

# Citizen's Guide to the Zoning Board of Appeals



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## Zoning Board of Appeals Members:

James Newman, Chairman; JoAn Baum;  
Monica Connett; Duane Lessen; Loren Toevs;  
Robert Vogelsang; Ken Zimmerman; and  
Alternates: Phil Webb & Sandy May

## PREFACE

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

## THE CITIZENS' ROLE

Smith accurately describes the purpose of the zoning hearing. In theory, before government enacts a measure that affects our lives, we are given an

opportunity to review and discuss it and then to present our view to officials, elected or appointed. This is the public hearing technique, and it is extremely important in zoning. Throughout the entire process one key provision is for the public to have the opportunity to be heard. This is not put in enabling legislation simply to provide an exercise or to provide a meaningless forum.

It is intended to indicate the importance of public understanding and support, as well as the necessity of having an expression given, both for and against, to those responsible for framing the ordinance and for its administration. The hearing process has been designed to provide a check and balance system in the adoption of or varying from legislation that directly concerns us. It is our responsibility to be aware of the system, to take advantage of it, and to understand how it should work and when it is not working properly."

## THE ZONING BOARD OF APPEALS

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

- 1) request for changes in the zoning classification;
- 2) permission for certain uses under zoning named as special uses in the zoning ordinance;
- 3) a request for relief from specific requirements of the zoning ordinance through a variance
- 4) an appeal of a determination made by the Community Development Administrator

The Zoning Board of Appeals makes a final decision on all Variance, Special Use and Appeals. However if the ZBA cannot make a decision due to a lack of four (4) concurring votes with regards to Variances and Special Uses the County Board shall make the final decision or refer the petition back to the ZBA for further consideration.

## BEFORE THE HEARING

- 1) A citizen who wishes to address one of the above issues may obtain the appropriate application from the Community Development Department to complete and submit with a filing fee.
- 2) After the case is set for hearing before the ZBA, the applicant will be notified of the time and place of the hearing along with the additional fee for the publication costs.
- 3) The applicant/objector may inquire for information at the Community Development Department. The staff may not give legal advice, but provides a public information service. The office maintains records on all zoning and subdivision activity in the unincorporated areas of Tazewell County. In addition, zoning and

subdivision ordinances are for sale at the Department.  
4) The applicant/objector should seek legal counsel if the case demands legal expertise. Either party may wish to consult a lawyer prior to the hearing and, if necessary, have him/her serve as the party's representative at the hearing. According to Smith, "The question is primarily whether you are denied the right to do something because of a peculiar circumstance or an unusual situation. If, in attempting to prove this, you decide to present an elaborate case, you probably have more reason to be represented by an attorney who, in turn, will perhaps suggest that you use the services of an expert in real estate, engineering, or planning and zoning."

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

6) The applicant/objector should attend a hearing before the case is scheduled in order to become familiar with the procedure and etiquette. The ZBA holds hearings on the first Tuesday of every month (hearing dates may change due to holidays) with a maximum of 10 cases per hearing. Contact the Community Development Department to find the date time, location and subject of the next hearing. In addition, the applicant/objector may wish to consult books and other material dealing with the zoning, planning and land use.

## THE HEARING PROCEDURE

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

1. Introduction of the application.
2. Evidence shall be presented in the following order:
  - (A) State purpose of hearing, view video as presented by the Community Development Dept., acknowledge comments received by Land Use Planner, County Departments and other public agencies.
  - (B) Presentation of evidence by the petitioner or designated representative(s):
    - Opening statements.
    - Testimony by petitioner's witness(es)

- Questions/cross examination of each witness by the members of the Board
- Questions/cross examination of each witness by Land Use Committee
- Questions/cross examination of each witness by an interested party that has filed an appearance with the Board office no later than one (1) business day prior to the hearing. NOTE: This is an opportunity to only question the witness, not to make statements or offer personal testimony.
- Close of petitioner's evidence.
- (C) Presentation of evidence by the objectors or their representative(s).
- Opening statements.
- Testimony by objector's witness(es)
- Questions/cross examination of each witness by the members of the Board
- Questions/cross examination of each witness by Land Use Committee
- Questions/cross examination of each witness by an interested party that has filed an appearance with the Board office no later than one (1) business day prior to the hearing. NOTE: This is an opportunity to only question the witness, not to make statements or offer personal testimony.
- Close of objector's evidence.
- (D) Presentation of statements by any person attending the hearing.
- (E) Closing statements and rebuttal by the petitioner or designated representative, if desired.
- (F) Closing of public testimony.
- (G) Findings of fact by the Board.
- (H) Recommendation or final decision (where the Board's action constitutes a final Administrative decision) by the Board.

In the interest of an orderly and impartial hearing it is requested that the above procedures be observed. Each person giving testimony shall do so under oath or affirmation. A record of the proceedings is required by law; therefore each person asking questions or giving testimony must give his/her complete name and address. Everyone will be given the opportunity to be heard and the proper time.

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

**MEETING THE STANDARDS:**

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

**STANDARDS FOR SPECIAL USES**

1. That the Special Use shall, in all other respects, conform to the applicable regulations of the Tazewell County Zoning Ordinance for the district in which it is located.
2. That the Special Use will be consistent with the purposes, goals, objectives, and standards of the officially adopted County Comprehensive Land Use Plan and these regulations and of any officially adopted Comprehensive Plan of a municipality with a 1.5 planning jurisdiction.
3. That the petitioner has provided the information required by Section 7TCC1-25(c) and has demonstrated the ability to complete the proposal shown in Section 7TCC1-25(c) (1)-(10) and has met those items required by the statements described in 7TCC1-25(c) (9)
4. When considering an application for a special use permit, the decision making body based on evidence presented shall also find, not one of which shall be controlling:
5. That the site shall be so situated as to minimize adverse effects, including visual impacts on adjacent properties.
6. That the establishment, maintenance or operation of the Special Use shall not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the neighboring vicinity.
7. That the Special Use shall not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted.
8. That the Special Use shall not substantially diminish and impair property value within the neighborhood.
9. That adequate utilities, access roads, drainage and other necessary facilities have been or are being provided.
10. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion and hazard on the public streets.

11. The evidence establishes that granting the use, which is located one-half mile or less from a livestock feeding operation, will not increase the population density around the livestock feeding operation to such levels as would hinder the operation or expansion of such operation.

12. Evidence presented establishes that granting the use, which is located more than one half mile from a livestock feeding operation will not hinder the operation or expansion of such operation.

13. Seventy-five percent (75%) of the site contains soils having a productivity index of less than 125.

14. The Special Use is consistent with the existing uses of property within the general area of the property in question.

15. The property is suitable for the Special Use as proposed

**STANDARDS FOR VARIANCES**

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

2. That the conditions upon which a petition for a variance are based are unique to the property for which the variance is sought and are not applicable, generally, to other property with the same zoning classification;

3. That granting the variance will not be detrimental to the public welfare, nor injurious to other property or improvements in the neighborhood in which the property is located;

4. That the proposed variance will not impair an adequate supply of light and air to adjacent property, nor substantially increase the congestion in public streets or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood;

5. That the purpose of the variance is not based exclusively upon a desire to increase the monetary gain realized from the property;

6. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures or buildings in the same district;

7. That the alleged difficulty or hardship is caused by the Ordinance and has not been created by any person presently having an interest in the property;

8. That the plight of the owner is due to unique circumstances.

**STANDARDS FOR AMENDMENTS**

1. The proposed amendment shall not be detrimental to the orderly development of Tazewell County;

2. The proposed amendment shall not be detrimental to or endanger the public health, safety, morals or general welfare of Tazewell County;

3. Whether the request is consistent with existing uses of property within the general area of the property in question;

4. Whether the request is consistent with the zoning classifications of property within the general area of the property in question;

5. The suitability of the property in question for the uses permitted under the existing zoning classification;

6. The suitability of the property in question for the uses permitted under the proposed zoning classification;

7. The trend of development, if any, in the general area of the property in question, including changes, if any, which may have taken place since the property in question was placed in its present zoning classification;

8. The length of time the property has been vacant as zoned, considered in the context of the land development in the area surrounding the subject property;

9. The proposed map amendment is within one and one half miles of a municipality with an adopted Comprehensive Plan;

10. The relative gain to the public as compared to the hardship imposed upon the individual property owner;

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

**PRESENTING TESTIMONY**

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

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

\*This brochure is intended to be brief guide to the ZBA and should not be relied upon for a thorough understanding of the hearing procedure. More information can be obtained from the Community Development Department, but an Attorney should be consulted for legal advice.\*