by substantial evidence rests upon the record of said board. A board decision must be upheld if there is some legal evidence of record upon which the said decision is based. Where no such record of evidence exists, the board's decision may be overturned.

There is some question as to exactly what constitutes substantial evidence, especially since non-expert witnesses as applicants, neighboring property owners, taxpayers and officers of civic organizations frequently testify before zoning boards. It has been held that although zoning boards may hear non-expert testimony, a decision based entirely upon such lay opinion is not supported by substantial evidence. The Supreme Court of Rhode Island has ruled, in address-

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1 Paine v Underwood, 203 So2d 593, 597 (Miss, 1967).
4 City of Hattiesburg v Pittman, 233 Miss 544, 102 So2d 195, 198 (RI, 1967).
5 Anderson, Zoning, Sec. 16.36, p. 229.
ing this question that

... testimony by non-expert witnesses that the erection of a gasoline station on a street corner would depreciate the neighborhood property and that an increasing flow of traffic would result in such congestion as to be a hazard are lay judgments, lacking in expertise and therefore without probative force.¹

Relatedly, the same Court expressed the following in another decision:

Here, the only evidence supportive of the board's findings on the adverse economic consequence to the neighboring property and on the traffic conditions come from non-expert witnesses and took the form of conclusional statements unsupported by factual data or background... It obviously was a lay judgment... and as such could have probative force under our law only if voiced by an expert.²

As suggested from the above, expert witnesses can provide substantial evidence to support the decision of the zoning board. Recently such expert witnesses have become frequent participants in board hearings.³ Though expert opinion is more substantial than that of lay witnesses, it is not always decisive. One authority has said that "even the testimony of expert witnesses may be weighed and found wanting by the Board of Appeals."⁴

¹Goldstein v Zoning Board of Review of City of Warwick, 227 A2d 195, 198.
²Thomson Methodist Church v Zoning Board of Review of City of Pawtucket, 210 A2d 138, 142 (RI, 1965).
⁴Rathkopf, op. cit., pp. 43-45
Since board hearings are often attended by property owners and since such boards are politically reluctant to alienate a bloc of voters, the boards must take care that decisions are not based upon winning the favor of those present at the hearing. Where such is the case the courts have annulled the board's decisions. Indeed, one court has stated that "... in basing its action on the wishes of a majority of the citizens appearing in favor or in opposition to the matter, "a local zoning board failed "to exercise the sound judgment and discretion required in such cases." Similarly, the Supreme Court of Rhode Island has decreed that "the remonstrances of neighboring landowners are not in any way conclusive on a zoning board or review and cannot control its action." The correlation of such citizen remonstrances and final zoning board determination will be the subject of this research.

1 Ibid., pp. 43-19, 43-20, 44-2.

2 Brehmer v City of Kerrville, 320 SW2d 193, 197 (Texas Civil Appeals Court, 1959).

CHAPTER V
STUDIES ADDRESSING THE IMPACT OF CITIZENS UPON THE ZONING BOARD OF APPEALS

The degree to which protestants may alter the outcome of a zoning board of appeals' determination has been only superficially documented. One of the more complete studies done on board procedure stated that

Despite the board's repeated statements that the question of granting variances was not a "popularity contest," the presence of protestants seems significant when the percentage of cases in which protestants appeared and the variance was granted is compared with the percentage of non-contested variances granted. ¹

In the study cited, citizen protestants appeared in 38% of the cases and in those particular cases variances were granted 24% of the time, while variances were granted in 77% of the cases in which protestants did not appear. With reference to this particular study, the ratio for granting variances was over three times as high as for those in which they did appear.

Another study² found that the board granted 63% of the petitions where there were protestants present as compared with 85% granted

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¹ Dukeminier and Stapleton, op. cit., p. 328.
where there were no protestants. Further, the study indicated that where neighbors favored the petition or said they had no objection to the variance provided certain conditions were met, the zoning board granted 91% of the petitions. The author alluded to the fact that within his case study the number of protestants, which ranged from 1 to 120, appeared to have no significant relation to the result. The weight accorded protestants in the latter study is much less than that accorded protestants in the former study.

Variables Found to Influence the Zoning Board of Appeals

The Status of the Petitioner

Experienced builders and realtors have been found almost invariably to succeed in their petitions. It has also been found that a high degree of success can also be obtained by established business wanting to expand or advertise. The incidence of success by these particular occupational groupings may be attributable to the fact that the board members have identifications with, and perspectives of, the same business and social groups with which these particular applicants identify.

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1Dukeminier and Stapleton, op. cit., p. 330.

By and large, board members are sensitive to requests by local businessmen. Ideological predispositions shared by businessmen revolve about the notion that each businessman has the right to be able to decide what is best for his business. The sensitivity revolves about the desire to promote what is best for the community. That the practice is widespread\(^1\) may be an indication that the board may be insensitive to planning considerations, including long-range planning considerations inclusive of the comprehensive plan and the impact of one individual's land use upon another neighboring parcel and upon community values.

Business petitioners have been found to be successful if the variance claim was made that, if not granted, the applicant would be at a disadvantage with business competitors in the city or in the area.\(^2\) Courts have generally held that a variance granted merely because the proposed use would be more profitable is null and void.\(^3\) The reason is that zoning, by prohibiting certain specified uses of property in designated areas, necessarily takes an economic potential of the prohibited use away from the landowner. Thus if economic disadvantage were held to be an unnecessary hardship, the petition would

\(^1\)ibid.


\(^3\)ibid.
always have to be granted; zoning would become a voluntary system.

In one study, the zoning board of appeals granted nine out of nine requests for filling-station sign variances.¹ Normally requests of this type cover many different fact situations: signs too large, signs too close to the property line, signs over the roof, signs in older areas with nonconforming signs, signs illegally erected without a permit. On the average, boards make no discrimination in terms of context, seeing the petitions simply as "filling-station sign variances." The relationship between this factor and any proper procedure is undeniably questionable.

Property Surrounding the Petitioner's Property

The material presence of a nonconforming use or structure in the neighborhood or block shall have substantial bearing upon whether the board will grant/deny a variance.² It has been shown in at least two studies that if such nearby uses existed, the applicant's chances for securing a variance were materially increased.³

Zoning theorists contend that conformity of uses is desirable.⁴

¹Dukeminier and Stapleton, op. cit., p. 327.
²Ibid.
⁴Dukeminier and Stapleton, op. cit., p. 313.
Indeed many cities have attempted to eliminate nonconforming uses by various restrictive regulatory schemes. To grant variances upon the ground of nearby nonconformity undercuts the basic policy and results in incipient nonconformity and in some cases deterioration of the district. If homogeneity of uses is not to be treated as a goal of planning, it would seem that the planning commission and the city council, not the zoning board of appeals, should make the determination.

The Degree of Variance from the Zoning Ordinance

Insubstantial departures from the zoning ordinance might be illustrated by home occupation or a temporary use permit. In one case study 86% of the petitioners for the above type of variance were successful in their appeal.\(^1\) It has been noted that insubstantial departure alone is not enough to qualify legally for a variance. However, in a rational, flexible system of land use control it would be an important variable. The problem becomes one of defining "insubstantial." The definition varies between agencies but is generally considered to be the absolute number of grants allowed that will either sustain or undermine the comprehensive urban plan. In one study,\(^2\) in two-thirds of the cases where the planning staff recommended denial, taking into

\(^1\)ibid., p. 314.

account the effect of the variance on the comprehensive plan, the board granted the variance. The study notes that "of 102 requests for variances, the staff recommended denying 75. The board denied 26. On the other hand, where the staff recommended granting the variance, the board's action was almost always in accord." Three questions must be asked as to the "at odds" nature of the two agencies: 1) was it because the planning staff was applying the legal requirements for a variance and the board viewed these requirements as "inflexible" or "unworkable?", 2) was it because the objectives and values of the comprehensive plan had not been communicated to the board by the staff?, and 3) was it because the board was insensitive to planning considerations? These questions were not answered.

Additionally it has been found that board members are sensitive to neighborhood integrity concerning some cases.¹ Use of this factor is sound. Indeed, one of the legal requirements for a variance is that the variance not substantially injure adjoining property.

Further it has been found that where a petitioner, once denied, applied for a rehearing or applied a second time for a variance, his chance of success increased. In one sample a board heard 14 such petitions and reversed itself in 10.² In the aforementioned study the


evidence in most of these reversals was substantially the same as
was produced upon first hearing.

Finally, according to case law the uniqueness of an applicant's
property must be taken into account when hearing a petition and grant­
ing a variance.¹ It has been found that generally this factor is brought
up more often when denying a variance than when approving one.²
Thus, one might conclude that the petitioner must prove his hardship
is unique if other factors do not work to his advantage.

¹ibid. ²ibid.
CHAPTER VI

VARIANCE PETITIONS BEFORE THE GRANDVILLE BOARD OF ZONING APPEALS

Use Variances Before the Grandville Board of Zoning Appeals

The City of Grandville's Board of Zoning Appeals heard a total of 43 petitions during the 24-month study period. Of these petitions, three were for use variances. All three of these petitions, requesting that a structure or use be permitted in a zone restricted against such structure or use, were made during 1971. Of the three appeals, two were granted and one was denied (see Table 6.1).

The denial concerned a petition asking for a variance to permit the applicant to "keep and board horses on his property." The zone was A-70 Residential and the lot size was 500 feet by 216 feet. According to the Minutes there were four objectors present and one letter of protest was received. The appeal was denied unanimously, 6-0.

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\(^1\) Although Michigan statutes refer to "zoning board of appeals," a few municipalities, such as Grandville and Grand Rapids, have altered the term to read "board of zoning appeals."


\(^3\) Ibid.
### TABLE 6.1

Variances Acted Upon before the Grandville Board of Zoning Appeals, 1971-1972

<table>
<thead>
<tr>
<th>Variance Applied For</th>
<th>Total No. of Petitions</th>
<th>Total No. Granted</th>
<th>Total No. Denied</th>
<th>Percent Granted</th>
<th>Percent Denied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>66</td>
<td>33</td>
</tr>
<tr>
<td>Bulk</td>
<td>26</td>
<td>23</td>
<td>3</td>
<td>91</td>
<td>9</td>
</tr>
<tr>
<td>Signs</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>100</td>
<td>0</td>
</tr>
<tr>
<td>Special Exception</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Temporary Use</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Home Occupation</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>100</td>
<td>0</td>
</tr>
<tr>
<td>Nonconforming Use</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>60</td>
<td>40</td>
</tr>
<tr>
<td>Demolition</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Conversion</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Earth Removal</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>75</td>
<td>25</td>
</tr>
<tr>
<td>Home Moving Permit</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>100</td>
<td>-</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>43</strong></td>
<td><strong>36</strong></td>
<td><strong>7</strong></td>
<td><strong>84</strong></td>
<td><strong>16</strong></td>
</tr>
</tbody>
</table>

The two appeals granted were:

1. A request for a variance to permit the erection of two four-family units and one duplex "on these five lots instead of five two-family units which are allowed in B-2 zoning." 1

2. A request for a variance to allow the applicant "to build a building 36' x 24' in his backyard to repair and make pipe organ pipes." 2

According to the Minutes of the board meeting, the first variance approved was without recommendation from the Inspection Committee. One protestant was present and did object to the mode of fencing and parking area lights which he asserted would bother the neighbors. 3 A roll call vote was taken upon motion that the variance be granted with the condition that the applicant "meet all the requirements of the Article and all lighting be directed away from the neighbors." 4 The motion passed unanimously.

The second variance granted, concerning the manufacture of organ pipes, was appealed without drawing protest. One participant appeared in favor of the variance. The Minutes take note of the fact that the variance was granted, 7-0. 5

The above are the only cases where the Board granted use


4ibid.

variances per se. Concerning the three use variances, the evidence on record did not reflect the ordinance requirements for such a variance.¹ There existed no planning staff or commission recommendation nor was there a mention of "unnecessary hardship" in the Board's minutes.

Bulk Variances before the Grandville Board of Zoning Appeals

Excluding requests for signs, by far the greatest number of requests before the Grandville Board concerned bulk variances. The Board granted 22 or 91% of such variances, and denied 2 or 9%. Most of these requests were for variations in the side yard, setback distance, area and parking space requirements of the ordinance. Although the percentage of petitions approved was quite high, these approvals would be justifiable if the Board acted within its powers and granted only those petitions which met the requirement of practical difficulty.² In reviewing the Minutes, however, one is impressed by the lack of factual "practical difficulty." Most often the petition stated that the petitioner could profit from the variance: that he needed extra living space or additional storage room for his


business; that the proposed building would be useful to his business; or that others, with similar situations, had received a variance. According to the Minutes, very few petitioners stated any "practical difficulty" inherent within their situation. Rather, it appeared that the zoning ordinance presented the greatest hurdle.

Of the requests denied by the Board, one concerned an applicant who resided out-of-town, and who wished to construct three homes on three lots, being an aggregated total of 82 feet short of required side width. Another requested a variance waiving aside the lot requirement of 20 feet, and a third requested a variance waiving parking shelter requirements for an apartment complex. All of these may be seen as inconsistencies with reference to other such variances.

The first two appeals may be seen in light of the fact that the Board had granted prior, as well as later, variances of side lot requirements of 20 feet in December of 1972 and 20 feet in August of that same year. Both of the approvals dealt with individuals wishing to construct new buildings, as did the two aforementioned denials.

The denial for a variance to waive parking requirements for shelter of autos may be compared with the variance granted by special meeting to a furniture store. The store's owners wished to extend their building without supplying the required "one foot of
parking for every one foot of floor space. The variance denied concerned eight covered parking spaces. The plans submitted to the Board showed 24 carports while the ordinance required 32 covered spaces for the complex. The respective section reads:

601. Residential OFF-STREET PARKING, houses shall be made for at least one off-street parking space for each one-family dwelling. Buildings with more than one dwelling unit shall provide two off-street parking spaces for each dwelling unit, at least one of which shall be an off-street garage or carport.

There appeared to be no question as to the parking space requirement; rather the issue was joined over the eight covered stalls.

In contrast to the above, a special meeting of the Board was called in November of 1972 to hear a variance request relating to Section 602 of the ordinance. The meeting was called to hear an applicant seeking a permit to construct an addition to an already existing building without supplying the required parking space. The following section was in question:

602. NON-RESIDENTIAL OFF-STREET PARKING. Provision shall be made for one square foot of total parking area for all non-residential buildings or additions to such buildings...

The variance was granted without any mention of either "practical

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1Grandville Zoning Ordinance, Art. 6, Sec. 602.
2ibid., p. 4
3ibid.
difficulty" or why the applicant could not comply. With the applicant's addition he was allowed a variance of approximately 40,000 square feet in parking area.

Though the above comparison does not present an identical problem set in both cases, it does convey the impression that with reference to parking variances, the Board's policies are somewhat oblique. The inconsistency between the above petition judgments may have been due to particular extraordinary circumstances. However such, if any, circumstances are not in any way to be gleaned from the official Minutes.

Sign Variances before the Grandville Board of Zoning Appeals

There were three sign variances granted between the two years surveyed, one of which was an extension of a non-conforming use. The signs given variance from the ordinance were in residential, commercial and industrial zones respectively. The appeals were summarily granted and very little existed in the Minutes to indicate any practical difficulty associated with either the property or the applicant. In one instance, the request for Board approval by the applicant centered around the amount of taxes paid the City during

the past year.\textsuperscript{1}

It should be remembered that according to Grandville's own ordinance, two of the following three conditions must be met before the Board may grant a variance:

a. That there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties in the same zoning district.

b. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.

c. That the condition or situation of the specific piece of property or the intended use of said property for which the variance is sought is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situation.\textsuperscript{2}

Given the specificity of the conditions imposed upon the Board and their lack of reference within the Minutes, with respect to all three sign variance requests, it would appear that the Board's action was not consistent with the City's ordinance. If, however, two of the above conditions were met one may question the utility of written minutes given the purpose of such minutes in the context of

\textsuperscript{1}Ibid.,

\textsuperscript{2}Grandville Zoning Ordinance, Art. 18, Sec. 1806.
procedure.

Protestants before the Grandville Board of Zoning Appeals

Out of 43 petitions for variance from the Grandville Zoning Ordinance 9 or 21% of the total were protested. Table 6.2 illustrates that of the 9 variances protested, 4 were granted and 5 were denied. The most frequently protested petition was that for bulk variances. Five such variances were protested during the 1971-1972 study period.

Passive objection was attendant upon 6 of the 9 protested petitions. Of the 6 passively protested petitions, 5 were denied while only 1 was granted. Table 6.3 illustrates the tendency for passively protested petitions to correlate more often with petitions denied than protested petitions overall.

Table 6.4 portrays the level of protest within the zone in which the variance was sought. Of the 9 protested petitions, 8 were in residential zones, tending to support Hypothesis V. It is interesting to note that of the 7 variances denied throughout the two-year study period, 5 of the 7 were protested variances. Of the 9 protested variances within the City of Grandville, none were protested by an organization or neighborhood group, whereas 12 such organizational protests were counted during the study period in the City of Grand Rapids.
### TABLE 6.2

**Total Protested Petitions, January 1971-December 1972**

Grandville

<table>
<thead>
<tr>
<th>Variance Requested</th>
<th>Granted</th>
<th>Denied</th>
<th>Total</th>
<th>Percent Granted</th>
<th>Percent Denied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use</td>
<td>1</td>
<td>1</td>
<td>2</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Bulk</td>
<td>3</td>
<td>2</td>
<td>5</td>
<td>60</td>
<td>40</td>
</tr>
<tr>
<td>Signs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special Exception</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temporary Use</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home Occupation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-conforming Use</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Demolition Conversion</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>4</td>
<td>5</td>
<td>9</td>
<td><strong>44.44</strong></td>
<td><strong>55.55</strong></td>
</tr>
</tbody>
</table>

Source: Grandville Board of Zoning Appeals Official Minutes 1971-1972

### TABLE 6.3

**Passive Objection Outcomes According to Petition Type**

Grandville

<table>
<thead>
<tr>
<th>Petition Type</th>
<th>Petitions with Passive Protest</th>
<th>Board Action</th>
<th>Percent Granted</th>
<th>Percent Denied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use</td>
<td>1</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Bulk</td>
<td>3</td>
<td>1</td>
<td>2</td>
<td>33</td>
</tr>
<tr>
<td>Signs</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Temporary Use</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>House Moving Permit</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>6</td>
<td>1</td>
<td>5</td>
<td>16.66</td>
</tr>
</tbody>
</table>

Source: Grandville Board of Zoning Appeals Official Minutes 1971-1972
TABLE 6.4
Protest Correlation to Zone of Variance, 1971-1972
Grandville

<table>
<thead>
<tr>
<th>Zone</th>
<th>Number of Petitions Protested</th>
<th>Percent of all Petitions Protested</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-60</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>A-70</td>
<td>4</td>
<td>88</td>
</tr>
<tr>
<td>A-85</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>A-110</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B-1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>B-2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C-1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C-2</td>
<td></td>
<td>12</td>
</tr>
<tr>
<td>C-3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D-1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>D-2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>R-R</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Grandville Board of Zoning Appeals Official Minutes 1971-1972
CHAPTER VII

VARIANCE PETITIONS BEFORE THE CITY OF GRAND RAPIDS BOARD OF ZONING APPEALS

According to one member of the Grand Rapids Board of Zoning Appeals, "the city has been built on variances granted."¹ The material presented in Table 7.1 would tend, at least in part, to support that observation.

The use variance was the predominant variance petitioned for during the study period. In 1971, out of a total number of petitions of 161, 65 were for use variances. Similarly in 1972, 66 out of a total of 159 were use related variance requests. During the two-year study period, the Board granted 75% of all use requests brought before it.

A listing of use variances denied follows.

1971 1. 635 Cherry Street S. E., requested permission to use a parcel of land in the R-4 zone for commercial off-street parking lot.

2. A requested variance to use garage in rear of property for storage of carpeting and floor tile in R-3 zone.

3. 132 Wealthy S. E., requested variance to use vacant lot for storage of used vehicles in R-2 zone.

4. 1121 Elkhart S. E., requested variance to use R-2 zoned

¹Interview with Ms. Stonehouse, Member, Grand Rapids Board of Zoning Appeals, June 21, 1974.
<table>
<thead>
<tr>
<th>Variance Applied For</th>
<th>Total No. of Petitions</th>
<th>Total No. Granted</th>
<th>Total No. Denied</th>
<th>Percent Granted</th>
<th>Percent Denied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use</td>
<td>131</td>
<td>98</td>
<td>33</td>
<td>75</td>
<td>25</td>
</tr>
<tr>
<td>Bulk</td>
<td>70</td>
<td>61</td>
<td>9</td>
<td>87</td>
<td>13</td>
</tr>
<tr>
<td>Signs</td>
<td>37</td>
<td>18</td>
<td>19</td>
<td>49</td>
<td>51</td>
</tr>
<tr>
<td>Special Exception</td>
<td>11</td>
<td>10</td>
<td>1</td>
<td>91</td>
<td>9</td>
</tr>
<tr>
<td>Temporary Use</td>
<td>4</td>
<td>3</td>
<td>1</td>
<td>75</td>
<td>25</td>
</tr>
<tr>
<td>Home Occupations</td>
<td>7</td>
<td>7</td>
<td>0</td>
<td>100</td>
<td>-</td>
</tr>
<tr>
<td>Non-conforming Use</td>
<td>17</td>
<td>11</td>
<td>6</td>
<td>65</td>
<td>35</td>
</tr>
<tr>
<td>Demolition</td>
<td>8</td>
<td>7</td>
<td>1</td>
<td>87</td>
<td>13</td>
</tr>
<tr>
<td>Conversion</td>
<td>35</td>
<td>18</td>
<td>17</td>
<td>52</td>
<td>48</td>
</tr>
<tr>
<td>Totals</td>
<td>320</td>
<td>223</td>
<td>97</td>
<td>69</td>
<td>31</td>
</tr>
</tbody>
</table>


lot for off-street parking

5. 1453 Strathmore Place S.E., requested permission to use residence for office in R-1 zone.

6. 421 Cass S.E., requested variance to erect a one-story metal and masonry storage building in R-4 zone.

7. 1144 Lenard N.W., requested permission to use former shoe repair shop on rear of lot for an apartment in C-2 zone.

8. to use parcel of land in R-1 zone for the erection of a new one-story furniture store.

9. 815-835 Benson N.E., to erect a 14-unit townhouse apartment in an R-3 zone.
10. 440 Oak Park Drive S. E., request to erect four twelve-family apartments in R-3 zone.

11. 1450 Sibley N. W., to erect a professional building in an R-1 zone.

12. 1005 Sheldon S. E., to erect a warehouse in an R-3 residential zone.

13. 215 Griggs S. E., permission to erect a parking structure in an R-2 zone.

14. 722 Franklin S. E., to use a two-family residence for a resident home for the aged, on the first floor, for not more than three tenants, in R-3 zone.

15. 333 and 337 Fourth Street, requested a variance to erect a new office building in an I-1 zone.

16. 438 Madison S. E., to use dwelling in R-2 zone for a five-unit apartment.

17. 312 Paris S. E., requested a variance to use residence for lodging of aged persons.

1972

1. 1251 Plainfield N. E., to erect a commercial structure in an R-3 residential zone.

2. 2335 Burton S. E., requested a variance to use space in an office building for men's wig and hair salon in R-1 zone.

3. 18 Rose S. E., to use residence in R-3 zone for dormitory.

4. 123 Cutler S. W., requested permission to use residence in R-3 zone for one apartment and three roomers.

5. 1112 Elkhart N. E., requested variance to use lot in R-2 zone for off-street parking. Previously denied in 1971.

6. 1948 Coit N. E., to operate a beauty salon in an R-2 zone.

7. 429 Covell N. W., requested a variance to erect a one-story retail food market in an R-1 zone.
8. 2770 Lenard N. E., request for a variance to erect four buildings with a total of 88 dwelling units in an R-1 zone.

9. 3167 Kalamazoo Avenue S. E., to erect a two-story office building addition with adjoining parking in an R-1 zone.

10. 541 College S. E., requested a variance in order to use a residential structure in an R-2 zone for a church.

11. 1, 3, 9 Fuller and 1158 Fulton S. E., requested a variance to use a lot and a portion of a second lot for a retail food store and possible use as a retail gasoline station in R-3 zone.

12. 657 Fulton W., requested a variance to use property in C-2 zone for used car sales.

13. 3765 Kalamazoo S. E., requested variance to erect a gasoline pump with underground storage tank in an R-1 zone.

14. 566 Morris S. E. requested permission to use a single-family residence as a career counseling facility.

15. 2375 Buchanan S. W., to use parcel of land in R-3 zone for the retail sale of cheese.

16. 1539 Alpine N. W., requested permission to erect a new one-story retail store building in a C-1 zone.¹

The foregoing is presented to document the discretionary obliqueness of the Board in those use related variances which were granted. The following presentation of use variance determinations by the Grand Rapids Board is representative of such obliqueness.

Use Variances before the Grand Rapids Board of Zoning Appeals

The Grand Rapids Board of Zoning Appeals made a number of

decisions during the study period that seemed to be at odds with prior determinations.

The most obvious inconsistency concerned gas pump and storage tank construction and use. A variance requesting the use in an R-1 zone was denied late in 1972. In 1971, two such use variances were granted, one in an R-1 zone, the other in R-2. The only apparent difference between the three was the fact that the variance denied was protested by over six people.  

Similarly, in 1971 an applicant requested permission to use a residence in an R-1 zone for an office; the variance was denied. By way of contrast, at an April meeting of the Board the same type of variance was granted unanimously. While no one protested the April petition, the denied variance was protested by three neighbors of standing.

In June of 1971 a variance was granted to allow the use of an R-1 parcel for storage of tree trimming and stump removal equipment. Five months earlier the same Board denied a requested variance to use a garage in the rear of an R-3 parcel for storage of carpeting and floor tile. The petitioner denied stated flatly that this use would only be needed for 6 months while the granted variance was of a more

1City of Grand Rapids Board of Zoning Appeals Official Minutes, October 19, 1972.

2ibid., November 18, 1971.
permanent nature. Such accessory use petitions were common during the two-year period covered.

Concerning professional office buildings within R-1 zones, a variance was granted in November of 1971 to erect a professional building and parking area while 4 months earlier an identical variance was denied. The petition denied brought forth 30 active protestants and a petition of 60 signatures. The Minutes concerning the granted variance made mention of neither active nor passive participation.

In December of 1971 a petition for the use of a two-family home for the lodging of three elderly persons was denied. The same type of variance, utilizing a one-family home for the lodging of four elderly persons, was approved unanimously only 6 months later. In July of 1972 another variance was granted allowing the use of a one-family home in an R-2 zone for the same purpose.

The above would seem to reflect on petition outcomes on the part of the Grand Rapids Board. Though no mention was made by applicants denied previous similar variance petitions, one might expect the Board to be cognizant of, if not similar variance determinations, at least a policy pattern toward such requests.

1 Ibid., January 7, 1971, p. 2. 2 Ibid., August 6, 1971, p. 5.
5 Dukeminier and Stapleton, op. cit., p. 337.
Save for one use petition approved above significant protest,\(^1\) those variances granted were devoid of public input, while those use variances denied were actively protested. Only 10 of all use variances denied, or roughly 12%, were void of either protestant or supportive input.

**Bulk Variances before the Grand Rapids Board of Zoning Appeals**

In terms of variances, excluding petitions for sign adjustment, the Grand Rapids Board granted 87% of all requests, denying only 13%. Out of the 61 petitions granted only 9.8% were protested while of those 9 denied, 56% were protested.

Only one decision out of the total of 70 resulted in a non-unanimous vote.\(^2\) The particular petition requested the erection of two single-family houses on two adjoining 44-foot lots of common ownership in an R-1 zone which requires a 60-foot width. There were two active protestants and "a number of written objections."\(^3\) The applicants' argument was that "more than 90% of these neighborhood lots are 44-foot lots."\(^4\) The Committee Report was favorable, "... the majority of the houses in this neighborhood are built on small lots

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\(^1\)Grand Rapids Board of Zoning Appeals Official Minutes, August 3, 1972, p. 3; 5 letters of objection and over 30 protestants.

\(^2\)ibid., November 4, 1971, p. 3.

\(^3\)ibid.

\(^4\)ibid.
and are more or less small houses. The hardship is that this property was on the block to sell for years and was not sold on account of the economic factor to build a large house on the lot."¹

The above variance was granted by a vote of 7-1, Ms. Brooks dissenting, who stated, "... since the Board may not use financial hardship as a hardship under the zoning ordinance, then they can use this 88 foot piece of property for one home."²

Protestants before the Grand Rapids Board of Zoning Appeals

Out of a total of 320 petitions before the Grand Rapids Board 84 or 26% were protested. The greatest number of protests occurred with respect to use variances, the second greatest number occurring when conversion variances were requested. The greatest number of citizen protests came when the variance occurred in a residential district. (Table 7.2).

Passive objection to variance requests before the Grand Rapids Board occurred 41 times during the two-year study period. Table 7.3 illustrates that of the 41 passively protested petitions 29 or 71% were denied, while 12 or 29% were approved. These figures stand in contrast to Table 7.4 wherein out of the total number of variances protested, both actively and passively, only 59% of the total

¹ibid. ²ibid.
TABLE 7.2
Protest Correlation to Zone of Variance 1971-1972
Grand Rapids

<table>
<thead>
<tr>
<th>Zone</th>
<th>Number of Protested Petitions</th>
<th>Percent of all Petitions Protested</th>
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</thead>
<tbody>
<tr>
<td>R-1</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>R-2</td>
<td>18</td>
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</tr>
<tr>
<td>R-3</td>
<td>13</td>
<td>75</td>
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<tr>
<td>R-4</td>
<td>13</td>
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<td>R-5</td>
<td>6</td>
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<tr>
<td>SR</td>
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<tr>
<td>F</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>C-1</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>C-2</td>
<td>5</td>
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</tr>
<tr>
<td>C-3</td>
<td>-</td>
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<td>-</td>
<td>25</td>
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<tr>
<td>CBD-3</td>
<td>-</td>
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<tr>
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<tr>
<td>CBD-5</td>
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<tr>
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<td>-</td>
<td></td>
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<tr>
<td>PSC</td>
<td>-</td>
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</tr>
<tr>
<td>I-1</td>
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</tr>
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<td>-</td>
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<tr>
<td>TOTAL</td>
<td>84</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Grand Rapids Board of Zoning Appeals Official Minutes 1971-1972
### TABLE 7.3

**Passive Objection Outcomes According to Petition Type**

**Grand Rapids**

<table>
<thead>
<tr>
<th>Petition Type</th>
<th>Petitions with Passive Protest</th>
<th>Board Action</th>
<th>Percent Grant</th>
<th>Percent Deny</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Granted</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<td>Denied</td>
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<td>60</td>
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<tr>
<td>Signs</td>
<td>5</td>
<td>1</td>
<td>4</td>
<td>20</td>
</tr>
<tr>
<td>Use</td>
<td>17</td>
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<td>29.41</td>
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<td>-</td>
<td>100</td>
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<tr>
<td>Non-conforming Use</td>
<td>5</td>
<td>1</td>
<td>4</td>
<td>20</td>
</tr>
<tr>
<td>Demolition</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>50</td>
</tr>
<tr>
<td>Conversion</td>
<td>6</td>
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<td>6</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>41</strong></td>
<td><strong>12</strong></td>
<td><strong>29</strong></td>
<td><strong>29.26</strong></td>
</tr>
</tbody>
</table>

Source: Grand Rapids Board of Zoning Appeals Official Minutes, 1971-1972

### TABLE 7.4

**Total Protested Petitions, January 1971-December 1972**

**Grand Rapids**

<table>
<thead>
<tr>
<th>Variance Requested</th>
<th>Granted</th>
<th>Denied</th>
<th>Total</th>
<th>Percent Grant</th>
<th>Percent Deny</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use</td>
<td>13</td>
<td>22</td>
<td>35</td>
<td>37.14</td>
<td>62.85</td>
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<tr>
<td>Bulk</td>
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<td>11</td>
<td>54.54</td>
<td>45.45</td>
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<td>Signs</td>
<td>2</td>
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<td>28.57</td>
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<td>Special Exception</td>
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<td>5</td>
<td>80</td>
<td>20</td>
</tr>
<tr>
<td>Temporary Use</td>
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<td>3</td>
<td>100</td>
<td></td>
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<tr>
<td>Home Occupation</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Non-conforming Use</td>
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<td>6</td>
<td>7</td>
<td>14.28</td>
<td>85.71</td>
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<td>Demolition</td>
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<td>6</td>
<td>83.33</td>
<td>16.66</td>
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<tr>
<td>Conversion</td>
<td>2</td>
<td>12</td>
<td>14</td>
<td>14.28</td>
<td>85.71</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>36</strong></td>
<td><strong>52</strong></td>
<td><strong>88</strong></td>
<td><strong>40.90</strong></td>
<td><strong>59.09</strong></td>
</tr>
</tbody>
</table>

Source: Grand Rapids Board of Zoning Appeals Official Minutes, 1971-1972
were denied while 41% of the protested petitions were granted.

Table 7.2 illustrates the level of protest by zone. Consistent with Hypothesis V, 75% of all protested petitions were within the residential zones.

In terms of protestant activity, the most influential single set of Board decisions involved four appeals for the demolition of existing structures within the Heritage Hill historical district in Grand Rapids.¹

On January 6, 1972, four appeals were made to the Grand Rapids Board for permission to "remove" five homes from the Heritage Hill area for the expansion of a church parking lot. The appeals were the following:

A. Mrs. Nellie Ripstra, 530 Crescent N.E. requested permission to remove building in Heritage Hill area for expansion of church structure (First Netherlands Reformed Church) and for additional parking. R-4 zone, lot size 40' x 240. 1'

B. Mr. Elan J. and Loraine Schantz, 524 Crescent N.E. asked to demolish building and use land for enlarged church parking area (First Netherlands Reformed Church) with 5' side yard on west and eliminate greenbelt on south. R-4 zone, lot size 37. 37' x 242. 1'

C. The Gilbert Runyon Estate, 225 Union N.E. request to demolish building and use land for enlarged parking area (First Netherlands Reformed Church) waiving the required front setback. R-4 zone, lot size 36' x 129, 69'

¹The appeals took place during the first three months of 1972.
D. Mr. Harry and Jennie DeBonte, 229 and 233 Union N. E. asked to remove two residential structures to expand church parking lot, utilizing entire area for parking (First Netherlands Reformed Church) and waive front and side yard setback. R-4 zone, lot size 70' x 121.69'

The appeals of January 6 brought out the following facts:

1. The church had taken options on all of the aforementioned property.

2. As of June 1969, the City Commission of Grand Rapids had adopted a moratorium for all buildings, on demolition of original structures.

3. As of February 2, 1971 the City Commission of Grand Rapids adopted the Preservation Commission Ordinance by appointment of a Historic Commission Study Committee.

4. The Study Committee had completed its report and said report had been accepted by the state and federal governments for historic designation. All that need be done was to gain acceptance by the City Commission. When this was done the Preservation Committee would then handle the requests for demolition and changes within the Heritage Hill area.

Protestants present at the January 6 hearing were the Heritage Hill Association and two property owners of standing. The Board postponed all appeals concerned for 30 days.

February 3, 1972

Concerning the variance at 530 Crescent, two letters of protest were submitted to the Board on February 3, 1972. The letters were concerned primarily with the degree of church expansion.

There was discussion by the Heritage Hill Association and the Board as to the Heritage Hill Ordinance No. 60-49, which required the
demolition, and Ordinance No. 71-13 extending the moratorium.

The appeal of 530 Crescent brought out the following facts:

1. The Planning Department recommended removal of the house at 530 Crescent but not that located at 524 Crescent. They also approved the demolition of the houses at 225, 229 and 233 Union.

2. Ordinance No. 71-13 simply extended the time limit for Ordinance No. 69-46 and did not amend its provisions.

3. Heritage Hill Association had agreed to compromise and allow the three homes on Union Avenue to be demolished, provided that the Crescent Street homes were saved.

Following the discussion which provided the above facts, the appeals of 524 and 530 Crescent were tabled. The appeals of 225 Union and 229 and 233 Union were granted for demolition only. That portion of the appeals requesting front and side yard set backs was not approved.

March 2, 1972

The appeal of Mrs. Nellie Ripstra, 530 Crescent Street, was the first to be heard at the March 2 meeting. The only objector present was Mr. J. Gillis of the Heritage Hill Association.

The Planning Department, by letter, stated that the razing of the home at 530 Crescent would not "affect the streetscape adversely." Mr. Miller, a board member, stated that the Board offered relief from the strict interpretation of the City Ordinance,

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stating "had it not been for the moratorium, the church would not even have had to appear before the board."¹ Counselor to the Board, Mr. Weible, stated that the Board's decision "should be according to the Heritage Hill Ordinance."² Mr. Miller then observed that the strict interpretation of Ordinance No. 69-49 "deprives this church of property rights commonly enjoyed by other churches in other districts who do not have to address themselves to this ordinance. In other districts it is not necessary for them to appeal before this board to demolish or raze structures."³

The Inspection Committee Report, presented by Ms. Brooks, stated that

"... since action to relieve the Zoning Board of this responsibility is apparently not imminent and another postponement would not seem to be my answer to the problem, and since our attorney advised that a simple majority of the quorum is enough to decide the Heritage Hill Ordinance, and the Investigating Committee is divided in opinion. ..."⁴

Ms. Brooks would yield to the other gentlemen to offer a motion,

Mr. DeJonge then offered the following motion:

Resolved that Mrs. Nellie Ripstra be granted her application to demolish the house at 530 Crescent Street in accordance with the provisions of the Ordinance as amended, for the following reasons and findings of fact: that there is a practical difficulty in the use of the property, as the property has relatively little significance to the Heritage Hill proposed district, and that there is a severe need for the

¹ibid. ²ibid. ³ibid. ⁴ibid.
contiguous First Netherlands Reformed Church for parking in its church activity, and the expansion of this church can only be met by use of this contiguous property. A hardship and practical difficulty has been shown to Mrs. Ripstra in that she does not have a real market value for her house other than this offer of First Netherlands Reformed Church and there is no relief seen for her in the near future other than through this Board, and so move for the demolition of her home.¹

The above motion was seconded by Mr. Miller and carried, 6-1, Ms. Brooks dissenting.

The appeal of Elan and Loraine Schantz of 524 Crescent to demolish and use land for an enlarged church parking area for the First Netherlands Reformed Church was closed to discussion "as it tied in with the appeal of 530 Crescent Street. "² The above motion was seconded by Mr. Miller and passed unanimously.³

Thereupon the Committee issued its report which was favorable.

Mr. DeJonge stated that the same facts apply to this matter as that of 530 Crescent, except that the hardship varied. This is a 4-apartment house, one of which has been vacant for two or three months because of the future uncertainty of the property, and another about to be vacated. The motion to grant the application for demolition of 524 Crescent Street was then made by Mr. DeJonge, seconded by Mr. Miller, and passed 6-1, Ms. Brooks dissenting.⁴

Heritage Hill Association appealed to the Circuit Court to provide for injunctive relief from the Board's decision on March 17, 1972.

¹ibid. ²ibid. ³ibid. ⁴ibid., p. 11.
The Court denied the Association's request. Thereupon, the Organization appealed to the Court of Appeals in April of that year and the Court of Appeals upheld the Circuit Court's determination.¹

Summary

Since the zoning board of appeals exists at the apex of the administration of any zoning ordinance, its process of hearing must be considered essential. The inability of the board to consider each case thoroughly and to inspect the parcel of each applicant by each board member is due both to the large number of cases which must be considered biweekly (for the Grand Rapids Board) and the fact that a member with the necessary expertise in the field cannot be expected to devote all of his or her time to such inspection. The inability of evaluating each case fully may result in unjust treatment of many applicants. Since the board rarely states explicitly the reasons for a variance grant or denial, only an attorney who handles cases regularly and therefore has some idea of the standards used by the board can effectively argue a case.

An examination of the use variance cases indicates that although the courts have not clearly specified the area which should be considered with regard to the environment surrounding the applicant's use, the board is mandated by law to consider a sphere of 300 feet surrounding the parcel. Although the consideration of 300
feet may be sufficient to determine the immediate effect of a particular use on the surrounding area, it would seem that a somewhat larger "frame of reference" should be utilized for considering the interrelationships of uses with existing and future zoning plans for the particular area, neighboring zones and the entire city.

Whatever the proper area may be, it must be determined which conditions existing within that area should be taken into account when deciding a particular case. Although the courts and the boards seem to agree as to the factors which must be considered, there would seem to be some disagreement as to the number of these factors which should be required in order to grant a variance. If one condition exists which the board feels is significant, it will grant the variance.

Protestant Impact before the Zoning Board of Appeals

Throughout the entire study it was noted that citizen participation before a zoning board of appeals was almost totally a negative function. Most individuals within 300 feet of the applicant's property were said to have "little preference one way or the other." Therefore, citizen participation came from those opposed rather than from

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1 Of the total number of requests before both boards, there were three variance requests in which supporters came to support the applicant. All three were bulk variances and all three passes unanimously.

2 Conversation with Dorothy Bekema, Secretary for the Grand Rapids Board of Zoning Appeals, June 18, 1974.
those not opposed. However, during public hearings in which there was support for a particular variance, the boards left little doubt that the opponents' position held more weight.

Organizational protest, though not formidable during the study period, did have its effect. Usually, the board acted as arbiter between the opposing parties and, though not reflected in the minutes, "an agreement to satisfy both parties . . . could be worked out." The Heritage Hill Organization, subsequent to its court defeat, was "less of a mover of the Board." Indeed, two of the four denials reached by the Grand Rapids Board followed the Heritage Hill decision and involved neighborhood organizations other than Heritage Hill. (see Table 8.1).

Though board members were obviously influenced by protestants, some members of both boards felt that input "slowed things up." That "things" were slowed up does not negate the fact that the boards were extremely sensitive to popular objection. That this fact

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1 Dukeminier and Stapleton, op. cit., p 309.

2 "Supporters are not allowed to present their case twice." Grand Rapids Board Member DeJonge, phone interview, 6-13-74.

3 Grand Rapids Board Member Stonehouse, interview, 5-30-74.

4 ibid.

5 Mulberry Association and the Leonard Street Association.

6 DeJonge, op. cit.
### TABLE 8.1
Organizational Protest before the Grand Rapids Board of Zoning Appeals

<table>
<thead>
<tr>
<th>Petition Type</th>
<th>No. of Petitions Protested by Organizations</th>
<th>Board Action</th>
<th>Percent Granted</th>
<th>Percent Denied</th>
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</thead>
<tbody>
<tr>
<td>Use</td>
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<td>Bulk</td>
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<tr>
<td>Special Exception</td>
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<tr>
<td>Temporary Use</td>
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<td>1</td>
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<td>100</td>
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<tr>
<td>Home Occupation</td>
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<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Non-conforming Use</td>
<td>-</td>
<td>-</td>
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</tr>
<tr>
<td>Demolition</td>
<td>7</td>
<td>6</td>
<td>1</td>
<td>85.71</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>12</strong></td>
<td><strong>8</strong></td>
<td><strong>4</strong></td>
<td><strong>66.66</strong></td>
</tr>
</tbody>
</table>

Source: Grand Rapids Board of Zoning Appeals Official Minutes 1971-1972

was exhibited with reference to both boards would seem to indicate that protestant activity is a significant part of the zoning process and that it must be taken into account in any analysis of either zoning or planning theory.

**Board Membership Attitude and Citizen Participation**

Obvious throughout the entire study period was that "though participation is sometimes trying, it is necessary." The fact that 1

---

1Grand Rapids Board Member Logan, interview, 7-13-74.
only one member out of the total of 16 questioned said that there was too much input is significant. (see Table 8.2).

Though the majority of the members questioned did not favor public referendum of the zoning ordinance as such or neighborhood referendum concerning a gas station variance, most reflected favorably toward graphically portraying variances "for the objectors" as well as not favoring the proposal to swear witnesses as "it would drive many people away." 1

Within the Grand Rapids Board, members seemed very aware of the protestant's concerns even before the public hearing. 2 That this was the case speaks well of a Board that "two years ago . . . announced the decision before the public hearing." 3

The Grandville Board seemed relatively more ill at ease with objectors than the Grand Rapids Board. 4 Whether due to membership or the fact that protestants seemed more willing to argue points revolving about the "spirit of the ordinance" this researcher was unable to tell.

1 Grandville Board Member Fanher, interview, 7-15-74.

2 The Inspection Committee occasionally visited neighbors in the area of the variance to determine if it would upset parking patterns.

3 Interview with Ms. Brooks, 6-14-72.

4 Two protestants walked out of a public hearing after being told that only persons with "standing" might address the Board.
<table>
<thead>
<tr>
<th>Question Number</th>
<th>Grand Rapids</th>
<th>Grandville</th>
<th>Percent of Respondents Answering Yes</th>
<th>Percent of Respondents Answering No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>N Y Y N N N Y N N</td>
<td>N Y N N N Y N Y</td>
<td>37.5</td>
<td>62.5</td>
</tr>
<tr>
<td>2</td>
<td>N Y Y N N Y N Y N</td>
<td>N Y Y N Y N N N</td>
<td>43.7</td>
<td>56.3</td>
</tr>
<tr>
<td>3</td>
<td>N Y - N N N N Y N</td>
<td>- - N Y N N N</td>
<td>23.0</td>
<td>77.0</td>
</tr>
<tr>
<td>4</td>
<td>N Y N Y - N Y N N</td>
<td>N N N N Y N N N</td>
<td>26.6</td>
<td>68.7</td>
</tr>
<tr>
<td>5</td>
<td>Y Y N Y N - Y Y Y Y Y</td>
<td>Y Y Y N Y Y Y Y N</td>
<td>73.3</td>
<td>26.6</td>
</tr>
<tr>
<td>6</td>
<td>Y Y N Y Y Y Y Y Y Y</td>
<td>Y N Y Y Y Y Y Y Y</td>
<td>81.25</td>
<td>18.75</td>
</tr>
<tr>
<td>7</td>
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<td>N Y Y - Y N N N</td>
<td>28.5</td>
<td>71.4</td>
</tr>
<tr>
<td>8</td>
<td>N Y Y Y N N N Y N N</td>
<td>N N Y N N Y N N</td>
<td>37.5</td>
<td>62.5</td>
</tr>
<tr>
<td>9</td>
<td>Y Y Y Y N Y Y Y N Y</td>
<td>N N Y N Y N N N</td>
<td>56.2</td>
<td>43.7</td>
</tr>
<tr>
<td>10</td>
<td>*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>- N N N N N N N N N</td>
<td>N Y N N N N N N N</td>
<td>6.0</td>
<td>93.9</td>
</tr>
<tr>
<td>12</td>
<td>a c a c c a c c c a c</td>
<td>c a b c a a c</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Y Y N Y N Y N Y Y</td>
<td>N N N N N Y Y Y</td>
<td>43.7</td>
<td>56.3</td>
</tr>
<tr>
<td>14</td>
<td>N N N N Y N N N N</td>
<td>Y Y N Y Y Y N Y</td>
<td>37.5</td>
<td>62.5</td>
</tr>
<tr>
<td>15</td>
<td>N Y N N N N Y N Y Y</td>
<td>Y N Y Y Y Y N N</td>
<td>50.0</td>
<td>50.0</td>
</tr>
<tr>
<td>16</td>
<td>N Y N N N N N N N N</td>
<td>N N N Y Y Y N N</td>
<td>18.8</td>
<td>81.2</td>
</tr>
</tbody>
</table>

Both boards thought it was of utmost importance to "protect the neighborhood." Of the 16 members interviewed, 10 quoted this criterion most often (see Table 8.2). The fact that 8 out of the 16 members questioned felt that there was too little public input could be seen as an invitation to those who are not aware of the "harm that variances have, can and will have on the type of city we live in."\(^1\)

When board members were asked whether a non-conforming use was a grant of special privilege, over 81% answered in the affirmative. This would appear to be at odds with the fact that over 60% of all variances affecting the non-conforming use were granted by both boards.

Over 62% of those members questioned stated that the board generally does not follow planning staff recommendations presented to them. Though the City of Grandville does not have a planning staff per se, members did respond in terms of consultant recommendations. The Grandville Board felt in five out of seven cases that the membership would not go along with such consultant recommendations. However, the Grand Rapids Board was more evenly split (five negatives to four affirmatives) when asked the same question. The possibility exists that because Grand Rapids has an "in-house" planning staff the Board's confidence in the staff is enhanced.

\(^1\)Ms. Stonehouse, Grand Rapids Board Member, pre-meeting, 7-3-72.
Finally, when the Board members were asked whether they felt the zoning ordinance was an adequate mechanism for controlling the use of property, over 73% answered in the affirmative.

Conclusion

The study considered 363 decisions in which relevant citizen participation accounted for only 27.5%. Within this 27.5%, participation ranged from one written objection\(^1\) to over 50 active protestants with respect to one variance. \(^2\)

Decision outcomes were collected by analysis of Board Minutes, with the petitions then categorized by type. The data were analyzed on two bases: 1) for variation in outcome of petition between those protested and those not protested, and 2) for variation in protest activity about the several categories of zone.

The data were organized to test five specific hypotheses. The first three hypotheses anticipated a petition's denial to correlate positively with the fact that such a petition was protested either actively or passively. The fourth hypothesis anticipated that a zon-board of appeals' membership would tend to agree with its own

\(^1\)Such was the case with reference to a conversion request made in order to "use multi-family residence for 3 apartments on 1st floor and office space on 2nd floor," August 17, 1972. Grand Rapids Board of Zoning Appeals Official Minutes, August 17, 1972.

Inspection Committee recommendation if such a recommendation existed with respect to a specific petition. Finally, the fifth hypothesis anticipated greater protestant activity with respect to petitions requesting a zoning variance within a residential area as opposed to those outside of residential areas. As illustrated below, four of the five hypotheses were borne out. One of the five, however, could not be substantiated or disproved due to a lack of reliable data.

Hypothesis I

IF A VARIANCE IS BEFORE THE ZONING BOARD OF APPEALS, IT IS MORE LIKELY TO BE APPROVED IF CITIZEN PARTICIPATION IS EITHER LOW OR NON-EXISTENT THAN IF PARTICIPATION IS HIGH.

The foundation of the above lies within the documented tendencies of the tabulated data. Tables 8.3 and 8.4 convey the tendency of expectation noted by the Pennsylvania study portrayed in Table 8.5. Within Grand Rapids, protested petitions resulted in the Board denying the same 59% of the time while only granting petitions 41% of the time. In terms of Grandville's Board, the impact of protestants, though seemingly not as large, resulted in the Board's granting 44% of the protested petitions as opposed to 56% denial. These percentages are more impressive when compared to the unopposed variances, 96% grants to only 4% denials. The figures for the Grand Rapids Board are equally as significant--85% grant and 15% denial. Thus it can be said that the tendency is that protestants do indeed alter the outcome
TABLE 8.3

Total Non-Protested Petitions January 1971-December 1972

<table>
<thead>
<tr>
<th>Variance Requested</th>
<th>Grand Rapids</th>
<th></th>
<th>Grandville</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Granted</td>
<td>Denied</td>
<td>Total</td>
<td>Percent Granted</td>
</tr>
<tr>
<td>Use</td>
<td>85</td>
<td>11</td>
<td>96</td>
<td>88.54</td>
</tr>
<tr>
<td>Bulk</td>
<td>55</td>
<td>4</td>
<td>59</td>
<td>93.22</td>
</tr>
<tr>
<td>Signs</td>
<td>16</td>
<td>14</td>
<td>30</td>
<td>53.3</td>
</tr>
<tr>
<td>Special Exception</td>
<td>6</td>
<td>0</td>
<td>6</td>
<td>100</td>
</tr>
<tr>
<td>Temporary Use</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>100</td>
</tr>
<tr>
<td>Home Occupation</td>
<td>6</td>
<td>0</td>
<td>6</td>
<td>100</td>
</tr>
<tr>
<td>Non-conforming Use</td>
<td>10</td>
<td>0</td>
<td>10</td>
<td>100</td>
</tr>
<tr>
<td>Demolition</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>100</td>
</tr>
<tr>
<td>Conversion</td>
<td>15</td>
<td>5</td>
<td>20</td>
<td>75.25</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>197</strong></td>
<td><strong>34</strong></td>
<td><strong>231</strong></td>
<td><strong>85.28</strong></td>
</tr>
</tbody>
</table>

Source: Grand Rapids Board of Zoning Appeals Official Minutes 1971-1972
Grandville Board of Zoning Appeals Official Minutes 1971-1972
TABLE 8.4

Total Protested Petitions January 1971-December 1972

<table>
<thead>
<tr>
<th>Variance Requested</th>
<th>Grand Rapids</th>
<th></th>
<th></th>
<th>Grandville</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th>Percent</th>
<th>Percent</th>
<th>Percent</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Granted</td>
<td>Denied</td>
<td>Total</td>
<td>Granted</td>
<td>Denied</td>
<td>Granted</td>
<td>Denied</td>
<td>Total</td>
<td>Granted</td>
<td>Denied</td>
<td>Granted</td>
<td>Denied</td>
</tr>
<tr>
<td>Use</td>
<td>13</td>
<td>22</td>
<td>35</td>
<td>37.14</td>
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<td>1</td>
<td>2</td>
<td>50</td>
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<td>Signs</td>
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<td>71.42</td>
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<td>6</td>
<td>60</td>
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<td>60</td>
<td>40</td>
<td>60</td>
<td>40</td>
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<tr>
<td>Temporary Use</td>
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<td>3</td>
<td>100</td>
<td>0</td>
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<td>100</td>
</tr>
<tr>
<td>Home Occupation</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>100</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Non-conforming Use</td>
<td>1</td>
<td>6</td>
<td>7</td>
<td>14.28</td>
<td>85.71</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Demolition</td>
<td>5</td>
<td>1</td>
<td>6</td>
<td>83.33</td>
<td>16.66</td>
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<td>5</td>
<td>6</td>
<td>60</td>
<td>40</td>
<td>60</td>
<td>40</td>
</tr>
<tr>
<td>Conversion</td>
<td>2</td>
<td>12</td>
<td>14</td>
<td>14.28</td>
<td>85.71</td>
<td>2</td>
<td>5</td>
<td>7</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>36</strong></td>
<td><strong>52</strong></td>
<td><strong>88</strong></td>
<td><strong>40.90</strong></td>
<td><strong>59.09</strong></td>
<td><strong>4</strong></td>
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<td><strong>55.55</strong></td>
<td><strong>44.44</strong></td>
<td><strong>55.55</strong></td>
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</tbody>
</table>

Source: Grand Rapids Board of Zoning Appeals Official Minutes 1971-1972
Grandville Board of Zoning Appeals Official Minutes 1971-1972
<table>
<thead>
<tr>
<th>Type of Petition</th>
<th>No Similar Uses</th>
<th>Similar Uses</th>
<th>History</th>
<th>Similar Uses and History</th>
<th>Other Cases</th>
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<tbody>
<tr>
<td></td>
<td>G R T</td>
<td>G R T</td>
<td>G R T</td>
<td>G R T</td>
<td>G R T</td>
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<td></td>
<td><strong>Protested Cases</strong></td>
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<td>Commercial Use</td>
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</tr>
<tr>
<td>Industrial Use</td>
<td><img src="https://example.com" alt="Table" /></td>
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<td></td>
</tr>
<tr>
<td>Use Totals</td>
<td><img src="https://example.com" alt="Table" /></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial Use and Zoning</td>
<td><img src="https://example.com" alt="Table" /></td>
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<td></td>
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</tr>
<tr>
<td>Industrial Use and Zoning</td>
<td><img src="https://example.com" alt="Table" /></td>
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<td></td>
<td></td>
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</tr>
<tr>
<td>Use &amp; Zoning Totals</td>
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</tr>
<tr>
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</tr>
<tr>
<td></td>
<td><strong>Non-Protested Cases</strong></td>
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</tr>
<tr>
<td>Commercial Use</td>
<td><img src="https://example.com" alt="Table" /></td>
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<td></td>
</tr>
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<td>Industrial Use</td>
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<td></td>
</tr>
<tr>
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<td><img src="https://example.com" alt="Table" /></td>
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</tr>
<tr>
<td>Commercial Use and Zoning</td>
<td><img src="https://example.com" alt="Table" /></td>
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<tr>
<td>Industrial Use and Zoning</td>
<td><img src="https://example.com" alt="Table" /></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Use &amp; Zoning Totals</td>
<td><img src="https://example.com" alt="Table" /></td>
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</tr>
<tr>
<td>TOTAL</td>
<td><img src="https://example.com" alt="Table" /></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The "Granted" columns include the cases in which temporary non-conforming uses were issued. The letters "G", "R", and "T" denote "Granted", "Refused" and "Totals".

of zoning board decisions with a differential of 41% and 44% for Grand Rapids and 52 and 51% respectively for Grandville.

Hypothesis II

THE ABSENCE OR PRESENCE OF PROTESTANTS AT A BOARD OF ZONING APPEALS' PUBLIC HEARING WILL HAVE A SIGNIFICANT IMPACT UPON EITHER THE DENIAL OR GRANT OF AN APPLICATION BEFORE SAID BOARD.

Documenting the second of the series of hypotheses was made a bit more difficult for lack of adequate information within the Minutes of the Board. Often times the notation of "many objectors!" or "number of protestants" made it difficult to correctly code the level of participation. During the period of time that I spent at the Board hearings, Minutes which were made during the hearings tended to vary in terms of the meaning of "many" and "a number." However, in looking over the minutes of both Boards, I was able to ascertain that within the protested cases protest amounted to no less than three to five objectors per variance in Grand Rapids and no less than two to three in Grandville. With reference to the non-protested cases, protestant activity was, according to the Minutes of both Boards, non-existent.

Within those protested cases which were denied, protestant activity was "primarily" of a written nature, with few (one to two) persons speaking before the Board. Those protested cases which were denied were protested actively 83% of the time.
Thus, conclusive evidence sustaining Hypothesis II was not available in any reliable form. For purposes of research, therefore, it would seem that "on the spot" notetaking is essential. Reliance upon the Minutes would seem to prove futile if any significant statistical tests were to be made.

During the period from May to July of 1974, the research tabulated variance requests from both Boards (see Table 8.6). Of the six denials reached by the Grand Rapids Board of Zoning Appeals, all were protested. Of the 37 petitions which were presented before the Grand Rapids Board only 29 were acted upon, the 8 remaining being tabled for further consideration.

Grandville's Board of Zoning Appeals heard 9 petitions for variance. Of the 9 petitions, 8 were granted and 1 was tabled. During the three months period only 1 petition was protested, that being the bulk variance which was subsequently tabled.

Hypothesis III

IF A USE VARIANCE IS BEFORE THE BOARD, SUCH VARIANCE IS MORE LIKELY TO BE GRANTED IF CITIZEN PARTICIPATION IS LOW CONCERNING THE PARTICULAR USE VARIANCE THAN IF PARTICIPATION IS HIGH.

The third hypothesis is also documented in Tables 8.3 and 8.4. In Grand Rapids, protested petitions for use variances were successful 62% of the time, while in non-protested instances, only 11% of the
TABLE 8.6

Variances Acted Upon by the Grandville and Grand Rapids Boards of Zoning Appeals

<table>
<thead>
<tr>
<th>Variance Requested</th>
<th>Grand Rapids</th>
<th></th>
<th>Grandville</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Petitions</td>
<td>Granted</td>
<td>Denied</td>
<td>Percent</td>
</tr>
<tr>
<td>Use</td>
<td>18*</td>
<td>10</td>
<td>4</td>
<td>-</td>
</tr>
<tr>
<td>Bulk</td>
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<td>7</td>
<td>-</td>
<td>100</td>
</tr>
<tr>
<td>Signs</td>
<td>4*</td>
<td>3</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Special</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Exceptions</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>100</td>
</tr>
<tr>
<td>Temporary Use</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Home</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occupation</td>
<td>-</td>
<td></td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Demolition</td>
<td>1*</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Conversion</td>
<td>3*</td>
<td>-</td>
<td>1</td>
<td>-</td>
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*Those petitions within granted nor denied were tabled for further action by the Board.

Source: Grand Rapids Board of Zoning Appeals Official Minutes, May 1-August 30, 1974
Grandville Board of Zoning Appeals Official Minutes, May 1-August 30, 1974
time. In Grandville, when protested, use variances were granted 50% of the time; when not, 100% of the time. The range of 51% and 50% would seem to indicate that in terms of use variance petitions the objector is of significant import.

Hypothesis IV

IF A PETITION RECOMMENDATION IS MADE TO THE BOARD OF ZONING APPEALS BY ITS OWN INSPECTION COMMITTEE THE BOARD WILL BE MORE LIKELY TO APPROVE THE RECOMMENDATION THAN NOT.

Overall there were 260 and 31 Inspection Committee recommendations for Grand Rapids and Grandville respectively. Of those 260 in Grand Rapids, only 21 or 7% were offered dissent. In Grandville none of the motions of the Committee were dissented. (see Table 8.7). The above would seem to indicate a solidarity among the members for the support of the Committee Report. This is even more interesting when one notes that in terms of both Boards, the Inspection Committee Report is written by one person, and is in essence "the view of that particular member only."¹

Additionally, the Grand Rapids Board was very sensitive to Planning Department recommendations. The department recommended denying 40% of those variances analyzed; the Board denied

¹Conversation with Mr. Kloet, Grand Rapids Board of Zoning Appeals Member.
TABLE 8. 7
Inspection Committee Dissensions According to Type of Variance before the Grand Rapids Board of Zoning Appeals

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TOTAL 21 8 13 38

Source: Grand Rapids Board of Zoning Appeals Official Minutes, May 1-August 30, 1974
33%. The department recommended granting 60%, the Board granted 66%. ¹

The fact that the second degree of residential zone received numerically more protestants might seem to indicate a knowledge on the part of the neighborhood property owner or renter that in terms of bulk and style of home, he is more likely to be impacted by a variance.
REFERENCES

Books


Articles


Cases

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Austin v Older, 278 Mich 518, 270 NW 771 (1936).

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Beadsley v Bethlehem Evangelical Lutheran Church, 261 Mich 458, 246 NW 180 (1933)

Brehmer v City of Kerrville, 320 Sw2d, 197 (Texas Civil Appeals Court, 1959).


City of Hattiesburg v Pittman, 233 Miss 544, 102 So2d 195, 198 (RI, 1967)

Couch v Zoning Commissioner of the Town of Washington, 141 Conn 349, 106 A2d 173, 178 (1954)

Cow Hollow Improvement Club v DiBene, 245 Cal App 2d 160, 53 Cal Rptr 610 (1966)

Dal Maso v Board of County Commissioners of Prince George County, 238 Md 333, 209 A2d 62 (1965)

Ellish v Goldman, 117 NYS2d 867, 869(S Ct 1952)

Euclid v Amber Realty Co, 272 US 365 (1926)

Goldstein v Zoning Board of Review of City of Warwick, 227 A2d 195, 198 (1956)
Goodrich v Selligman, 298 Ky 863, 183 SW2d 625, 627 (1944)

Heath v Mayor and City Council of Baltimore, 187 Md 296, 49 A2d 779, 802 (1946)

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Heritage Hill v Grand Rapids, 48 Mich App 765 (1973)

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Indian Village Manor Co v Detroit, 5 Mich App 679, 147 NW2d 731 (1967)

Janigan v Dearborn, 336 Mich 261, 57 NW2d 876 (1953)

Jenny Manufacturing Co v Zoning Board of Review of Town of East Providence, 63 RI 477, 9 A2d 705, 707 (1939)

Jones v DeVries, 326 Mich 126, 40 NW2d 317 (1949)

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Paine v Underwood, 203 So2d 593, 597 (Miss, 1967)

People ex rel Fordham Manor Reformed Church v Walsh, 244 NY 280, 155 NE 575, 578 (1927)

People ex rel Home for Hebrew Infants of City of New York v Walsh, 131 Misc 581, 227 NYS 570, 573 (S Ct 1928)

Rodick v Zoning Board of Review of Town of East Providence, 83 RI 392, 117 A2d 84, 85 (1955)

Thomson Methodist Church v Zoning Board of Review of City of Pawtucket, 210 A2d 138, 142 (RI, 1965)

Tuite v Zoning Board of Review of City of Woonsocket, 191 A2d 155, 157 (RI, 1963)

Miscellaneous

1970 Census of Population and Housing, Grand Rapids, Michigan, PCH (1) 80, Table P. 1, U.S. Department of Commerce, Bureau of the Census.


Zoning Ordinance, City of Grand Rapids, Michigan.

Zoning Ordinance, City of Grandville, Michigan.
APPENDICES
APPENDIX A

QUESTIONNAIRE

1. Would you support a policy of public referendum to adopt the municipal zoning ordinance?
   ____ Yes  ____ No

2. The City of Detroit allows for community (neighborhood) referendum on the granting of variances for gas stations. Would you support such a procedure in your city?
   ____ Yes  ____ No

3. Would you support extending the distance of "standing" in variance granting decisions from 300 feet to 300 feet plus?
   ____ Yes  ____ No

4. It has been suggested that sworn testimony be taken at Zoning Board of Appeals' public hearings concerning variance applications. The purpose of this suggestion would be to eliminate hearsay evidence. Would you be in favor of such a proposal?
   ____ Yes  ____ No

5. In your opinion, is the zoning ordinance an adequate mechanism for control of property use today?
   ____ Yes  ____ No

6. Would you say that a non-conforming use is a grant of special privilege?
   ____ Yes  ____ No

7. Would you be in favor of the creation of "neighborhood zoning boards" to provide structured public input on variance requests to the Zoning Board of Appeals?
   ____ Yes  ____ No

8. Would you say that in general the Board follows planning staff recommendations concerning variance grants?
   ____ Yes  ____ No

9. Do you consider public input essential at Board hearings?
   ____ Yes  ____ No

10. When voting to grant a variance, what criterion is of utmost importance to you? ________________________________
11. Would you favor a proposal requiring attendance by those property owners impacted by a proposed variance?

   _____ Yes   _____ No

12. In terms of public input at Board of Appeals' hearings, do you feel

   a. _____ there is enough public input
     b. _____ there is too much public input
     c. _____ there is too little public input.

13. Are variances graphically portrayed on zoning maps and present at all variance hearings? If not, would you favor such a procedure being inaugurated in your hearings?

   _____ Yes   _____ No

14. If you felt that technical expertise was lacking on the Board, would you favor a restructuring of the Board to include more experts in the fields of zoning law and planning?

   _____ Yes   _____ No

15. Should the courts specifically determine via formula "unnecessary hardship?"

   _____ Yes   _____ No

16. Would the public be better served at a public hearing if said hearing was held at the site of every parcel petitioned for variance?

   _____ Yes   _____ No
APPENDIX B

EXPLANATION OF TERMS

ZONING: The regulation of property under the police power of the state by which properties are defined by uses allowed upon said parcel of property. In addition zoning ordinances delimit the building and lot dimensions for the respective uses allowable upon a given parcel.

VARIANCE: That permission grant allowed by the zoning board of appeals to provide an applicant relief from the requirements of the zoning ordinance because of unnecessary hardship or practical difficulty.

USE VARIANCES: That variance allowing a structure or a use in a zone restricted against such structure or use.

BULK VARIANCES: That variance allowing the property owner relief from some ordinance requirement with respect to area, height, setback, parking spaces and such. The property owner still uses his property in a conforming manner, but he may deviate from the bulk requirement.

RESIDENTIAL VARIANCE OR SPECIAL EXCEPTION: Those variances or special exceptions sought by parties wishing to impact a residential zone with a use other than that provided for within the ordinance within said zone.

SPECIAL EXCEPTION: That permission grant allowed by the zoning board of appeals through the zoning ordinance to provide for certain uses where proof is given that the proposed use will not be detrimental to the health, safety and welfare of the neighborhood.

PROTESTANTS: Those individuals either speaking against a proposed variance or special exception (active protest), or signing such petition as would protest against such variance or special exception (passive protest).

CITIZEN PARTICIPATION: Those individuals either in physical or written presence—regardless of position—either for or against said variance or special exception. Participants shall not include either the board membership or members of the planning staff, nor any other city official whose duties are of a statutory nature to the proceeding.