

THE BOARD OF ZONING APPEALS

Its Functions, Duties, and Responsibilities

and

An Analysis of the Operations of the
Detroit Board of Zoning Appeals

By

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CHAPTER I

INTRODUCTION

The responsibilities vested in a board of zoning appeals represent no easy task, since the success or failure of zoning administration, to a large extent, rests upon the proper exercise of judicial discretion by the members of the board. The planning objectives of a well-conceived land use plan and a carefully written zoning ordinance will not be realized when undermined by inefficient and uncoordinated zoning enforcement and administration.

Without a board of zoning appeals any zoning ordinance would likely lose public respect and would eventually not be upheld by the courts. If zoning were done under eminent domain there would be no special need for an appeal board. The only effective zoning, however, is done under the police power of the state, which can only be invoked for the promotion of the health, safety, morals, and general welfare of the community. On this basis no mercenary compensation is made to land owners, although they part with somewhat of the absolute, unqualified control of their own property. All property owners are, theoretically, benefitted by regulation in the interest of the public whereby each owner, to some extent, is

compelled to use his own property so as not to injure another.

Each owner, therefore, cannot complain so long as this community power is exercised reasonably and not arbitrarily.

Whenever the application of a zoning ordinance is arbitrary, capricious, unreasonable, or confiscatory, the courts will likely declare it void in that instance. Once an ordinance has been declared void in several details it has little binding force. However careful the legislative body may be to avoid provisions that may be arbitrary, it is well known that exceptional situations will arise where the written rule fails to provide the proper remedy in a specific case. Such flexibility is achieved through an appeal function vested in a board of zoning appeals. Its basic function is to vary the strict letter of the law by allowing minor departures in order to grant relief to an individual property owner, but at the same time, not harming the general public interest or the interests of adjoining property owners, nor destroying the spirit and aim of the zoning ordinance. The board, through its exercise of discretion, is able to protect the rights of individuals from the arbitrary use of the police power.

The duties of the board of appeals are such that it must maintain an equilibrium between rigid and loose interpretation of the ordinance. If a board interprets its discretionary powers too liberally, it can easily destroy the effectiveness of the zoning ordinance.

The board of appeals, however, that interprets the ordinance too rigidly will gather resentment, opposition, and judicial disapproval on the grounds of unreasonableness.

Since zoning regulates the use of private property in the interest of the public health, safety, and welfare, such power is delicately balanced and can easily be abused, and much of the litigation centering around zoning ordinances has to do with the decisions of zoning boards of appeals.

While the functioning of the zoning board of appeals is considered essential in effectuating zoning regulations, the authority vested in such a board has been greatly abused in many parts of the United States, including Michigan. It is rather difficult to point to any single factor as the basis for a board's usurpation, since there are probably many factors, either singly or in combination, which are contributing to the misuse of discretion by zoning boards of appeals. There is one factor, however, which is probably contributing more to the abuse of the board's authority than any other factor. This, an assumption, is that the average board does not understand its functions in relation to the objectives of zoning. The very strong likelihood of this assumption being a common characteristic of boards of zoning appeals has inspired an investigation of the functions, duties, and responsibilities of such bodies in the hope

that a clear statement of proper functions might be the means of effective enlightenment for members of appeal boards throughout the United States.

With this objective in hand, the following text is devoted, first, to a review of the proper powers and functions of boards of zoning appeals, particularly as related to the broad objectives of zoning; and, second, to a comparison of these proper responsibilities with the operations of the City of Detroit Board of Zoning Appeals¹ in an effort to sharpen, through a case study, understanding of the vital assignment vested in a board of zoning appeals for the effective administration of a zoning ordinance.

It is recognized that, as a thesis production, the material covered in this study, particularly relating to the operations of the Detroit Board, is definitely limited; however, on the basis of data collected and analyzed, a schedule of conclusions and recommendations has been offered that should, at least, point to directions for further study.

The material presented in Chapter III has been derived from a study of each case heard at every fourth meeting of the Board

¹ Hereinafter referred to as the "Board."

during the years 1951 through 1954. Additional data were gathered from the minutes of the hearings and other files of this board.

CHAPTER II

THE FUNCTIONS AND POWERS OF ZONING BOARDS OF APPEALS

The Purpose of Zoning

The legal basis for zoning is found in the police power of the state and municipality which has as its justification the protection of health, safety, and general welfare of the public. Besides the promotion of these police power objectives, other objectives include:

1. The encouragement of land usage in accordance with its character and adaptability.
2. Avoidance of undesirable population concentration.
3. Provision of reasonable light and air.
4. Lessening of traffic congestion on the public ways.
5. Reduction and removal of hazards to life and property.
6. Facilitation of adequate provision for a system of transportation, sewage disposal, safe and adequate water supply, education, recreation, and other public requirements.
7. Conservation of the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources and properties.¹

The objectives of zoning, although listed separately above, are interrelated, since the imposition of any of the three major types of regulations common to municipal zoning ordinances; i.e.,

¹ Louis A. Wolfanger, Your Community and Township Zoning, Michigan State College Agricultural Experiment Station, East Lansing, Michigan, 1945, page 21.

regulations covering land and building use, building height, and building area, will carry out one or more of these objectives. Before regulations covering land and building use, building height, and building area can be utilized, however, a definite relationship must be established between them and one of the police power objectives--the safeguarding of the health, safety, and general welfare of the public. The following examples illustrate this relationship:

1. In order to establish a justifiable height and bulk of structures in any particular district, a reasonable relationship between street area and building size must first be established. Inadequate restrictions of height and bulk of buildings may cause such a tremendous congestion of streets and other transportation facilities that the health and safety of the public may be in jeopardy.

2. In order to prevent excessive crowding of people, since congested areas cause problems of health and safety, regulations covering lot area, setbacks and lot coverage for any particular district must be reasonably related to the width of the street rights-of-way and the type of sewage disposal and water supply. For instance, where the terrain of a particular area of a municipality is exceedingly steep necessitating on-lot sewage disposal, minimum lot requirements would depend upon the amount of space necessary to accommodate an effective disposal field.

There are a multitude of similar relationships which result in achieving the objectives of zoning as listed above.

Source of Power of a Zoning Board of Appeals

Stimulated by the preparation of the model standard state zoning enabling act¹ by the United States Department of Commerce in 1922, state legislatures throughout the country soon enacted enabling legislation for zoning. Most statutes provided for a board of appeals with three main functions as set up in the standard act. The State of Michigan Zoning Enabling Act, although adopted a year before the Department of Commerce's standard act was published contains essentially the same wording in specifying the powers of the board of appeals.²

A brief review of each of the powers of the board of appeals indicates that the first is the review of administrative action and interpretation of the zoning ordinance provisions. The second power is known as a special exception which allows a board to grant a special permit for a use identified in the ordinance, but which can be authorized only by action of the board. The third power permits

¹U.S. Department of Commerce, A Standard State Zoning Enabling Act, 1922.

²Section 125.585 of Act 207 of the Public Acts of 1921.

a board to grant a variance where it finds the applicant suffering unnecessary hardship because of special conditions. What is the extent and what are the limitations of these powers? It is obviously impossible to provide an answer valid in every state, but it is possible to outline the basic principles which have been shaped by endless court decisions to form a guide to the responsibilities and limitations of zoning boards of appeals.

The Powers of the Zoning Board of Appeals¹

In the usual case the board of appeals exercises its three powers in sequence. Upon receiving an appeal from a property owner who has been denied a building permit, since his proposal would either violate the zoning regulations or requires review by another authority, the board will examine the application in order to determine whether the proposal is permitted under the terms of the ordinance. If not, then the board will decide whether the circumstances are such that it may approve the application as an exception. If the ordinance conditions are not present for granting an exception, then the board decides whether the hardship involved in

¹The following discussion largely follows Philip P. Green, Jr., Zoning in North Carolina (Chapel Hill, North Carolina: Institute of Government, The University of North Carolina, 1952), Chapter Fourteen.

the case is such that it will justify a variance. If the application does not come under any of the foregoing jurisdictions, the board is powerless to act and must, therefore, dismiss the case.

Interpretation and Review

The action and powers of the board of appeals under review - and interpretation have been clearly set out by John W. Reps in The Zoning Board of Appeals in New York State:

A review and decision by the board of appeals in a case of this type can take place only in the following manner:

1. the administrative official must take some official action, either granting or denying a permit.
2. an appeal must be made to the board in accordance with the provisions of the ordinance or the board of appeals' rules of procedure.
3. there must be a legal notice preceding a public hearing before the board.
4. the board, in reaching a decision, must not vary or modify any of the regulations. The board must decide if the action was in conformity with the provisions of the ordinance and either reverse or uphold the action of the administrative official. No discretionary powers are available to the board in this type of case.

This power--of review and interpretation--does not ordinarily cause difficulty. It should be noted, however, that the board has little if any discretionary power. It must act under the strict terms of the ordinance as if it were the administrative official. Although the requested use might be regarded by the board as undesirable or harmful to the community, if the ordinance is so worded as to allow the use, a permit must be ordered. Similarly, a permit for a use considered by the board as desirable, or even essential, must be refused if the

ordinance prohibits it in the form or location in which it is proposed.¹

In other words, the board, in exercising its power of interpretation and review, must not vary the terms of the ordinance. Its specific function is to interpret and apply what the legislative body has written, not to vary the terms to fit its own ideas. Its decisions must be in accord with what the board believes to be the actual meaning of the ordinance.

Examples.

1. A typical case in which the board may take action would arise when an applicant for a building permit disagrees with the building commissioner in regard to the location of a boundary line between a business and an industrial district involving the applicant's property. An appeal for a decision on the exact location of the district boundary may be made to the board.

2. An ordinance may list specific uses permitted in light business districts and, in addition, may permit "other uses similar in character" or "uses accessory to the above permitted uses." Among the permitted uses listed is a filling station. An applicant

¹John W. Reps, The Zoning Board of Appeals in New York State, Planning Advisory Service Special Report, American Society of Planning Officials, July, 1950.

requests a permit for a repair garage, which was not listed as a permitted use, claiming it meets the conditions set forth in the ordinance for this district. The building commissioner denies the permit because it is not listed as a permitted use, and the applicant has the right to appeal for an interpretation by the board.

Exception

The power of granting exceptions is misunderstood largely because the terminology is confusing. What is meant is not the power to make exceptions to the ordinance, but rather the power to permit exceptional uses which the ordinance authorizes under stated conditions.

The difference between an exception and a variance is noted in Lukens et ux. v. Zoning Board of Adjustment of Ridley Township. The court said, ". . . a special exception relates only to such cases as are expressly provided for under the terms of the ordinance, while a variance may be issued in the case of unnecessary hardship."¹ For instance, certain public uses such as public utility buildings are necessary to the welfare of any community, yet they may adversely affect the surrounding properties or neighborhood if

¹Delaware County, Supreme Court of Pennsylvania, May 23, 1951, 80 A. 2d 765.

permitted without special consideration of design and location. The zoning ordinance will ordinarily specify the conditions which must be met before such a use can be located in any district and directs the board of appeals to issue the permit for such a use only where those conditions are found to exist. The ordinance may also allow the board to specify further conditions needed to protect the interests of the community.

Example. The function of granting exceptions should proceed in almost the same manner as the board's function of interpreting the ordinance. In granting exceptions, the board must be sure that all conditions specified in the ordinance have been met. This principle is illustrated by an exception listed in the Charlotte, Michigan, Zoning Ordinance, which reads as follows:

The Zoning Board of Appeals may, by special permit (exception) and after public hearing, authorize the location of any of the following buildings and uses in any district from which they are prohibited by this ordinance: . . . (2) Telephone exchange and static transformer stations and other public utility buildings; provided (1) there is no public business office nor any storage yard or storage building operated in connection therewith; (2) the exchanges and transformer stations are located not less than fifteen (15) feet from any interior property line and twenty-five (25) feet from any front property line.¹

¹Section 506.

In order to grant an exception under this clause the board would have to find that all of the stated conditions are present. If one of the conditions is not present, then it must deny the exception (if the property owner is denied an exception, he might still be accorded relief in the form of a variance).

The board must also include in its minutes a full statement of its findings on every point mentioned by the ordinance, so that the courts can determine if the board acted properly. If the necessary finding is not made the court will reverse the decision of the board as being arbitrary and unreasonable.

It should be emphasized that the authorization for the board of appeals to grant exceptions is a delegation of legislative power, which is valid only if accompanied in the ordinance by a standard or rule of conduct sufficiently precise to guide the board. The statutory rule of "unnecessary hardship," as a guide for variances, has been generally upheld as adequate, but since statutory authorization for special exceptions is rarely accompanied by a standard or rule, it must be provided in the local ordinance. Briefly, standards to guide the board in granting exceptions must be specified in the ordinance and must be capable of reasonable interpretation.¹

¹See Ralph Crolley, The Necessity for Adequate Standards for Boards of Zoning Appeals in Special Exception Cases, New York Regional Plan Association, 1949.

Although the board has original jurisdiction to hear such cases, it is generally considered better to require all cases to be presented first to the building commissioner and then appealed to the board. Under this procedure the applicant will not have to decide whether he is desirous of an exception or a variance, and the standardized procedure for handling all cases will be less easily misunderstood by city officials and the public.

When the necessary findings have been made, the board still has the duty of protecting the public interest, and so the board may place conditions on the permit. In so doing, the board faces the same situation as when it imposes conditions or time limits on a variance. The discussion of "conditional variances"¹ is, therefore, applicable here.

The power to authorize an exception is generally, but not always, given to the board of appeals. The power may be given to a zoning administrator, the planning commission, or it may be retained by the legislative body.

Variance

The function of the board to permit variances or adjustments in the application of the zoning ordinance is, without a doubt, the

¹See page 32.

least understood of all its functions, since it is the one least capable of precise definition.

A variance is a permit, which a board of appeals may grant in certain situations, enabling a property owner to make use of his property in some way which is in conflict with the literal provisions of the zoning ordinance. Consider a property so peculiarly shaped that the owner would have practical difficulty in complying with the yard requirements and yet erect a suitable structure. In this example a board might grant a variance from the strict provisions of the ordinance by lessening the yard requirements.

The confusion in defining the scope of the variance power arises directly from the typical wording of most enabling acts dealing with this power. The Michigan State Zoning Enabling Act provides:

When there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, the board of appeals shall have the power in passing upon appeals to vary or modify any of its rules, regulations, or provisions relating to the construction, structural changes in, equipment, or alteration of buildings or structures, or use of land, buildings or structures, so that the spirit of the ordinance shall be observed, public safety secured and substantial justice done.¹

¹Michigan State Zoning Enabling Act, Section 125.585 of Act 207 of the Public Acts of 1921.

The phrase "practical difficulty or unnecessary hardship" does not furnish any clue as to when a variance should be granted. The references to the "spirit," "public safety," and "substantial justice" are just as vague. Because of this vague terminology, some boards have believed that their power was unlimited and have actually taken pride in the fact that they have never denied a variance, not realizing that in so doing they were destroying the effectiveness of the zoning ordinance which they were created to enforce!

In believing that their variance power is unlimited, boards have been badly mistaken, since such administrative bodies are limited to the functions delegated to them by statute. Regardless of the vagueness of statutory limitations, such limitations still exist and only need to be interpreted. Courts have been active in defining such terms as "practical difficulties" and "unnecessary hardships" and with each decision, the rules the board must follow have been made more definite. All that remains is that boards of appeals begin to absorb the basic principles laid down by our courts.

Findings necessary to grant a variance. The courts require that before a board of appeals can issue a variance it must make certain findings, which must be included in the record of the case and must be broad enough to indicate not only the conclusions which

the board draws, but also the factual reasons on which these conclusions are based. These findings must be such as to indicate to the courts that the board has complied with the requirements and applied the standards set forth in the state enabling act and the city zoning ordinance. The Michigan State Zoning Enabling Act calls for the following important findings:

- A. That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.

This phrase has been used in state enabling legislation throughout the country ever since it was included in New York City's original zoning ordinance, and consequently, much case law has arisen to define it.

Five general rules have been developed to show whether there are practical difficulties or unnecessary hardships within the meaning of the statute. Courts have required the applicant for a variance to show:

1. "If he complies with the provisions of the ordinance the property owner can secure no reasonable return from, or make no reasonable use of, his property."

The courts have been rather insistent in their statements that the property owner make a showing that he is prevented from making any reasonable

use of his property. The fact that the property can be more profitably used for a nonconforming purpose does not, standing alone, make out a case of unnecessary hardship within the meaning of the law.¹ It is obvious that every time a business is permitted to enter a district which otherwise prohibits such use the owner will find it profitable, because in effect he is being granted a monopoly in that area. Any property owner, therefore, could make the plea that he could sell his residential property for more if the board would permit its development for business purposes. The profit secured by this land-owner will be directly reflected, moreover, in the losses sustained by his neighbors. Since one of the prime purposes of the zoning ordinance is to

¹The following cases, some of the many, listed by Charles A. Rathkopf and Arden H. Rathkopf, The Law of Zoning and Planning, 3rd ed., Vol. I (New York: Clark Boardman Co., Ltd.; Albany, New York: Banks and Co.; 1956), pp. 705-714, indicate that financial considerations alone cannot govern action of the board: *Thayer v. Board of Appeals of City of Hartford*, 114 Conn. 15, 157 A. 273; *Gleason v. Keswick Improvement Association*, 78 A 2d 164; *Seinfeld v. Murdock et al.*, 259 App. Div. 694, 20 N. Y. S., 2d 464; *Fleming v. Prospect Park Board of Adjustment*, 318 PA. 582, 178 A. 813.

prevent fluctuation of property values, it would be anomalous to permit variances from the ordinance based upon this reasoning.

It should be noted, however, that the difference between a situation in which an applicant urges that he could make more money from his property if he were granted the variance and a situation in which he complains that he can, under the ordinance, make "no reasonable use" of his land or secure "no reasonable return" therefrom is one of degree rather than kind. What one board or court might feel was mere deprivation of greater profit, another might consider to be denial of the right to a reasonable return, the difference lying in their conception of reasonableness. What is "reasonable" raises one of the most perplexing questions which a board must answer in individual cases.

An examination of individual cases dealing with the degree of hardship will indicate that courts throughout the country have reached varying results in dealing with similar fact

situations.¹ One general principle can be extracted from an examination of individual cases, as Green points out:

. . . the degree of financial loss and hardship must ordinarily be very high before it will be enough to support the granting of a variance. Just where it reaches the point that it becomes "deprivation of the right to secure a reasonable return from property" is uncertain. . . .²

2. "That the hardship results from the application of the ordinance to his property."

To obtain a variance, the applicant must show that the enforcement of the regulations contained in the zoning ordinance involve practical difficulties and unnecessary hardships which relate to the property in question.³ For example, in the case Hammond et al. v. Kephart,⁴ the applicant sought

¹ Philip P. Green, Jr., Zoning in North Carolina (Chapel Hill, North Carolina: The University of North Carolina Press, 1952), pp. 345-353.

² Ibid., p. 353.

³ See cases cited by Charles A. Rathkopf, The Law of Zoning and Planning, 2d ed. (New York: The Crosby Press, 1949), p. 215.

⁴ Supreme Court of Michigan, December 3, 1951, 50 N.W. 2d 155.

to convert a large single-family residence into a four-family apartment in a single-family residence zone. The applicant proposed evidence that the property in question was expensive to maintain and difficult to sell. The supreme court, in affirming the order of the lower court, held that the zoning was not unreasonable, since such hardship resulted from the nature of the property, rather than from the ordinance.

Another illustration of this rule is found in the case Teglund v. Dodge.¹ The petitioner applied for a permit to erect a multiple dwelling which, after review by the board, complied fully with the zoning regulations. The board denied the permit, however, on the grounds that the multiple dwelling would create "practical difficulties and unnecessary hardships" for petitioner's neighbors, who owned single-family residences. On appeal, the Michigan Supreme Court held that the board had exceeded its powers. The unnecessary

¹ 316 Michan 185, 25 N.W. 2d 161 (1946).

hardship against which the board may give is only that which arises from the operation of the ordinance, and such hardship as was demonstrated here resulted from the fact that the ordinance was not broad enough in its protection, rather than too broad, and the court said that this was the same hardship as would have existed in the absence of any ordinance. The court, therefore, felt that this hardship did not result from the operation of the ordinance, and concluded that 'no power reposes in the board to make restrictions on the use of specific property more severe than those imposed by the ordinance itself.' As the conditions imposed by the board in granting or denying a variance or an exception must be reasonable, the conditions imposed must not be more burdensome than the restrictions contained in the ordinance.¹

3. "That the hardship is suffered by the applicant's property."

Another qualification of hardship which should be considered by the board is that the hardship

¹See the cases cited by Rathkopf, The Law of Zoning and Planning, 2d ed., op. cit., p. 201.

complained of affects only the applicant's property.

The fact that the nonexistence of a grocery store in a residential zone will create hardship on many housewives is not unreasonable, but such hardship is not suffered by the property of an applicant requesting such permission.

4. "That the hardship is not the result of the applicant's own actions."

In order to make the necessary showing of hardship, the applicant for a variance may not show hardship which he caused or could have prevented. If the hardship is caused by actions of the owner, applicant, or some other person, relief by means of a variance may not be granted. Such a situation would arise where hardships result from improvements made in violation of the zoning ordinance, either willfully or innocently, in which case a variance may not be granted.

For example, in *Selligman v. Von Allmen Bros.*,¹ a dairy company secured a permit to

¹297 Ky. 121, 179 S.W. (2) 207.

replace the decaying roof of one of its buildings, being ordered to do so by the health department. It was learned later that the walls were so decayed that they would not support the new roof, so without a permit the dairy company started to replace the walls with brick. It was halted by the order of the building inspector when 90 percent of this work was completed. When the dairy sought a variance permitting the erection of the brick walls, it was refused by the Board of Adjustment, whose decision was upheld by the Kentucky Supreme Court. The dairy argued that it would be an unnecessary hardship if it were forced to tear down the new walls, the court replying that this hardship was self-inflicted and could not be considered by either the board or itself.

A second type of appeal where a variance should be denied because of a self-inflicted hardship is where an owner bought his property after the enactment of the ordinance and, therefore, should have known of the restrictions which the ordinance imposed on the property. In such a

case, the courts take the position that the owner can hardly maintain that the hardship results from the operation of the ordinance, for he could have avoided it by not purchasing the land. Such was the case of Reisberg v. Board of Standards and Appeals.¹

5. "That the hardship is peculiar to the property of the applicant."

The final rule concerning the types of hardship which have relevance is that the hardship of which the applicant complains must be peculiar to his property. If the hardship complained of is common to others in the neighborhood, the remedy is by rezoning and not by a variance granting a special privilege to a single owner. Relief, therefore, becomes a matter for the legislative body. It must be presumed that the legislative body was aware of conditions at the time it adopted the ordinance and if these conditions have changed since the adoption of the ordinance, the legislative body is the proper agency to amend the ordinance.

¹ 81 N.Y. Sup. (2) 511.

The board of appeals is empowered only to carry out the intent of the legislative body as reflected in the ordinance, although it may recommend changes to the legislature.¹

The statements in the case Levy v. Board of Standards and Appeals are, perhaps, the fullest statements concerning this principle.² The New York Court of Appeals, in reversing the board, stated:

So far as appears, they [the conditions cited] apply to all pieces of property in the neighborhood which front on Atlantic Avenue and which are subject to the general rules restricting the use of premises in a business district.

Only where the burden of a general restriction creates a special hardship upon a particular owner, can the grant of a special privilege to him, in truth, promote equal justice.

[The Board] may not destroy the general restriction by piecemeal exemption of pieces of land equally subject to the hardship created in the restriction, nor arbitrarily grant to an individual a special privilege denied to others.

Relief from general rules which are shown to be unwise by experience or change

¹See E. M. Bassett, Zoning (New York: Russell Sage Foundation, 1940), p. 164.

²267 N.Y. 347, 196 N.E. 284 (1935).

of conditions must be through appeal to the legislative authority, or in extreme cases, where the rule has become confiscatory, by challenge in the courts to the continued validity of the rule.

The rule to be followed is, therefore, that where the only facts presented to demonstrate hardship are equally applicable throughout the neighborhood, the board should refuse the variance and refer the applicant to the local legislative body for the requested relief.

B. That the variance will observe the spirit of the ordinance.

While the existence of hardship may be proved by the applicant, such proof alone is not sufficient, since the determination "that the variance will observe the spirit of the ordinance" has yet to be made. This finding is easy to state, but rather difficult to support with facts.

The usual cases in which the courts have held that a variance is in conflict with the "spirit" of the ordinance fall into the following two classes: (1) cases in which the applicants seek to expand or extend nonconforming uses, and (2) cases in which applicants seek "use variances," which are variances permitting the use of property for uses forbidden by the zoning regulations as

opposed to 'nonuse variances' or permits authorizing deviations from height, lot area, set-backs, and other dimensional regulations.

1. 'Expansion or extension of nonconforming uses.'

A typical case relating to the extension of nonconforming uses is Colati v. Jirout,¹ in which the petitioner was granted a variance permitting him to enlarge his nonconforming restaurant in a residence district. The Maryland Supreme Court reversed the board's decision, declaring that any variance authorizing extension of a nonconforming use was contrary to the spirit of the ordinance, since the ordinance provisions concerning nonconforming uses were clearly designed to cause the eventual abandonment of all such uses rather than their perpetuation and enlargement.

2. 'Use variances.'

A typical case relating to the intrusion of a use expressly prohibited by the ordinance is Zahodiakin Engineering Corp. v. Zoning Board of

¹ 186 Md. 652, 47 A. 2d 613 (1946).

Adjustment of City of Summit. The Supreme Court of New Jersey reversed the decision of the board which granted a variance permitting an industrial use in a residential district, declaring:

The proceeding was wholly beyond the statute. It was not designed to advance the statute policy, but to effectuate a contractual understanding for private benefit in disregard of it. It constituted an arrogation of authority in defiance of the statute and the ordinance. Special hardship from unique circumstances within the principle of the statute and the ordinance was concededly not a point of inquiry. Considerations dehors the statute controlled. There was no pretense of the exercise of the statutory function. Whim and caprice rather than the reason and spirit of the statute determined the course taken.¹ There was a deliberate breach of jurisdiction.¹

- C. That in the granting of the variance the public safety has been secured and substantial justice done.

The third finding required by the statute, that of whether or not public safety has been secured and substantial justice done, is just as difficult to make findings of fact as the determination of whether the "spirit" of the ordinance is observed. The board may grant a variance in a specific case where strict enforcement of the letter of

¹Supreme Court of New Jersey, January 21, 1952, 86 A. 2d

the ordinance would cause practical difficulties or unnecessary hardship, but it can only grant the variance when it is in harmony with the general intent of the zoning restrictions so that the public safety, health, and general welfare is served and substantial justice is done.

The board of appeals, with its knowledge of all the facts, should be able to determine that a variance, if allowed, would effect a substantial change in the character of the district or be in conflict with the general intent of the zoning law. If the board finds that the variance will have either of these effects it should deny the variance.

In order that the courts may know that the board has made such findings, they must be shown in the record of the case--normally, the minutes of the board. Evidently, to require the board to give reasons for granting or refusing a request for a variance depends upon the appearance of such a provision in the statute or ordinance. In a Connecticut decision,¹ the court held that whenever a zoning authority makes a change in a zoning regulation and fails to state on its records the reason why the change was made, that

¹Neilson v. Board of Appeals of Bridgeport, 129 Conn. 289, 27A (2d) 392.

this did not invalidate the action of the board in granting a variance.

While it is not strictly necessary, it is a good practice for the board of appeals to give reasons for its action in rejecting an application for a variance and is helpful in interpreting the motives of the appeal board. In Saporiti v. Zoning Board of Appeals the Supreme Court of Errors of Connecticut said,

Zoning Boards of Appeals are administrative bodies. Proceedings before them are necessarily informal. Unless some statute specifically requires a finding of the facts upon which the board bases its action, such a finding is not a prerequisite to legal action, although a disclosure of the board's reasons in its minutes is highly desirable.¹

Where a board of appeals does not comply with a statutory requirement that it give reasons for its decisions in its records, however, the board's decision authorizing an appeal becomes null and void.

Conditional and temporary grants. When the necessary findings have been made and the board decides to grant a variance, it still has the duty to protect the public interest by placing conditions on the permit. The right to impose conditions when granting exceptions and variances has been generally upheld by the courts. In Hopkins v. Board of Appeals, the court said,

¹January 30, 1951, 78A 2d 741.

The power to impose reasonable conditions in making exemptions under the zoning ordinance is inherent in the board, and, where warranted, it is inherent in the court upon review.¹

The law is not too clear in indicating just how far the board may go in restricting the use of a particular property by means of conditions, although the courts have felt that the board should have wide latitude in imposing conditions. The courts also generally agree that such conditions are not limited to the scope of the police power.² It should be remembered, however, that the conditions imposed by the board in granting a variance or exception must be reasonable, but they cannot be more burdensome than the restrictions contained in the ordinance itself.³

It has been sustained that it is unreasonable for a board to grant an exception or a variance with the condition that it applies only to a single owner. A zoning board of appeals is concerned fundamentally with matters relating to the property in question and the use to be made thereof, and not with the person who owns or occupies it.⁴

¹ 179 Misc. Rep. 325, 39 N.Y. Supp. (2) 167.

² Bassett, op. cit., p. 128.

³ See the many cases listed by Rathkopf, The Law of Zoning and Planning, 2d ed., op. cit., p. 201.

⁴ See Clevson v. Zoning Board of Review of Town of Narragansett, 71 R.I. 303, 44 A 2d 720 (1945).

Boards of appeals should guard against the danger of having conditions attached to a variance or an exception held invalid by the courts as being unreasonable conditions, yet upholding the variance while voiding the conditions. Even though some courts have ruled that where the condition is invalid the variance or exception is likewise void, the board should make clear that if the condition is void, so is the appeal.

If a permit is granted upon conditions imposed and these conditions are not complied with, the permit granted by the board may be revoked. In Kelly v. Board of Appeals of New Haven,¹ it was held that the board may impose conditions when granting a variance and also that if a permit is granted upon a condition imposed, which condition is violated, an aggrieved party may apply to the administrative officer to revoke the permit, and if denied, may appeal to the board to reopen the hearing and revoke the permit granted. A court, however, has held that:

The board could extend time for compliance with imposed conditions when there was substantial progress made toward compliance with the imposed conditions.²

¹126, Conn. 648, 13 A (2) 675.

²Fleischer v. Murdock, 62 N.Y. Supp. (2), 417, 168 A.L.R. 126.

Another court has held that a board may accept consents of interested property owners as compliance with the imposed conditions.¹ This would be proper since the conditions were imposed for the protection of the neighbors, but where the case affects an area greater than the surrounding properties, the board should not waive the conditions merely because the neighbors consent.

Many zoning ordinances contain power given to the board to grant temporary permits. The courts have sustained such grants as long as such permits fully comply with the provisions of the ordinance. An example of this is the provision in City of Detroit Zoning Ordinance, which says:

In undeveloped sections of the city the board may approve temporary and conditional permits for non-conforming uses, to terminate at a date specified in the approval, which date shall not exceed two (2) years from the date of the permit, provided that upon investigation by the Board it is ascertained that such uses are helpful to the development of such sections and are not detrimental to the adjoining and neighboring developed sections. Renewals of such permits may be approved by the Board provided the general conditions of the neighborhood have remained practically unchanged.²

Periodic checks should be made by the board to insure that the enforcement officer is enforcing the time limits. Unenforced

¹ Hampstead, 245 App. Div. 750, 280 N.Y. Supp. 448.

² Section 20.7 (b).

temporary permits allows the temporary occupant to stay permanently, a situation causing the breakdown of many zoning ordinances.

If an applicant requests an extension of a temporary permit, the board should check the applicant's reasons for so doing as carefully as it would check into an original jurisdiction. If the conditions in the neighborhood have changed, the board should refuse the extension.

Amendment

The board is in a good position to recommend amendments to the legislative body, even though this particular power is not expressly conferred or implied by statute. The board should always be aware of conditions taking place that will require legislative action. By the time an application for a second variance of the same type in the same area comes before the board, the board should consider whether the hardship conditions are general. If it is apparent that there is need for a change in the regulations or in the district designations, then the board should make a recommendation to the legislative body of the action necessary to correct it, rather than undertake it a parcel at a time by illegal variant action.

Summary

Table I, following, gives a summary of the powers of zoning boards of appeals by listing their basic characteristics in comparison to each other and in comparison to the amendment power of the legislative body.

TABLE I
SUMMARY OF THE CHARACTERISTICS OF THE POWERS
OF ZONING BOARDS OF APPEALS^a

Characteristics	Powers of the Zoning Boards of Appeals			Power of the Legislative Body
	Interpre- tation	Excep- tion	Variance	Amendment
Varies the terms of the ordinance	No	No	Yes, as applied to a par- ticular property	No, changes the terms
Permits the proper- ty owner to use his property only as specified in the ordinance	Yes	Yes	No	Yes
Showing of hardship necessary	Not rele- vant	Not re- quired	Yes	Not rele- vant
Type of act	Adminis- trative	Adminis- trative	Adminis- trative or quasi- judicial	Legislative
Appears on zoning map	May or may not	No	No	Yes, if district boundaries are changed
Type of jurisdiction	Original	Original	Appellate	Original
Changes character of district	No	No	No	Yes

^a Adapted from the American Society of Planning Officials, Planning Advisory Service Information Report No. 60, Measures of Variance Activity, March, 1954, pp. 2-3.

CHAPTER III

AN ANALYSIS OF THE OPERATIONS OF THE DETROIT BOARD OF ZONING APPEALS

Introduction

The Detroit Board of Zoning Appeals was established as an integral part of the Detroit Zoning Ordinance in December, 1940, empowered with the same functions as previously discussed in Chapter II of this paper, which are:

1. To hear and decide appeals challenging any decision made by an administrative official in the interpretation of the provisions of the ordinance.
2. To hear and decide special exceptions to the terms of the 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 provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

Boards of zoning appeals all over the United States have been accused of abusing their discretion, mishandling zoning, and legislating under the guise of variances. Walter Blucher, consultant to the American Society of Planning Officials, has said, "Many zoning boards of appeal and adjustment have forgotten what a zoning variance is, and under the guise of a so-called variance, they make zoning changes which are in effect spot zoning and which really ought to require a legal act."¹

The Detroit Board of Zoning Appeals has not been free from such depreciating remarks, for in April, 1949, the Detroit Common Council ordered a hearing on charges that the Board was ignoring the city's land use policy in its decisions.² In May, 1950, the Common Council ordered another hearing on charges that the board was granting variances far too liberally.³ "The city zoning laws were enacted fifty years too late," was the reply the Board gave in answering council criticism.⁴ A great number of charges can be made against any board of zoning appeals, since membership is

¹Walter Blucher, American City (December, 1946), p. 131.

²Detroit Free Press, May 4, 1950.

³Detroit Free Press, May 16, 1950.

⁴Detroit Free Press, May 11, 1949.

small and there are opportunities for arbitrary and biased decisions based on discretion. Many of these charges may be unjustifiable, but certainly all of them cannot be so classified and it is, therefore, necessary to inquire into the operations of the Detroit Board of Zoning Appeals to ascertain why this Board has been so accused and the justification for such accusations.

By defending its decisions with the reasoning that the Detroit Zoning Ordinance was enacted too late, the Board clearly indicated that the failure to adopt an ordinance until late in 1940 has had a definite effect upon the amount of work and the character of its decisions.

History of Zoning in Detroit

Zoning history in Detroit has been something far less than dynamic. The existing city charter, adopted in 1918, provided for, among other things, a city plan commission appointed by the mayor. The Plan Commission, under a charter provision, was to prepare and submit to the Common Council,

. . . a plan to regulate and restrict the location of trades and industries and the location of buildings designed for specific uses, to regulate and limit the height and bulk of buildings hereafter erected, and for such purposes to divide the city into zones in such number, shape and area as may seem best suited to carry out a definite plan for the betterment of the city, and

upon its approval and adoption by the common council, shall have the power and authority to enforce its provisions.¹

The Plan Commission, therefore, in 1918, commenced an extensive study of the city and prepared a zoning ordinance. Various pressure groups, however, sensing the dangers of any restriction on the use of property and buildings, was successful in getting the zoning power of Detroit contested when the Michigan Supreme Court held, ". . . that the Home Rule Act did not give the city specific authority to establish height, use and bulk regulations of buildings."²

The Michigan State Legislature, however, passed an act in 1921 enabling local legislatures to enact zoning regulations,³ but the pressure groups were successful in preventing the adoption of zoning in Detroit until December 25, 1940.⁴

From 1920 to 1930 Detroit increased in excess of 60 percent in population and almost 68 percent in area. This tremendous growth took place when planned development was needed the most,

¹Detroit City Charter, Chapter 10, Section 7 (d).

²Detroit News, October 7, 1922.

³Act 207 of the Public Acts of 1921, as Amended.

⁴For a more detailed history of the growth of zoning in Detroit, see Isedore Goodman, "Local Zoning Administration, A Study of the Growth, Operations, and Contribution of Detroit Zoning Laws, 1919-1949" (thesis, School of Public Affairs, Wayne University).

and so Detroit was punished by the resulting blighted areas, incompatible land uses, lost taxes, and false land values, which are still very real today.

The Detroit Zoning Ordinance when first enacted was only an interim measure to hold the line until a master plan could be drawn and adopted.¹ This implied that the zoning ordinance would eventually be modified to meet the requirements of a comprehensive plan, once such a plan was accepted. The Detroit Master Plan was not adopted until 1947 and, therefore, zoning preceded planning in Detroit, which should not be, since the courts have held that the zoning ordinance must be based on a comprehensive or master plan.² Another reason why planning should precede zoning is that,

. . . zoners ought to give careful consideration to . . . the necessity for doing the correct kind of zoning at the outset rather than by amendment at a later date. It might be said that a city, having made a mistake in its original zoning, is not permitted to correct that mistake if it imposes regulations which will reduce the value of some properties in the area. That is a high price to pay for a mistake, which makes it all the more important to do careful zoning at the outset--and which makes it even more important to have the zoning ordinance used as an instrument to carry out the community plan. The community plan must come first.³

¹Detroit News, July 8, 1947.

²See the many cases listed by Rathkopf, The Law of Zoning and Planning, 2d ed., op. cit., p. 38.

³Walter Blucher, Zoning Digest, American Society of Planning Officials, Vol. 2, No. 1, p. 4.

From the foregoing discussion, it can be seen that the effect of the history of zoning in Detroit has caused problems for the administration of zoning in the city. These problems will be brought out more clearly in the remainder of this paper. It is felt, however, that the Board cannot claim that the "zoning ordinance was enacted too late" for its defense on the charges that it has abused its authority, since the Board has only those specific and limited powers delegated to it in the ordinance. It is not the Board's function to interpret the ordinance to give a property owner a "break," for in so doing it is overstepping its authority and making zoning a useless tool of planning in Detroit. The general feeling is that the Board is abusing its authority because its members do not know or do not care to know their functions in relation to the objectives of zoning.

Selection of Sample Data for Analysis

In order that a detailed analysis could be made of the operations of the Detroit Board of Zoning Appeals, it was necessary to utilize a sample of the cases before the Board. A random sample was taken, which consisted of all the cases heard at every fourth meeting of the Board from 1951 through 1954. The sample, therefore, consists of 1,970 cases that were before the Board at fifty different hearings throughout the four-year period, or approximately

30 percent of the cases heard and disposed. Table II, following, establishes a definite relationship of the cases comprising the sample and the universe from which it was drawn.

Any statistical data analyzed, therefore, will be based on the cases comprising the sample, unless otherwise noted, except for 191 cases that were dismissed, withdrawn, or were unavailable, and which, for the purposes of this study, have no bearing and will not be further considered.

The Administrative Structure for Zoning in Detroit

In Detroit a number of municipal agencies are concerned with the administration of the zoning ordinance. Since this study is concerned with the operations of the Board of Zoning Appeals, the other municipal bodies concerned will be discussed primarily in their relationship to the operations of the Board of Zoning Appeals.

The Board of Zoning Appeals

The Detroit Board of Zoning Appeals, appointed by Common Council, consists of six members with overlapping terms of three years.¹

¹When the zoning ordinance was originally adopted, the Board consisted of five members, but Ordinance 669-E, adopted August 7, 1952, increased membership to six.

TABLE II
COMPARISON OF SAMPLE DISPOSITIONS WITH TOTAL
DISPOSITIONS OF APPEALS MADE TO THE
DETROIT BOARD OF ZONING APPEALS,
1951-1954

Dispositions	Total Dispositions, 1951-1954		Sample Dispositions, 1951-1954	
	No.	Pct.	No.	Pct.
Total dispositions	6,627	100.0	1,970	100.0
Total granted	5,812	87.7	1,541	78.3
Outright	(4,354)	(74.9)	(1,021)	(66.2)
Conditionally	(649)	(11.2)	(316)	(20.6)
Temporarily	(215)	(3.7)	(55)	(3.6)
Conditionally and tem- porarily	(594)	(10.2)	(149)	(9.6)
Total denied	643	9.7	238	12.1
Total withdrawn	86	1.3	27	1.4
Total dismissed	86	1.3	33	1.7
Total data unavailable	-	-	131	6.5

Source: 1951-54 Annual Reports and Minutes of the Detroit Board of Zoning Appeals.

As of 1955, the Board was composed of the following citizens:

Martin C. Callahan, Chairman
Frank Burton
Herman Schmier
William J. McBrearty
Allen E. MacNichol
James H. Garlick

Two of the members, Mr. Callahan and Mr. Burton, have served on the Board continuously since the ordinance was adopted. Table III, on page 48, shows Board membership since its inception, and indicates that membership rarely changes except when a member dies. Reappointment, therefore, has almost always been certain.

The Detroit Board of Zoning Appeals is, as elsewhere, an administrative body with quasi-judicial powers in the application of the zoning ordinance. In carrying out its functions, the Board must accept the zoning ordinance and zoning map as correct. In the course of its work, however, the Board may frequently come upon situations which justify amendments to the text or map of the ordinance. Normally, such situations should be brought to the attention of the legislative body. Unfortunately, the Board has recommended only one change in the zoning ordinance since its adoption, which was to give the Department of Buildings and Safety Engineering more discretion in granting building permits where the zoning nonconformity was minor in nature.¹

¹Detroit Free Press, May 5, 1949.

TABLE III
BOARD MEMBERSHIP, 1941-1954

Board Member	Year													
	41	42	43	44	45	46	47	48	49	50	51	52	53	54
Schiappacasee	x	x ^a												
Burton	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Callahan	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Schilling	x	x	x	x	x	x	x	x	x	x	x	x	x ^d	
Robinson	x	x ^a												
McClure			x	x	x	x	x	x ^b						
Johnson			x	x	x	x	x	x	x ^c		x ^e	x ^f		
Schmier									x	x	x	x	x	x
McBrearty											x	x	x	x
MacNichol													x	x
Garlick														x

^a As far as could be ascertained, both Schiappacasee and Robinson died and were replaced by McClure and Johnson.

^b McClure died October 24, 1948; Schmier filled facancy.

^c Johnson replaced by McBrearty.

^d Schilling died September 11, 1952; MacNichol filled vacancy.

^e Johnson reappointed as of August 7, 1952, due to ordinance amendment increasing board membership to six.

^f Johnson's term expired December 31, 1953; replaced by Garlick.

Source: Annual Reports of the Detroit Board of Zoning Appeals.

Functions of the Board. The Detroit Board, like most zoning appeal boards throughout the United States, has the power to interpret, to grant exceptions to, and to vary the literal terms of the zoning ordinance. The first of these powers, to review administrative action and interpretation of ordinance provisions, has not been the main source of difficulty in Detroit. The real difficulty arises from the separate but related powers of the Board to grant variances and special exceptions. The differences between the two have been explained, but they are often confused by the Board, since it does not even attempt to differentiate them in handling an appeal.

When the ordinance was originally adopted there were six instances in which the Board could permit special exceptions as defined in the ordinance. Today the Board retains these special exception powers and has been given authority to grant special exceptions in five additional provisions.¹

The third power of the Board is, of course, the power to grant variances with the administrative obstacle being what the Board considers unnecessary hardship. Loose construction of this term may jeopardize the whole zoning plan, and therefore, the power to grant variances must be used sparingly. This has not been the

¹See Appendix A for the Board's special exception and other powers as set up in the ordinance.

case, however, as will be pointed out in an analysis of the cases before the Board in a following section of this study.

An idea of the effect that the Detroit Board of Zoning Appeals' decisions can have on the objectives of zoning can be obtained from the figures in Table IV, following, which shows the number of cases disposed each year since the Board's inception. In disposing of 19,288 cases over a fourteen-year period, the type of disposition can have a tremendous effect by jeopardizing the entire zoning plan. In the words of Hugh Pomeroy,

Every improperly granted special permit, every adjustment (variance), which is in effect an instance of spot zoning, is a leak in the zoning ordinance. And it doesn't take very many such leaks to exhaust the strength of the zoning plan. Even if the excess densities, or the fudging on yard and area requirements, or mayhap, the change of uses, permitted by improper actions of the board of appeals do not greatly affect the broad land use and density pattern of the master plan, they do start a disintegration of the zoning plan, and they do undermine confidence in its integrity.¹

The City Plan Commission

The relationship between the Board of Appeals and the City Plan Commission was harmonious in the early years of zoning in Detroit, for the first secretary of the Board was regarded as an

¹Hugh Pomeroy, "Losing the Effectiveness of Zoning through Leakage," Planning and Civic Comment, October, 1941, pp. 8-9.

TABLE IV

NUMBER OF BUILDING PERMITS REQUESTED, DENIED, AND
DENIED AND APPEALED, AND THE NUMBER OF
CASES DISPOSED BY THE DETROIT BOARD
OF ZONING APPEALS, 1941-1954

Year	Building Permits			Cases Car- ried For- ward	Re- hear- ings Re- quested	Cases before the Board	Cases Car- ried For- ward	Cases Dis- posed by the Board
	Re- quested	De- nied	De- nied and Ap- pealed					
1941	a	a	897	-	10	907	35	872
1942	a	a	858	35	7	900	20	880
1943	a	a	881	20	39	940	34	906
1944	a	a	931	34	16	981	28	953
1945	4,785	1,373	1,198	28	5	1,231	68	1,163
1946	21,373	1,649	1,439	68	9	1,516	26	1,490
1947	23,154	1,859	1,638	26	41	1,705	44	1,661
1948	23,087	1,798	1,552	44	12	1,608	71	1,537
1949	29,632	1,715	1,559	71	28	1,658	140	1,518
1950	28,914	1,908	1,674	140	28	1,842	159	1,683
1951	24,237	1,860	1,648	159	33	1,840	170	1,670
1952	23,381	1,909	1,700	170	45	1,915	208	1,707
1953	23,155	1,678	1,617	208	36	1,861	235	1,626
1954	22,054	1,848	1,708	235	37	1,880	256	1,624
<hr/>								
Total 1945-1954								
No.	223,772	17,597	15,733	1,149	274	17,056	1,377	15,677
Avg./yr.	22,377	1,760	1,573	115	27	1,706	138	1,568
<hr/>								
Total 1941-1954								
No.	a	a	19,300	1,238	346	20,784	1,494	19,288
Avg./yr.	a	a	1,379	88	25	1,485	107	1,373

^aData unavailable.

Sources: Annual Reports of the Detroit Board of Zoning Appeals.
Annual Reports of the Detroit Department of Buildings
and Safety Engineering.

expert on zoning problems and had been closely associated with the Plan Commission.¹ Upon his death, however, the Plan Commission endeavored to induce the Board to hire another expert, whose knowledge in the field would enable him to give the lay members of the Board the leadership they needed. The Plan Commission's recommendation was rejected, however, and a new provision was inserted in the zoning ordinance which enabled the Board to select its own secretary.²

From this point on, the Board became completely divorced from the Plan Commission and much rivalry between these two municipal bodies ensued. Until 1947, both the Board and the Commission accused one another of usurping its authority under the zoning ordinance.

In 1947 the Board and the Commission developed a program for bringing the two agencies closer together. At this time it became the practice of the Commission to have a member of its staff sit in on the hearings before the Board to offer suggestions on various cases. Unfortunately this practice was discontinued because of the heavy workload confronting the staff of the Plan Commission.

¹City Plan Commission; also referred to as "the Commission" in this paper.

²City of Detroit, Ordinance No. 342-D, June 30, 1943.

Although the Commission occasionally had a staff member sit in on the Board hearings, the practice became ineffective because of irregularity of his attendance.

In June, 1949, a conference was arranged between the two agencies to discuss methods of greater cooperation. The method devised was one by which a digest of cases to be heard would be submitted to the Commission, which would review the list and make recommendations in the form of letters to the Board on certain cases felt to be important or in some way affecting City Plan Commission activities. In addition to this, it became standard operating procedure for a member of the planning staff to sit in at the Board meetings every week and point out the reasons for the Commission's advisory letters. This arrangement has brought the two agencies closer together, but it is felt that a better method of cooperation could be attained by having a member of the City Plan Commission also be a member of the Appeal Board. Such an arrangement ". . . makes available to the Board of Appeals the experience and understanding of fundamental zoning principles and objectives and the familiarity with the ordinance and the master plan that members of the planning commission gain through intimate contact with planning surveys and studies."¹

¹Local Planning Administration, International City Managers Association, Chicago, 1948, p. 243.

The Plan Commission, of course, can only recommend that certain cases be denied, and in its letters gives supporting data for so doing. City Plan has only jurisdiction in those instances enumerated in the zoning ordinance.¹ It should be noted, however, that through amendments to the ordinance, the Plan Commission has been accumulating more and more authority. In general, it can be stated that the new powers conferred on the Board have lagged behind and in some instances have been subordinated to the authority granted to the Plan Commission. In the ordinance, as originally adopted, the Plan Commission had power under ten separate sections, while today it exercises review and decides matters arising under twenty-seven separate sections, with more than a dozen truly significant. The Board, on the other hand, under the original ordinance enjoyed, in addition to its interpretation and variance powers, six instances in which it could permit special exceptions. Today the Board retains the above powers and has been given only five additional provisions of authority. The diminution of the powers of the Board in relation to the increasing powers of the Plan Commission can probably be accounted for by the gradual recognition by various agencies in Detroit that " . . . it is fundamental in construing the

¹See Appendix B for the provisions of the ordinance granting authority to the Plan Commission.

powers and duties of a board of appeals that it is limited by its properly designated powers and that it cannot exercise legislative functions so as by the guise of a variance to really change the law regulating the character and use of certain zones."¹

The Department of Buildings and Safety Engineering

Enforcement of the Detroit Zoning Ordinance begins in the Department of Buildings and Safety Engineering. If the proposed use or construction does not conform to the ordinance requirements, the building permit is denied. For the number of building permits requested, requested and denied, denied and appealed each year since the adoption of the ordinance, see Table IV, page 51. In the case of a denied building permit, the Board of Zoning Appeals has jurisdiction, and the person seeking the permit may petition the Board for a variance to, an exception as outlined under, or an interpretation of the terms of the ordinance.

Enforcement on the part of the Building Department is actually far from complete. Inasmuch as most of the violations are discovered through routine inspections or complaints there are, undoubtedly, many illegal uses of which the Building Department is

¹E. C. Yokley, Zoning Law and Practice, 1st ed. (Charlottesville, Virginia: Michie Co., 1948), p. 238.

unaware. The department itself candidly admits "that it depends largely upon complaints from the general public."¹ The lack of adequate enforcement facilities is reflected in the cases which are handled by the Board. In many requests for variances and exceptions, the use sought is already existing in violation.

It is rather ironical that the Board has been granting a steadily increasing number of appeals that either have been granted with conditions attached or granted conditionally and temporarily, while the Building Department is so understaffed that it must continue to enforce the zoning ordinance on a complaint basis only.

The Corporation Counsel

A representative of the Corporation Counsel sits in at every hearing and advises the members of the Board in respect to the particular legal issues involved and counsels them on their limitations of power.

In court cases directed against the ordinance or against the decisions of the Board, the Corporation Counsel defends the section attacked in the circuit court. If the city is reversed, counsel is authorized to appeal the case to the higher courts.

¹Detroit Free Press, May 2, 1949.

It should be noted that the advice of the Corporation Counsel is only occasionally heeded or asked for by the Board.¹

The Common Council

Final dispositions of the Board cannot legally be changed by a legislative body; nevertheless, various members of the council endeavor to influence its decisions. As the members of the Board are appointed by council, it is only natural to expect council members to exert some influence when a particular constituent desires a favor. Not infrequently a member of council will call or write the secretary of the Board or individual Board members to seek a favor or to request an explanation as to why a certain case was either granted or denied.

There have been cases when the pressure brought by an individual, after receiving an adverse decision, upon a councilman was potent enough to have him request a rehearing. Although the members of the Board are probably loathe to grant rehearings on such grounds, they sometimes owe it to their appointers to do so, or expediency dictates it.

¹As was noted in the reading of the transcripts of various cases analyzed.

The council has also been guilty of passing resolutions allowing to what amounts to nonconforming uses to certain citizens who have petitioned it. Of course the council has no authority for such spot zoning; nevertheless, it continues to practice these acts. Whenever an individual has received the approval of council, via a resolution, and petitions the Board, it is customary for the Board to grant the appeal without question. Such a practice hopelessly confuses the differences between the legislative and executive functions. Perhaps the most undesirable end of this practice is that the granting of appeals is, in essence, removed from the jurisdiction of the Board set up entirely for this function and placed in the hands of a politically motivated, often uninformed, and usually overworked council.

Neighborhood Improvement Associations

In early 1950 the Common Council passed a resolution requesting that the secretary of the Detroit Board of Zoning Appeals notify the secretary or president of every neighborhood improvement association whenever a petition for a nonconforming use comes up in his area. Presently there are ninety-four such associations in Detroit and, no doubt, the notification of these groups has increased the workload of the understaffed Board. It is felt, however, that

such a practice is a desirable one, since such persons can perform two rather important functions. It serves the purpose of acquainting the Board with certain conditions in the block and area in which the appeal is requested which the members of the Board otherwise might not have considered because of their inability to inspect the premises. Secondly, such a practice enables members of the associations to point out specific evils connected with the conduct of the use, especially in cases where the use had been existing illegally. Certainly these functions far outweigh any influence such persons may have with members of the council or Board who might lend an ear to their desires and prejudices.

A flow chart constructed to illustrate the zoning functions of the various municipal bodies in Detroit might show the Common Council receiving advice from the City Plan Commission on zoning needs. The Common Council then enacts a regulation which is mandatory for the Department of Buildings and Safety Engineering to enforce and the Corporation Counsel to defend. Property owners may obtain special exceptions as defined in the ordinance through either the City Plan Commission or the Board of Zoning Appeals, and may gain relief from the strict terms of the ordinance through the Board of Zoning Appeals when unnecessary hardship is proved and is due to unique circumstances to the property in question.

Procedure before the Detroit Board of Zoning Appeals

The city of Detroit, availing itself of the power granted to it by the state of Michigan, in 1940 enacted a comprehensive zoning ordinance,¹ which, except for relatively few changes, remains in its original form at the present time. The ordinance provides for fifteen types of zoning districts: five residential,² five business,³ one parking,⁴ one commercial,⁵ and three industrial.⁶ The residential zones are designated R1, R2, RM, RM4, and RMU. The primary uses permitted in the residential zones are single-, two-, and multifamily dwellings, churches, schools and similar uses, and professional offices. In general, with regard to the type of use, the primary distinctions are that multiple dwellings are permitted only in RM, RM4, and RMU and excluded from R1 (Single Family) and R2 (Double Family) zones. In general, the residential zones are cumulative; that is,

¹ Ordinance No. 171-D, Official Zoning Ordinance, City of Detroit, Michigan.

² Ibid., Sections 5-9.

³ Ibid., Sections B9-13.

⁴ Ibid., Section 9-A.

⁵ Ibid., Section 14.

⁶ Ibid., Sections 15-17.

all uses that are permitted in the preceding zones are permitted in the next lowest classification. For example, all uses permitted in the R1, R2, and RM zones are permitted in the RM4 zone. Another major difference among zones is the setback, height, side and rear yard, and open area requirements with, for example, a 30-foot rear yard being required in a R1 zone, while a 25-foot rear yard is required in an RMU zone.

The business districts, B1, B2, B6, BL, and BC, provide for retail and personal service stores, business offices, and similar uses. Although there are some differences in the few other kinds of uses permitted in the lower business districts, the major differences are in the bulk requirements.

The parking zone, P-1, provides parking only for private passenger vehicles, with no charge for the service rendered.

The commercial zone, C6, provides for such uses as warehousing, storage, and terminal buildings and similar uses.

The industrial districts are divided into two light industrial districts, ML and ML6, and a heavy industrial district, MH. The ML district is, in general, restricted to light manufacturing uses such as tool, die, gauge, and machine shops not involving stamping operations, and similar uses. The ML6 district permits such uses as assembly plants, painting shops, tin shops, welding shops,

furniture manufacturing and tank storage, for example. The MH zone permits uses that are considered heavy manufacturing, such as foundries and drop forging plants, or more obnoxious uses, such as slaughter houses and the manufacturing of glue, fertilizer, and petroleum, subject to the approval of the Plan Commission. There is also a wide divergency among the three districts in height regulations. In these districts residential and similar uses are prohibited.

Zoning maps, designating the classification of each, area on a block-by-block basis, were enacted in conjunction with the substantive provisions contained in the ordinance.¹ The ordinance requires a building permit to be obtained whenever any type of building is erected, constructed, altered, moved, or repaired.² A building permit is also required for every use of land and buildings commenced after the passage of the ordinance.³

The procedure for obtaining a variance, exception, or interpretation is begun with a request for a permit in the Department of

¹This does not mean that each block is zoned differently from the blocks on either side of it, but merely that each block is designated separately on the zoning maps. Primarily, in the older sections of the city, however, one block may have as many as three zones in it. This is due to the various types of uses and structures that existed before the passage of the ordinance.

²Ibid., Section 18.7.

³Ibid., Sections 18.5 and 18.6.

Buildings and Safety Engineering. If the proposed use or construction does not conform to the zoning ordinance requirements, the permit will be denied, but the applicant is entitled to appeal to the Board of Zoning Appeals to secure a variance or interpretation.¹

From 1945 through 1954 an average of 22,377 requests were made each year for building permits, and an average of 1,760 of these requests were refused in the first instance with approximately 89 percent of these appealed to the Board.² Appeals must be filed within thirty days from the time when the Building Department refused to grant the permit, unless a majority of the Board permit the appeal to be filed at a later date.³ The appeal form which is provided for petitioning the Board is in most cases an administrative record and is not used by the Board in its consideration of the case.⁴

¹Technically, an exception is not an appeal, since the Board or the Plan Commission has original jurisdiction to decide when it should be granted. An application, however, is filed with the Department of Buildings and Safety Engineering, which is then referred to the Board or to the Plan Commission, and for all practical purposes, is handled the same way administratively as a variance.

²See Table IV, page 51, for the actual numbers of building permits requested, denied, and appealed to the Board.

³Rules of Procedure, Board of Zoning Appeals of the City of Detroit, Rule 2. See Appendix C for complete rules of the procedure of the Detroit Board.

⁴See Appendix D for petition form.

The Public Hearing

The public hearing is held once each week. The Board hears approximately forty-one cases at each hearing.¹ Although the Board spends only 3.43 minutes per case,² most cases consume more or less time than this average. The Board disposes of nonuse appeals, those in which there are yard deficiencies, excess height, et cetera, generally within a matter of seconds. Those cases which involve the application of individual hardship and/or have a large number of protestants present, require more discussion, debate, and weighing of facts before a decision is made.

All proceedings before the Board are recorded by a court stenographer, and this record is transcribed completely and is permanently filed in the office of the Board.³ The members of the Board rely on their notes taken during the hearing in making their decisions.⁴ The testimony of applicants and objectors is required

¹The average number of cases heard in the sample.

²Average time spent on each case comprising the sample.

³See Appendix E for the transcription of case 312-54, for example.

⁴All the members of the Board were present at most of the hearings during the period in which this study was made. If a member was absent, however, he did not vote on the cases heard during his absence.

to be given under oath. In most cases the applicant himself first presents his case to the Board orally in a very informal manner; then, if there are any objectors or consentors, they are permitted to speak. The presence or absence of unnecessary hardship is brought out more by the Board in the questioning of the applicant than by the applicant's presentation. Since the board has probably determined in advance when certain factors will automatically render the case an unnecessary hardship, the most rapid manner of disposing the case is by direct questioning. Although the applicant has the burden of proving that he is entitled to a variance, it seems that a large number of applicants have no conception of what the term "unnecessary hardship" implies and, therefore, the only manner in which the necessary proof can be adduced is through the Board's questioning. Not many cases are argued by attorneys representing the applicants, which might indicate that such a procedure is unnecessary because of the applicant's probable awareness of the Board's record of granting nine out of every ten cases brought before it.

In considering a case, the Board has as evidence the file of the case containing the type of appeal sought, the reason for its initial refusal by the Department of Buildings and Safety Engineering, the original application, the appeal form prepared by the applicant

listing the main arguments upon which the appeal is based, any communication the Board has received in behalf of or in opposition to the appeal, pictures of the property in question, locational map, and an inspector's report.

The inspector's report contains a very brief description of the various properties on each side of the street of the particular block in which the appeal is sought. It also contains a violation notice if such exists. Although it is generally admitted that a personal inspection of the premises by the members of the Board would be desirable, the number of cases which are handled each week and the limited amount of time which the Board members have to devote to handle appeals make it impossible. In some cases, however, an inspection by a Board member is necessary, and in some particular close cases a personal visit will be made by at least one member. In all other cases, therefore, the members of the Board must rely on the inspector's report, their own knowledge of the city, the photographs, and often conflicting testimony of the applicants and objectors.

Types of Action

Once the Board has heard all of the facts, it will take any one of the following courses of action:

Immediate disposal. If the case involves a nonuse appeal, the Board will usually grant the appeal without further question. The Board will also grant a use-appeal if it is a clear case of what the Board considers practical difficulty or unnecessary hardship.

Advisement till executive session. If the appeal case is debatable and one in which the petitioner becomes highly wrought up at a contemplated invasion of his property rights, or one in which many protestors delay the proceedings, it is customary for the Board to accelerate the process by moving the case under advisement to be voted on at the executive session, or closed hearing, which usually follows the public hearing.

The legality of voting on a public matter at a closed session is questionable. 'Certainly the citizens of . . . who see slums pressing in on all sides, who see neighborhoods collapsing, who pay the mounting cost of ruined areas--have a right to ask for open decisions, openly discussed. This is the public's business, legally and morally.'¹

¹ New York Times, June 24, 1956, from an editorial in The Cleveland Press, Commenting on an Ohio state law which was not being followed by the Cleveland Zoning Board of Appeals, which reads: 'All meetings of any board or commission, of any state agency or authority and all meetings of any board, commission, agency or authority of any county, township, municipal corporation,

Adjournment. Adjournment is a mechanism through which action is delayed by setting a new hearing date. The members of the Board, meanwhile, are afforded an opportunity to inspect the property in question or to gather additional evidence before making the final decision. Case 1555-50, for example, an appeal to extend an existing industrial use, now located in an industrial district, into a residential district immediately adjacent, was carried under adjournment for a period of eleven weeks. By probably acting under one of its exception powers,¹ which reads

Permit the extension of any building, structure or use into a more restricted district immediately adjacent thereto under such conditions and limitations as will safeguard the character of the more restricted district, provided a reasonable need for such an extension and an absence of injurious effect on the contiguous property is shown to the satisfaction of the Board.

the Board granted the appeal with the condition "that the south wall of the proposed addition shall be a masonry wall with no openings." The petitioner, therefore, evidently satisfied the Board as to the need and to the absence of injurious effect, but such satisfaction

school district or other political subdivision are declared to be public at all times. No resolution, rule, regulation or formal action of any kind shall be adopted at any executive session of any such board, commission, agency or authority."

¹Section 20.7 (B), Detroit Zoning Ordinance.

could not be ascertained from reviewing the facts and findings determined by the Board in the brief of the case.¹

Advisement for an indefinite period. This course of action should not be confused with advisement till executive session, a technique for expediting business. By keeping a case under advisement for an indefinite period, the Board postpones action, and in so doing can easily allow a use forbidden by the zoning ordinance. This advisement technique is consequently an excellent subterfuge which appears harmless in itself. Case 754-50, for example, was kept under advisement for 170 weeks, or over three years. In this particular case the petitioner wanted the Board to make permanent the temporary grant for a second-floor addition of a structure housing his light industrial use, located in a residential district. The Board had previously granted permission to erect this temporary addition in 1942 and then extended it temporarily again until May, 1950, at which time the petitioner requested this permanent grant. From July 11, 1950, until October 20, 1953, the Board saw fit to carry this case under advisement, which allowed the use to continue

¹For the brief of this case, see Appendix F.

to exist illegally in violation of the zoning ordinance. Finally on October 27, 1953, the Board granted the appeal outright.¹

Dismissed. When the Board has no obvious jurisdiction, it will dismiss the case. Since the Board was set up, it has found it necessary to dismiss only a little more than 1 percent of the cases filed.

As can be seen in the foregoing discussion, the Board can postpone immediate action by either adjourning the case or putting the case under advisement for an indefinite period. Good practice would dictate a time limit on the number of weeks that any case can be delayed till final action. Certainly any property-owner should be able to know whether he can or can not do what he is requesting within a reasonable period of time.

Minutes

The minutes of the hearings of the Board are very incomplete, giving only a list of the cases heard, the type of appeal sought, and the decision of the Board. No information can be found

¹See Appendix G for brief of case number 754-50.

in the minutes that would in any way incriminate the Board.¹ From July 1, 1951, the budget of the Board included an appropriation for the services of a court reporter to provide the Board with a complete transcript of the entire proceedings of all meetings and public hearings. Even so, an examination of such transcriptions reveals that the findings of fact are not sufficiently definite and certain to enable a court, or anyone else for that matter, to review the decision intelligently and ascertain that the facts afford a reasonable basis for the determination.²

Facts and Findings

The facts and findings of the Board are generally insignificant. The facts found frequently do not warrant the decision of the Board. In variant appeals, the Board usually repeats the general language of the statute, and by so doing, adds nothing. It is almost impossible to determine what amounts to a finding of fact required in the enabling act, and as a result, the findings have assumed various forms. The Board does not insert in its decisions a statement that there is practical difficulty and unnecessary hardship

¹See Appendix H for an example of the minutes.

²The reading of a copy of the transcript taken on case 312-54 in Appendix E reveals this.

inherent with the property in question. It does, however, include, generally, the following types of statements:

1. That there are similar nonconforming uses in the block.
2. That the board found the proposed addition and use would not be unduly harmful or injurious to other property-owners of interest.
3. That yard deficiencies are common in this district.
4. That testimony has been introduced to show that the building was originally designed to be converted.
5. That no protesting property-owners in interest appeared at the hearing, but one letter of protest was submitted to the board.

It is sufficient to say that in only a few cases are the findings of fact sufficiently detailed to determine whether an owner was entitled to a position different from that of his neighbors.

Types of Decisions

The Board, after making its determination, will hand down one of the following types of decisions:

Granted outright. It is the general practice of the Board to grant the majority of the cases outright, as can be seen in Table V.

TABLE V
SAMPLE CASES BY TYPE OF DECISION

Type of Decision	No.	Pct.
Granted	1,541	86.6
Granted outright	(1,021)	(57.4)
Granted conditionally	(316)	(17.7)
Granted temporarily	(55)	(3.1)
Granted conditionally and temporarily	(149)	(8.4)
Denied	238	13.4
Total	1,779	100.0

Source: Records of the Detroit Board of Zoning Appeals.

which shows that 1,021 cases, approximately 57 percent, in the sample have been disposed in this manner.

Granted conditionally. Three hundred sixteen cases, or about 18 percent, were granted with certain conditions imposed by the Board. This is done particularly when either the denial or the granting of the appeal outright would be subject to complaint. The Board's power to attach conditions is quite broad, though not unlimited. Conditions are legal when the restrictions imposed are not more severe than the ordinance.

In some cases the Board imposes a condition giving it jurisdiction over the case. In the event that the applicant at some future date fails to comply with each and every one of the conditions, the Board may compel him to "show cause" as to why his grant should not be revoked. The Board, having once made its decision, however, has no means of determining whether the conditions it imposes are being followed, except by complaint, since it does not make periodic inspections. The number of cases in which the Board retained such jurisdiction could not be definitely established, but a reasonable estimate would be approximately 25 out of the 465 cases it granted conditionally or conditionally and temporarily.

Granted temporarily. About 3 percent, or 55 cases in the sample, were granted temporarily. A breakdown of these temporary grants implies that the word "temporary" as used by the Board is somewhat a misnomer. It was discovered that all 55 temporary grants made in the sample were nothing more than extensions of previous temporary grants that had expired during the course of the study. By renewing temporary grants from year to year, the Board is, in effect, rendering such nonconformities permanent.

Granted conditionally and temporarily. When the Board feels that the applicant is entitled to some relief, it will grant the case

for a limited time and will also impose conditions to "protect" the surrounding properties. The Board granted 8.4 percent of the cases in this manner.

Denied. When the Board finds that it is impossible to give any type of relief to the applicant it denies the case. During the course of this study the Board found it necessary to deny only 13.4 percent, or 238 cases out of 1,779.

Disposition of Cases by the Detroit Board of Zoning Appeals

It is the purpose of this section to examine in detail the cases that have come before the Detroit Board of Zoning Appeals. Such an analysis will attempt to show proper and improper action by the Board and the effect such action has had on the city of Detroit.

The Record of the Board, 1941-1954

While mere numbers are not proof of improper action, they are certainly grounds for suspicion. For Table VI shows that in Detroit from 1941 through 1954, the Board granted 16,363 appeals out of 19,288 requests--or granted about 85 percent of all requests. It also indicates that the percent of appeals granted has been increasing, although not progressively, each year from 64 percent in

TABLE VI
CASES BY TYPE OF DISPOSITION, 1941-1954

Year	Type of Grant								Totals	
	Granted		Denied		Withdrawn		Dismissed		No.	Pct.
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.		
1941	555	63.7	250	28.7	34	3.8	33	3.8	872	100.0
1942	625	71.0	213	24.2	25	2.9	17	1.9	880	100.0
1943	796	87.9	102	11.2	6	0.7	2	0.2	906	100.0
1944	846	88.8	81	8.5	22	2.3	4	0.4	953	100.0
1945	1,023	88.0	107	9.2	22	1.9	11	0.9	1,163	100.0
1946	1,265	84.9	185	12.4	32	2.2	8	0.5	1,490	100.0
1947	1,412	85.0	203	12.2	17	1.0	29	1.8	1,661	100.0
1948	1,358	88.5	145	9.4	20	1.3	12	0.8	1,535	100.0
1949	1,271	83.7	208	13.7	25	1.7	14	0.9	1,518	100.0
1950	1,400	83.2	227	13.5	21	1.2	35	2.1	1,683	100.0
1951	1,449	86.8	163	9.8	29	1.7	29	1.7	1,670	100.0
1952	1,464	85.8	186	10.9	33	1.9	24	1.4	1,707	100.0
1953	1,433	88.9	164	10.1	11	0.7	18	1.1	1,626	100.0
1954	1,466	90.3	130	8.0	13	0.8	15	0.9	1,624	100.0
Totals	16,363	84.8	2,364	12.3	310	1.6	251	1.3	19,288	100.0

Sources: Annual Reports of the Detroit Board of Zoning Appeals.
Audit Reports of the Detroit Board of Zoning Appeals.

1941 to an all-time high of 90.2 percent in 1954. Any petitioner today, therefore, stands a 9 to 1 chance of getting approval of the appeal he is requesting. Of course, while the percent of appeals granted has been increasing, the percent of appeals denied has been decreasing. In 1941 the Board denied 28.7 percent of the appeals brought before it, while in 1954 the Board reached a record low by denying only 8 percent of its cases.

It can be assumed from the data in Table VI, which is a compilation of figures obtained from the annual reports of the Board, that the Board is rendering the Detroit Zoning Ordinance totally ineffective. Such an assumption, however, is not entirely warranted, as data analyzed later will show. In short, the information presented in the Board's annual reports is such that it can easily be misconstrued.¹ Despite the inadequacies of the annual reports, there is additional evidence which supports the conclusion that zoning in Detroit has been adversely affected by the operations of the Board.

Table VII, which is a breakdown of cases granted by the Board from 1941 through 1954 by type of grant, reveals that the percentage of appeals granted by type of grant has remained rather constant through the years, except for a few noticeable exceptions.

¹For example, see Appendix I for a copy of the 1953 annual report of the Board.

TABLE VII
CASES BY TYPE OF GRANT, 1941-1954

Type of Grant										
Year	Granted Outright		Granted Condi- tionally		Granted Tem- porarily		Granted Condition- ally and Tem- porarily		Total Granted	
									No.	Pct.
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
1941	445	80.2	90	16.2	9	1.6	11	2.0	555	100.0
1942	349	55.8	91	14.6	12	1.9	173	27.7	625	100.0
1943	481	60.4	101	12.7	18	2.3	196	24.6	796	100.0
1944	552	65.3	95	11.2	19	2.2	180	21.3	846	100.0
1945	744	72.7	131	12.8	35	3.4	113	11.1	1,023	100.0
1946	960	75.9	184	14.5	59	4.7	62	4.9	1,265	100.0
1947	1,099	77.8	172	12.2	80	5.7	61	4.3	1,412	100.0
1948	1,074	79.1	155	11.4	94	6.9	35	2.6	1,358	100.0
1949	932	73.4	172	13.5	98	7.7	69	5.4	1,271	100.0
1950	1,099	78.5	148	10.6	98	7.0	55	3.9	1,400	100.0
1951	1,086	74.9	148	10.2	130	9.0	85	5.9	1,449	100.0
1952	1,128	77.0	158	10.8	58	4.0	120	8.2	1,464	100.0
1953	1,081	75.5	140	9.8	17	1.2	195	13.6	1,433	100.0
1954	1,059	72.2	203	13.9	10	0.7	194	13.2	1,466	100.0
Totals	12,089	73.9	1,988	12.1	737	4.5	1,549	9.5	16,363	100.0

Source: Annual Reports of the Detroit Board of Zoning Appeals.

During the years 1942-1944 the percentage of cases granted outright averaged about 60 percent of the total granted, while the percentage of cases granted conditionally, temporarily, or conditionally and temporarily averaged about 40 percent. In comparison, the percentage of cases granted outright in the remaining years of the Board's operations of the total cases granted averaged about 76 percent, while the percentage of cases granted otherwise averaged 24 percent. This can be attributed to the fact that during the war years the Board made many grants to convert single-family residences to two-family residences, upon the conditions that the new dwelling unit could only be rented to a veteran and that such grant was only temporary for the duration of the war. Of course, the relief of a housing shortage is necessary, but such action should be from the legislative body, not the Board of Appeals.

Another noticeable trend that can be seen in Table VII is that since 1950, the number of appeals granted temporarily has been decreasing, while the number of appeals granted conditionally and temporarily has been increasing. Since the only way such grants are enforced is through complaints made by surrounding property owners or accidentally through a routine building check, the Board should consider more carefully the end result of granting an increasing number of appeals conditionally and temporarily. Besides

the granting of an appeal in this manner indicates that the Board felt that in the near future the grant would have an adverse effect on the surrounding properties. If this was not the consideration, then the Board should have denied the appeal or granted it outright at the hearing.

The foregoing information corroborates the conclusion that the Board was more severe in the early years of zoning in Detroit. There are several reasons for this conclusion. Probably the first reason leading to a decrease in the number of denials originated in the decision of the Supreme Court of Michigan in 1942. In Palmer v. Detroit,¹ which tested the reasonableness of a particular section of the Detroit Zoning Ordinance, the court held that the "Board of Zoning Appeals, through its interpretation of the Ordinance was abusing its discretion." The Board may have become less stringent in an effort to avoid further reversals by the Supreme Court, as can be seen in the answer the Board gave when asked why it had granted approximately 85 percent of the total requests up to 1949:

Many of the cases that come before us are denials of building permits for minor technical reasons. For example, an owner may be fractionally short of the required yard space for a conversion he has planned. In many cases we have no legal choice but to approve. In many cases we stand as a

¹ 306 Michigan 449.

buffer between the citizen and the circuit court. If we interpreted the zoning ordinance too strictly we might find it thrown out by the court. We try to make our judgements on the basis of common sense. We don't feel that it is our duty to clamp down on the property use.¹

If the thought is true that "if we interpreted the zoning ordinance too strictly we might find it thrown out by the circuit court," it is just as true that loose interpretation of the zoning ordinance will be thrown out by the courts also.

The Board's claim that many of its cases are requests for appeals which do not involve property use is true, but it will also be shown that the majority of its cases are concerned with the use of properties rather than with dimensional aspects of property.

Another possible factor having an effect on the Board's wholesale granting of appeals has been the lack of a formal contact with the planning of Detroit. As has been mentioned, the relationship between the Board and the Plan Commission has always been rather strained, and until a definite relationship is established, the percentage of appeals granted will probably continue to increase.

Cases before the Board, 1951-1954

During the four-year period that this study was made, 1,779 cases were either granted or denied by the Detroit Board of Zoning

¹Detroit Free Press, May 4, 1949.

Appeals. Use appeals will be discussed first, since they are more important in respect to the objectives of zoning, and will be followed by nonuse or dimensional appeals. An attempt will then be made to determine the influence that certain general factors have had on the Board in making its decisions.

Use appeals. Of the 1,779 cases heard during the course of this investigation, the use of the property was the main concern in 1,112 cases, with the Board granting 81 percent of the total. In other words, the Board found that 902 of the 1,112 cases in question presumably had (1) conditions creating unnecessary hardships, unique and inherent to the individual properties; or (2) under the terms of the ordinance, such conditions as to justify authorization to permit certain uses identified in the ordinance. No attempt is made to classify the use appeals into the two categories of variance or exception and then to proceed to prove that many of the use appeals granted should have been denied, since little would be gained by such involvement of detail. Much more will be gained by classifying the use appeals into groups that will generally show proper and improper action of the Board and the consequences of such action.

Table VIII indicates that 415 cases before the Board were requesting permission to go from one nonconforming use to another

TABLE VIII

USE APPEALS INVOLVING A CHANGE FROM ONE NONCONFORMING USE TO ANOTHER NONCONFORMING USE, BY TYPE OF APPEAL AND TYPE OF DECISION

Type of Appeal ^a			Type of Decision ^b					To- tal Gr.	De- nied
Exist- ing Use	Pro- posed Use	Zoned Use	To- tal	G. O.	G. C.	G. T.	G. C. T.		
Same Classification									
Res.	Res.	H.Res.	60	52	2	0	0	54	6
Res.	Res.	Ind.	19	17	1	0	0	18	1
Com.	Com.	H.Com.	21	12	7	0	1	20	1
Com.	Com.	Res.	120	84	20	2	6	112	8
Ind.	Ind.	H.Ind.	25	10	13	0	2	25	0
Ind.	Ind.	Res.	46	15	20	1	6	42	4
Ind.	Ind.	Com.	36	22	11	0	3	36	0
(Subtotal)			327	212	74	3	18	307	20
Lower to Higher Classification									
Res.	Com.	Ind.	6	6	0	0	0	6	0
Com.	L.Res.	H.Res.	8	7	1	0	0	8	0
Ind.	Com.	Res.	13	2	11	0	0	13	0
Ind.	L.Com.	H.Com.	8	3	5	0	0	8	0
(Subtotal)			35	18	17	0	0	35	0
Higher to Lower Classification									
Res.	L.Res.	Ind.	8	7	0	0	0	7	1
Com.	L.Com.	Res.	15	5	5	1	2	13	2
Com.	Ind.	Res.	23	1	13	0	5	19	4
Ind.	L.Ind.	Res.	5	1	2	0	1	4	1
Ind.	L.Ind.	Com.	2	0	0	0	0	0	2
(Subtotal)			53	14	20	1	8	43	10
Totals			415	244	111	4	26	385	30

^a Res., Residential; Com., Commercial; Ind., Industrial; H., Higher; L., Lower.

^b G.O., Granted Outright; G.C., Granted Conditionally; G.T., Granted Temporarily; G.C.T., Granted Conditionally and Temporarily.

Source: Records of cases comprising the sample.

nonconforming use. In granting such appeals, the Board is probably acting under Section 3.3, paragraph g of the Detroit Zoning Ordinance, which permits a structure utilized for a nonconforming use to be utilized for some other nonconforming use that is permissible generally in the same or in a more restricted district under the ordinance, if the Board, after public hearing approved such new use as being less injurious to the contiguous property and less detrimental to the surrounding neighborhood. For example, a nonconforming commercial use, in a residential district, may be allowed to go to another nonconforming commercial use permissible in the same commercial district or to a use permitted in a residential district, but it can not go to a use first allowed in a less restricted commercial district or in an industrial district. Of 327 requests for permission to change from one nonconforming use to another nonconforming use first permitted in the same district, the Board granted 307 and denied only 20 such appeals.

Thirty-five cases requested permission of the Board to change from existing nonconforming uses to nonconforming uses first permitted in more restricted districts. By approving all thirty-five appeals, the Board acted properly, since one of the basic objectives of zoning is the gradual elimination of nonconforming uses. It should be noted that six of the cases requested permission to change

from residential uses to commercial uses in industrial zones.

Whether such action is in the best interest of zoning was not a consideration of the Board, and rightly so, since the zoning ordinance prohibits new residential construction in industrial districts. By such a provision, the legislative body has recognized that residential uses adversely affect industrial uses of land, and the Board, therefore, considered that the elimination of existing residential uses in industrial zones was within the intent and purpose of the zoning ordinance.

Of fifty-three cases requesting permission to go from existing nonconforming uses to nonconforming uses first permitted in less restricted districts, the Board granted forty-three and denied only ten. Generally, such action is improper since it is contrary to the objective of the gradual elimination of nonconforming uses. The Board, apparently in an attempt to minimize the injurious effect on the surrounding properties, attached conditions to twenty-nine of the forty-three cases it granted.

While 415 cases were before the Board requesting permission to go from one nonconforming use to another, 697 cases were before the Board requesting permission to create new nonconforming uses. Again the Board found that either it had the authority as defined in the ordinance under its exception powers or else the conditions of

unnecessary hardship were present in 517 cases. In comparing the type of appeal to the exceptions listed in the ordinance, it was found that very few, if any, of the 697 cases could qualify as special exceptions to the terms of the ordinance.¹ The vast majority of the applicants, therefore, had to prove unnecessary hardship in order to be granted the appeal they were seeking. It is almost inconceivable that 517 properties in Detroit during this period had conditions causing unnecessary hardship, unique and inherent within them. An examination of these cases, which are listed in Table IX, substantiates the conclusion that the Board, under the guise of a variance, usurps the legislative power; and in so doing, is rendering zoning a useless tool of planning in Detroit.

Table IX groups the use appeals that would create new non-conforming uses into sixteen different classifications according to the type of use requested and the type of decision made on each by the Board. Five classes are significant in that they represent 608 of the 697 cases of this type disposed by the Board. One hundred forty-six appeals requested commercial uses in residential zones, and the Board saw fit to grant 107 of them. Two hundred twenty-nine property-owners requested permission to increase the number

¹For the list of exceptions in the Detroit Zoning Ordinance upon which the Board must act, see Appendix A.

TABLE IX

REQUESTS TO CREATE NONCONFORMING USES BY
TYPE OF APPEAL AND TYPE OF DECISION

Type of Appeal ^a			Type of Decision ^b					To- tal Gr.	De- nied
Exist- ing Use	Pro- posed Use	Zoned Use	No.	G. O.	G. C.	G. T.	G. C. T.		
None	Res.	Ind.	2	2	0	0	0	2	0
None	L.Res.	H.Res.	14	8	0	0	0	8	6
None	Comm.	Res.	146	28	31	9	39	107	39
None	L.Com.	H.Com.	6	3	2	0	1	6	0
None	Ind.	Res.	6	0	1	3	1	5	1
None	Ind.	Com.	18	0	6	1	3	10	8
None	L.Ind.	H.Ind.	5	1	3	0	0	4	1
Res.	L.Res.	H.Res.	229	95	16	6	23	140	89
Res.	Com.	Res.	95	7	15	24	28	74	21
Res.	Com.	H.Com	4	0	3	0	1	4	0
Res.	Ind.	Res.	20	2	5	2	6	15	5
Res.	Ind.	Com.	3	0	3	0	0	3	0
Com.	L.Com.	H.Com.	62	30	22	0	6	58	4
Com.	Res.	Ind.	10	10	0	0	0	10	0
Com.	Ind.	H.Ind.	1	0	1	0	0	1	0
Com.	Ind.	Com.	76	10	43	3	14	70	6
Totals			697	196	151	48	122	517	180

^aRes., Residential; Com., Commercial; Ind., Industrial; H., Higher; L., Lower.

^bG.O., Granted Outright; G.C., Granted Conditionally; G.T., Granted Temporarily; G.C.T., Granted Conditionally and Temporarily.

Source: Records of cases comprising the sample.

of dwelling units to a number contrary to the number allowed in the residential district in which they were located. The Board granted 140 of these requests. Ninety-five property-owners requested permission to convert their residential properties to commercial properties in districts zoned residentially, and the Board agreed in 74 cases. Finally, the Board permitted 70 existing commercial properties in commercial districts to convert to industrial uses out of a total of 76 such requests. In the remaining classes, composed of 89 requests for use appeals to create new nonconforming uses, the Board granted 68 and denied only 21. In all probability, some of the cases that were granted were within the scope of the variance power of the Board, but it is difficult to comprehend that 517 property-owners in Detroit were able to convince the Board that their properties qualified for a relaxation of the literal interpretation of the terms of the ordinance. It must be remembered that in order for any property to qualify for a modification in the terms of the ordinance, the petitioner must prove each of the following points:

1. That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance by showing that

- (a) if he complies with the provisions of the ordinance, the property-owner can secure no reasonable return from, or make no reasonable use of, his property.
 - (b) the hardship results from the application of the ordinance to his property.
 - (c) the hardship is suffered by the applicant's property.
 - (d) the hardship is not the result of the applicant's own actions.
 - (e) the hardship is peculiar to the property of the applicant.
2. That the variance will observe the spirit of the ordinance.
 3. That in the granting of the variance, the public safety has been secured and substantial justice done.

It can not be overemphasized that if the property-owner fails to prove any one of the above-mentioned determinations, relief is not forthcoming. A variance, therefore, allowing an otherwise prohibited use is rarely justified.

Under such conditions it is difficult to justify the granting of appeals creating commercial uses in residential zones, industrial uses in commercial and residential zones, and less restricted residential uses in more restricted residential zones, as the Detroit Board has done. Besides the fact that the Board has overstepped

its authority in granting so many use appeals, it is the consequences of the Board's actions that result in many physical planning problems. For example, a certain area of a city, zoned for double-family residences, was built for the zoned use and the services and facilities, such as streets, parks, water supply, sewers, et cetera, were of necessity planned and constructed for this intensity of uses. If, however, by unrestricted increase in the bulk and use of the structures and the resulting increase in traffic, these services and facilities are permitted to become inadequate, replanning and reconstruction are necessary. Except in a very few instances can these services and facilities once planned and constructed be replanned and reconstructed without an expense that is almost prohibitive. By allowing more intensive uses, not planned, constructed, or zoned for such uses, the Board can claim that such uses increase the revenue for the city in terms of property tax. In the long run, however, it will cost the city more, since undue concentration becomes congestion, impeding movement instead of facilitating it, to the injury not only of business and industry, but of living conditions as well. The costs of reversing the forces of decay are not cheap as can be seen in the cost estimates for effectuating Detroit's Urban Renewal Plan. It cannot be stated enough that as the intensity of use increases in areas not planned or constructed for such intensive uses, so do the

hazards of fire, disease, and accidents. This is the price the city may have to pay for the results of improper action on the part of the Board of Zoning Appeals.

Nonuse appeals. Table X helps to substantiate the Board's contentions that many of the appeals that come before it are denials of building permits for minor technical reasons. Of the 1,779 cases heard, 667--or about 38 percent--were of this nature. Of this figure, 639 were granted and 28 denied.

It is difficult to criticize the Board for granting the majority of the cases involving nonuse appeals. Only if the proposed modification is a gross violation of the building code, health code, or fire prevention regulations does it deny relief.

The Board should, however, consider more carefully the granting of appeals that allow a deficiency of off-street parking and loading space, particularly in commercial areas along major highways. The majority of the nonuse appeals that permitted deficiencies in off-street loading and parking made by the Board during the course of this study were not only located along major highways, but also within the same area. Such a procedure will result in making this new commercial area similar in character to the downtown

TABLE X
NONUSE APPEALS BY TYPE, NUMBER,
NONCONFORMITY, AND DECISION

Type of Appeal ^a			No.	Nonconformity			
Exist- ing Use	Pro- posed Use	Zoned Use		Yards	Excess Height	Excess Lot Cover- age	Defi- cient Lot Area
None	Res.	Res.	122	80	1	5	21
None	Res.	Com.	18	16	0	0	0
None	Com.	Com.	18	4	0	0	0
None	Com.	Ind.	1	1	0	0	0
None	Ind.	Ind.	1	1	0	0	0
Res.	Res.	Res.	327	314	2	21	100
Res.	Res.	Com.	48	45	0	1	25
Res.	Com.	Com.	16	8	0	0	3
Com.	Com.	Com.	72	26	0	1	2
Com.	Res.	Com.	15	15	0	0	1
Com.	Res.	Res.	8	8	0	0	0
Com.	Com.	Ind.	8	6	0	1	0
Ind.	Ind.	Ind.	12	4	1	1	0
Ind.	Com.	Ind.	1	1	0	0	0
Totals			667	529	4	30	152

^aRes., Residential; Com., Commercial; Ind., Industrial.

Note: The number of nonconformities is greater than the number of appeals, since one appeal may be nonconforming in several instances.

TABLE X (Continued)

Nonconformity			Decision				
Defi- cient Park- ing Space	Defi- cient Load- ing Space	Mis- cella- neous	Granted Out- right	Granted Condi- tionally	Granted Tempo- rarily	Granted Cond. and Temp.	Denied
0	0	41	90	24	0	1	7
0	0	2	15	1	0	0	2
12	2	0	17	1	0	0	0
0	0	0	1	0	0	0	0
0	0	0	1	0	0	0	0
2	0	65	297	14	1	0	15
2	0	5	43	2	1	0	2
0	0	5	13	3	0	0	0
35	10	4	65	6	1	0	0
0	0	0	14	0	0	0	1
0	0	0	7	1	0	0	0
0	1	0	7	1	0	0	0
0	0	11	10	1	0	0	1
0	0	0	1	0	0	0	0
51	13	131	581	54	3	1	28

Source: Records of cases comprising the sample.

shopping area, where traffic is congested and parking space is at a premium.

Most of the requests for nonuse appeals were before the Board because of deficient yards and lot areas. Such appeals are disposed of in a matter of seconds, but they do consume much time that could be used more effectively on the more controversial use-appeals. They also have to be fitted into the hearing schedule and frequently cause a citizen undue delay; a delay which, on many occasions, creates an antipathy toward zoning. This problem could be greatly reduced by the addition of supplementary regulations in the zoning ordinance, which would cover certain specific deviations from the general rules and which, therefore, could be automatically invoked by the building inspector. For instance, Section 5.6 of the Detroit Zoning Ordinance requires that every lot in a R1 Residence District shall have a rear yard of not less than 30 feet. This means that the building inspector must deny the building permit if the applicant's plans indicate a rear yard of less than 30 feet, even though the plan meets all the other dimensional regulations of the ordinance, which would give the property the required amount of open space necessary for light and air upon which the regulations are based. By inserting the supplementary provision that the rear yard may be reduced a certain number of feet, provided the side yards are

increased a certain number of feet, the building inspector could invoke the provision and the applicant would not have to petition the Board.

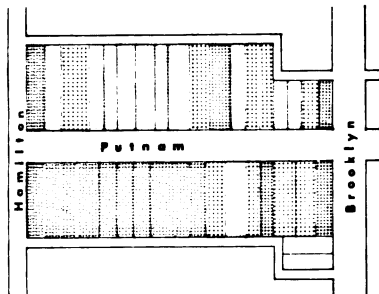
The number of nonuse appeals that will come before the Board can be greatly reduced by the insertion of supplementary provisions similar to the above example. The flexibility of such provisions is important, since the property-owner knows exactly what he can do and he is not bothered by the delay in appealing to the Board, and the intent and spirit of the zoning ordinance are carried out.

Improper Action by the Board of Zoning Appeals

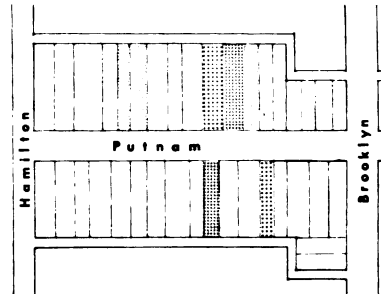
Plate 1 is an example of improper action by the Board. The block is located in an R2 Residence District which permits one- and two-family dwellings as the primary uses. Fifteen of the thirty-five properties in the block are legal nonconforming uses, since at the time the ordinance went into effect the properties were being used for multiple-family purposes. The Board granted permission to seven applicants the right to convert their single- and double-family dwellings to multiple dwellings, since so many of the properties were already being used for such purpose. This hardship complained of was common to all the properties used for single- and double-family

Plate 1. IMPROPER ACTION BY THE BOARD OF ZONING APPEALS

EXISTING LAND USE 1949

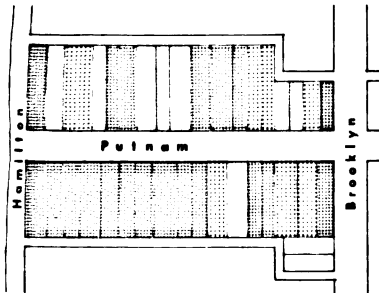


ENTIRE BLOCK

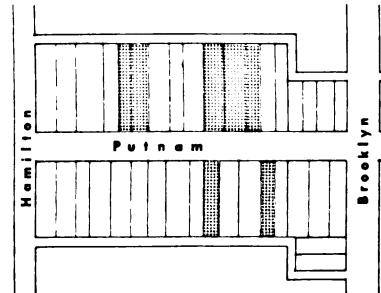


LOTS TO BE AFFECTED
BY BOARD ACTION

PRESENT LAND USE 1954






ENTIRE BLOCK



LOTS AS AFFECTED BY
BOARD ACTION

KEY

	SINGLE FAMILY
	DOUBLE FAMILY
	MULTIPLE FAMILY

NOTE: BLOCK IS ZONED FOR DOUBLE FAMILY DWELLINGS

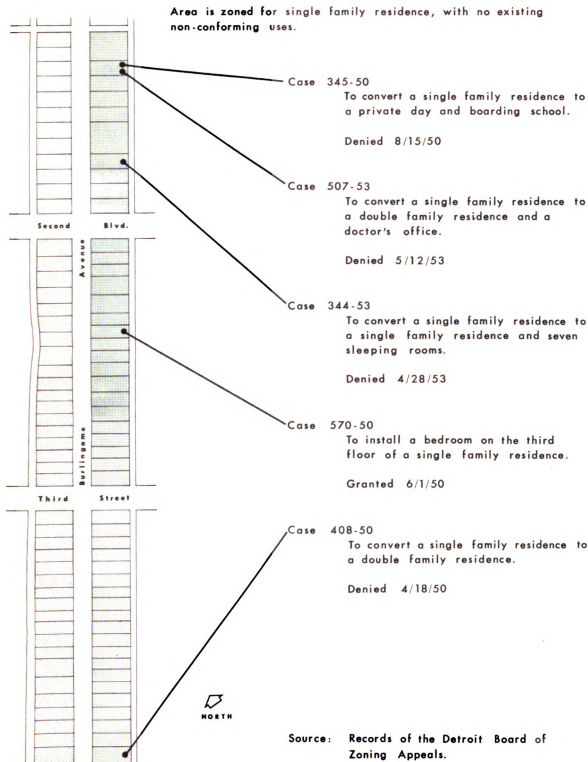
Source: Records of the Detroit Board of Zoning Appeals.

purposes and the remedy should have been by rezoning, which is a matter for the legislative body, and not the Board of Appeals. The Board may not destroy the general restriction by piecemeal exemption of pieces of land equally subjected to the hardship created in the restriction. The Board should have refused the appeals and referred the applicants to the legislative body for relief, instead of usurping the legislative authority.

Proper Action by the Board of Zoning Appeals

Plate II is an example of proper action by the Board. The area is zoned for single-family residences with no existing legal or illegal nonconforming uses. Since 1950 five different appeals were made to the Board, four for uses first permitted in less restricted districts and one for permission to install a bedroom on the third floor of one of the residences. The Board denied all the appeals for nonconforming uses and granted the appeal to increase the height of the residence to enable the installation of the bedroom. Action on the four use appeals was proper, since the applicants could not show the basic requirements necessary to grant a variance, while the granting of the excess height appeal was proper in that the Board acted under the ultimate erection section of the zoning

Plate 2. PROPER ACTION BY THE BOARD OF ZONING APPEALS



ordinance,¹ which permits the Board to approve such extension in accordance with the original intent when such building was erected and as not being injurious to the surrounding neighborhood.

Influence of Factors on the Board's Decisions

In an effort to ascertain the reasoning behind the Board's actions in overstepping its authority, an attempt has been made to determine the influence that certain general factors have had on the Board's decisions.

Geographic Location

A study of the geographical locations in which appeals have been disposed shows that the Board has made dispositions throughout the city of Detroit. The majority of appeals, however, have come from the older sections of the city and, invariably, are granted by the Board. Plate III shows the disposition of appeals by geographic location in relation to the general areas of deterioration. It can readily be seen that the majority of appeals came from the older sections of the city where the density of appeals disposed is the heaviest. The density pattern lightens considerably as the city

¹ Section 3.7, Detroit Zoning Ordinance.

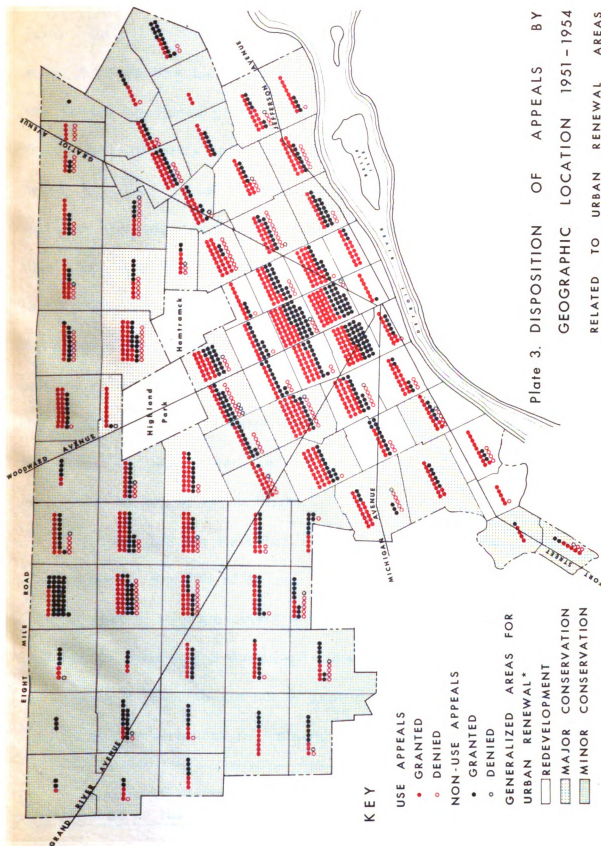
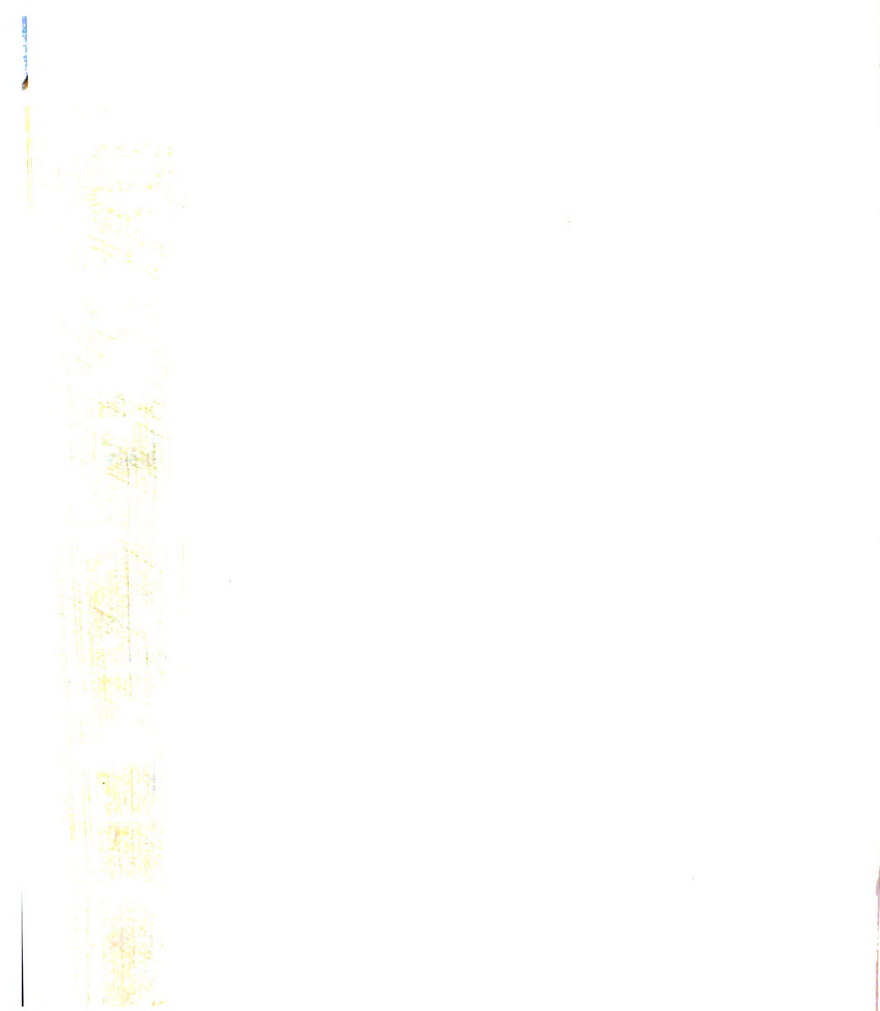


Plate 3. DISPOSITION OF APPEALS BY
GEOGRAPHIC LOCATION 1951-1954
RELATED TO URBAN RENEWAL AREAS
DETROIT, MICHIGAN

Source: Detroit Board of Zoning Appeals,
Record of sample cases



limits are approached where more recent development has taken place. As can be seen in Table XI, out of a total of 695 use appeals made in properties located within redevelopment and major conservation areas, the Board granted 582 and denied only 113 cases. Since 582 cases represents approximately one-third of the total cases heard, the Board's only recourse is that it is permitting nonconforming uses in areas nearly or already blighted. It is not a purpose of this study to determine whether the granting of nonconforming uses is a cause or an effect of urban blight, but the pattern presented by the geographical distribution of use appeals in Detroit establishes a definite correlation between the granting of unjustified use permits and the deterioration of neighborhoods. A study of this very problem in Illinois has proved that the granting of unjustified permits is one of the causes of urban blight.¹

In carrying out its urban renewal plan for the conservation of neighborhoods, the city of Detroit considers the removal of nonconforming uses a very important aspect in replanning neighborhoods in order to reverse the downward trend of neighborhood deterioration. Does it promote the public good to have one of the agencies of the city's government recommend that the city purchase certain

¹Comment, Zoning Amendments and Variations and Neighborhood Decline in Illinois, 48 N.W.L. Review, 1953.

TABLE XI

USE AND NONUSE APPEALS GRANTED AND DENIED
BY AREAS OF DETERIORATION, 1951-1954

Areas of Deterioration	Granted	Denied	Total
<u>Use Appeals</u>			
Redevelopment	303	37	340
Major conservation	279	76	355
Minor conservation	<u>320</u>	<u>97</u>	<u>417</u>
Totals	902	210	1,112
<u>Nonuse Appeals</u>			
Redevelopment	207	4	211
Major conservation	149	12	161
Minor conservation	<u>283</u>	<u>12</u>	<u>295</u>
Totals	639	28	667
<u>Total Appeals</u>			
Redevelopment	510	41	551
Major conservation	428	88	516
Minor conservation	<u>603</u>	<u>109</u>	<u>712</u>
Totals	1,541	238	1,779

Source: Records of sample cases, Detroit Board of Zoning Appeals.

existing nonconforming uses in order to remove the injurious effect that they have on surrounding properties, while another city agency is constantly creating numerous new nonconforming uses? In respect to this situation, it is particularly important that the Board of Appeals be rigidly controlled from acting improperly, since land acquisition costs for the removal of these uses will be increased by inflation of condemnation awards which take into account more intensive uses allowed by improper permits.

As can be seen from Table XI, the Board has granted more use and nonuse appeals in minor conservation neighborhoods than it has granted in either major conservation or redevelopment areas, although the distribution geographically is not so pronounced, as can be seen in Plate III. This is due to the fact that over half the area of the city is in the stage of minor conservation. Care should be taken that the current practice of granting improper use permits in the major conservation and redevelopment areas is not extended into the minor conservation areas. Such a practice, unless within the Board's legal jurisdiction, will only result in the rapid deterioration of properties and all the problems resulting from such decay.

Objectors and Consentors

Since the Board is required to notify property-owners within 300 feet of the property in question, these property-owners can either protest or consent through personal appearances, letters, or petitions. Actually, the number of persons for or against any appeal should have very little, if any, effect on the Board in disposing a case, since if the appeal meets the requirements for a variance or an exception, the Board must grant the appeal.

Objectors appearing at the Hearing. The presence of objectors seems significant when the percentage of cases in which objectors appeared and the appeal was granted is compared with the percentage of noncontested appeals granted, as can be seen in Table XII. In 1,255 cases in which no objectors appeared at the hearings, the Board granted 93 percent of the cases, but when one or more objectors made an appearance, the Board granted only 72 percent of the cases.

Table XII indicates another significant trend in that as the number of objectors appearing at the hearing of a particular case increases, the percentage of appeals granted decreases. In those cases where one to five objectors appeared the Board granted 78

TABLE XII

DISPOSITION OF CASES BY NUMBER OF OBJECTORS
APPEARING AT THE HEARINGS, 1951-1954

Number of Objectors	Total Cases	Cases Granted		Cases Denied	
		No.	Pct.	No.	Pct.
None	1,255	1,163	93.0	92	7.0
1 or more	402	291	72.0	111	28.0
1 to 5	(307)	(239)	(78.0)	(68)	(22.0)
6 to 10	(30)	(22)	(73.0)	(8)	(27.0)
11 or more	(65)	(30)	(46.0)	(35)	(54.0)
Unavailable	122	87	71.0	35	29.0
Totals	1,779	1,541		238	

Source: Records of sample cases, Detroit Board of Zoning Appeals.

percent of the cases as compared to granting only 46 percent of the cases when eleven or more objectors appeared at any particular cases.

Objectors through letters. Table XIII indicates that the number of persons protesting by letters had a similar effect on the cases disposed, as did the number of persons protesting at the hearings. In 1,177 cases in which no letters of protest were filed

TABLE XIII
DISPOSITIONS OF CASES BY NUMBER OF
LETTERS OF PROTEST, 1951-1954

Number of Letters of Protest	Total Cases	Cases Granted		Cases Denied	
		No.	Pct.	No.	Pct.
None	1,177	1,086	92.0	91	8.0
1 or more	599	453	76.0	146	24.0
1 to 5	(537)	(416)	(77.0)	(121)	(23.0)
6 to 10	(30)	(23)	(77.0)	(7)	(23.0)
11 or more	(32)	(14)	(44.0)	(18)	(56.0)
Unavailable	3	2	67.0	1	33.0
Totals	1,779	1,541		238	

Source: Records of sample cases, Detroit Board of Zoning Appeals.

with the Board, the Board granted 92 percent of the cases, while in 599 cases in which letters of protest were filed, the Board granted 453, or 76 percent, of the cases. Another significant trend that is established in Table XIII is that the Board granted only 44 percent of the cases in which eleven or more letters of protest were filed as compared to granting 77 percent of the cases in which one to ten letters of protest were filed.

Objectors through petitions. Again, the presence of protestors through petitions seems significant when the percentage of cases in which protests were filed by petitioners and the appeal was granted is compared with the percentage of noncontested appeals granted. As can be seen in Table XIV, the Board granted 89 percent of the 1,648 cases in which no petitioners protested, while granting only 54 percent of the 131 cases in which one or more persons protested in the form of petitions.

Consentors appearing at the hearing. In only a very few cases did persons appear in support of an appeal and, therefore, no significant trend could be established as to the effect that individuals who appeared in behalf of an appeal had on the dispositions of the cases in this study.

Consentors through letters. Of the 1,403 cases in which no letters of consent were filed, the Board granted 88 percent of the cases, as can be seen in Table XV, while in the 376 cases in which letters of consent were filed, the Board granted only 80 percent of the cases.

Consentors through petitions. As can be seen in Table XVI the Board granted 87 percent of 1,731 cases in which there were no

TABLE XIV

DISPOSITION OF CASES BY NUMBER OF
PETITIONERS PROTESTING, 1951-1954

Number of Persons Protesting by Petitions	Total Cases	Cases Granted		Cases Denied	
		No.	Pct.	No.	Pct.
None	1,648	1,470	89.0	178	11.0
1 or more	131	71	54.0	60	46.0
1 to 20	(43)	(24)	(56.0)	(19)	(44.0)
21 to 40	(48)	(28)	(58.0)	(20)	(42.0)
41 to 60	(18)	(11)	(61.0)	(7)	(39.0)
61 to 81	(7)	(2)	(29.0)	(5)	(71.0)
81 to 100	(7)	(3)	(43.0)	(4)	(57.0)
101 or more	(8)	(3)	(38.0)	(5)	(62.0)
Totals	1,779	1,541		238	

Source: Records of sample cases, Detroit Board of Zoning Appeals.

petitioners consenting, while granting 75 percent of the cases in which one or more persons signed petitions of consent.

In analyzing the effect that persons consenting or protesting have on the disposition of appeals, it can be seen that there is a definite relationship between the percentage of cases objected to by property-owners of interest and granted, as compared with the

TABLE XV
DISPOSITION OF CASES BY NUMBER OF LETTERS
OF CONSENT, 1951-1954

Number of Letters of Consent	Total Cases	Cases Granted		Cases Denied	
		No.	Pct.	No.	Pct.
None	1,403	1,239	88.0	164	12.0
1 or more	376	302	80.0	74	20.0
1 to 5	(367)	(296)	(81.0)	(71)	(19.0)
6 to 10	(7)	(4)	(57.0)	(3)	(43.0)
11 or more	(2)	(2)	(100.0)	(0)	(0.0)
Totals	1,779	1,541		238	

Source: Records of sample cases, Detroit Board of Zoning Appeals.

percentage of noncontested appeals granted. The percentage of contested appeals granted decreased 16 percent in those cases protested through letters, 21 percent in those cases protested through personal appearances at the public hearings, and 35 percent in cases protested through petitions. Thus it appears that property-owners of interest who fail to protect their property rights by objecting to the appeals before the Board, may find them in jeopardy.

TABLE XVI

DISPOSITION OF CASES BY NUMBER OF
PETITIONERS CONSENTING, 1951-1954

Number of Persons Consenting by Petitions	Total Cases	Cases Granted		Cases Denied	
		No.	Pct.	No.	Pct.
None	1,731	1,505	87.0	226	13.0
1 or more	48	36	75.0	12	25.0
1 to 20	(26)	(19)	(73.0)	(7)	(27.0)
21 to 40	(11)	(10)	(91.0)	(1)	(9.0)
41 to 60	(6)	(3)	(50.0)	(3)	(50.0)
61 to 80	(2)	(2)	(100.0)	(0)	(0.0)
81 to 100	(0)	(0)	(0.0)	(0)	(0.0)
101 or more	(3)	(2)	(67.0)	(1)	(33.0)

Source: Records of sample cases, Detroit Board of Zoning Appeals.

Evidently, the number of persons giving their approval of certain appeals has little, if any, effect on the disposition of cases, since the Board granted a higher percentage of cases in which no consentors supported the appeals than in those cases in which there were consentors.

Appeals Previously Granted or Denied in the Block

Appeals previously granted in the block. Table XVIII, a breakdown of the cases disposed by the Board according to the

TABLE XVII

DISPOSITION OF CASES BY NUMBER OF APPEALS
PREVIOUSLY GRANTED IN THE BLOCK,
1951-1954

Number of Appeals Previously Granted	Total Cases	Cases Granted		Cases Denied	
		No.	Pct.	No.	Pct.
None	575	462	80.0	113	20.0
1 or more	1,181	1,061	90.0	120	10.0
1 to 5	(995)	(884)	(89.0)	(111)	(11.0)
6 to 10	(144)	(139)	(97.0)	(5)	(3.0)
11 or more	(42)	(38)	(90.0)	(4)	(10.0)
Unavailable	23	18	78.0	5	22.0
Totals	1,779	1,541		238	

Source: Records of sample cases, Detroit Board of Zoning Appeals.

number of appeals previously granted in the block of the appeal in question, shows that the Board granted 80 percent of the 575 cases located in blocks in which appeals had never been granted previously. In comparison, the Board granted 90 percent of the appeals located in blocks that contained one or more previously granted appeals. The Board, therefore, grants a higher percentage of cases in areas where appeals have been granted before.

Appeals previously denied in the block. In disposing of cases located in blocks in which no appeals had been denied previously, the Board granted 88 percent of 1,403 such cases, as can be seen in Table XVIII. In contrast, the Board granted 83 percent of the 353 appeals located in blocks in which it had previously denied appeals. The Board, therefore, grants a lower percentage of appeals in areas where it had previously denied appeals.

The disposition of cases by a combination of appeals previously granted and previously denied in the same block was not attempted in this study. Such an analysis, however, would probably show that many of the cases granted in blocks in which no appeals had been denied previously, contained one or more appeals which were previously granted.

Common Council Interference

In discussing and analyzing factors which are likely to affect the decisions of the Board, the Common Council cannot be excluded. The council knowingly exerted its influence in sixteen different cases in this study, in order to help a friend or constituent obtain the relief he was seeking. Such practice on the part of the members of council should be eliminated, since they are breaking the regulations which they adopted.

TABLE XVIII

**DISPOSITION OF CASES BY NUMBER OF APPEALS
PREVIOUSLY DENIED IN THE BLOCK, 1951-1954**

Number of Appeals Previously Denied	Total Cases	Cases Granted		Cases Denied	
		No.	Pct.	No.	Pct.
None	1,403	1,231	88.0	171	12.0
1 or more	353	292	83.0	61	17.0
1 to 5	(352)	(291)	(83.0)	(61)	(17.0)
6 or more	(1)	(1)	(100.0)	(0)	(0.0)
Unavailable	23	18	78.0	5	22.0
Totals	1,779	1,541		238	

Source: Records of sample cases, Detroit Board of Zoning Appeals.

City Plan Commission Recommendations

As was previously discussed, the Board considers the recommendation of the City Plan Commission in particular cases before it makes its final disposition. The City Plan Commission made recommendations for denials in twenty-nine different cases during the course of this study; the Board concurring in twelve and disagreeing in seventeen. It is interesting to note, however, that of the

seventeen cases the Board granted, only three were granted outright. By attaching conditions to the remaining grants, the Board, no doubt, felt that they were not harmful as such.

There are, no doubt, other factors which tend to influence the decisions of the Board, such as the number of similar uses in the block, the past use of the property, and the existing structures on the properties, for examples. Such factors should be measured, but it is felt that the above factors are sufficient to indicate that the Board considers many elements that, in reality, should have little or no effect on the disposition of any case in question. Each case must be considered on its own merits in relation to the requirements necessary to grant a variance from, or an exception to, the terms of the zoning ordinance.

CHAPTER IV

CONCLUSIONS AND RECOMMENDATIONS

A board of zoning appeals is important and necessary for the proper functioning of a zoning ordinance, since no zoning ordinance can be so drawn to treat everyone with justice and encompass every situation. A board of appeals is, therefore, needed to alleviate the situations where the harm to a particular property outweighs the value that would be derived by the community if strict adherence to the ordinance were maintained.

The discretionary powers of the board of zoning appeals, while of considerable magnitude, are not unlimited. The decisions of our courts, over the years, have established certain basic principles which are definite enough to establish a framework in which a board of zoning appeals can operate legally. The variant requirements for a showing of unnecessary hardship, and unique circumstances inherent within the property in question are accepted, generally, by our courts. The requirements for granting special exceptions as specified in the ordinance must be capable of reasonable interpretation, since the lack of such requirements and their

reasonable interpretation are nothing more than poorly defined grants of legislative power.

Since the Detroit Zoning Ordinance was enacted too late to guide the tremendous growth of the city that took place from 1920 to 1940, many problems have been created for zoning administration. The adoption of the Detroit Zoning Ordinance in late 1940 was only an interim measure until a master plan could be developed. When the master plan was adopted in 1947, the zoning ordinance was not amended in order to implement it. The Board of Zoning Appeals, however, cannot claim that the late enactment of the ordinance and the failure to amend the ordinance to implement the master plan are sufficient defense to the charge that it has abused its discretion. The Board must accept the ordinance as enacted by the legislative body and must proceed to administer the specific functions delegated to it, only as defined in and limited by the ordinance. The Board, otherwise, is usurping legislative authority.

The primary administrative difficulties stem from the lack of time the members of the Board have to handle the cases that come before them. The inability of the Board members to consider each case thoroughly and to inspect the property of each applicant is due both to the large number of cases which must be considered each week and to the fact that prominent citizens cannot be expected to

devote all their time to positions on the Board. The impossibility of considering each case fully has resulted in not only the issuance of unjustified permits, but also unjust treatment of many of the applicants. The problem could be partially solved by making the Board members full-time officials, but this may be impractical because of lack of funds. A better solution might be to appoint a single zoning administrator. With zoning ordinances increasing in complexity and detail, and with the growing needs for more positive zoning as an aid to vigorous community planning and urban renewal, zoning appeals should be reviewed by those qualified through professional training or experience. Appeal from the decisions of the administrator could then be made to a board of appeals. This procedure would greatly reduce the number of cases now being considered by the Board, which would afford it sufficient time to consider each case thoroughly.

The inharmonious relationships of the public agencies concerned with zoning administration in Detroit have been detrimental to the objectives of zoning. The Common Council has interfered in particular cases with illegal spot zoning the result. The Board of Zoning Appeals in generally refusing the advice of its legal counsel has granted unjustified permits. In specific cases the recommendations of the City Plan Commission have been received in a manner

inconsistent with the proper functioning of city government, resulting in petty jealousies and accusations of usurping one another's authority.

The types of action taken by the Board to delay immediate decisions are questionable, since such delays create an antipathy toward zoning by the applicants. Delayed action has also been used to circumvent the ordinance by permitting the continuance of illegal uses existing in violation. A time limit should be adopted in order that any applicant may receive a final decision within a reasonable time and that such a technique cannot be utilized to conceal a real motive.

The facts and findings of the Board on many appeals do not warrant the decision made. Certainly the facts should be sufficiently definite to enable the review of a case in order to ascertain that the facts afford a reasonable basis for the determination. Rules of procedure should be adopted which require the reasons for the decisions reached, and such reasons should be included in the minutes of each case.

Since the Board's inception, it has granted about 85 percent of all requests. One-fourth of the appeals were granted conditionally, temporarily, or conditionally and temporarily. The strict enforcement of such grants is of critical importance, since the

conditions imposed are for the protection of surrounding properties. The Board should consider the administrative costs and difficulties of such conditional and temporary grants before making its decisions, since unenforced grants--which is the rule rather than the exception in Detroit--do not protect the surrounding properties and, therefore, the spirit and intent of the ordinance are violated.

The granting of so many appeals is due to the Board's loose interpretation of the terms of the ordinance and to the lack of understanding of its relationship to the objectives of zoning. The Board's staff members have no technical training or experience that would enable them to assist the Board members in determining the effect an appeal, if granted, would have on the land use plan of Detroit. A staff common to both the Board and the zoning commission (the Plan Commission in Detroit) would not only give the Board the technical assistance it needs to make proper determinations, but would also coordinate the operations of two of the agencies concerned with the physical development of Detroit.

The total damage done to the Detroit Zoning Plan is not recognized by the Board because of the time required to process the flood of applications received each week. Maps indicating the location of every exception and variance granted and denied would be an ever present reminder of the effect of its actions. Certainly

the grouping of symbols representing granted variances in a particular area indicates conditions of general hardship, which can only be relieved through legislative action.

An examination of use appeals shows that the Board has overstepped its authority. Of the cases comprising the sample, the use of the property was the main concern in approximately 60 percent of the cases, 80 percent of which the Board granted. The requirements necessary for the granting of a variance, as discussed in this paper and based on principles handed down in decisions by our courts, are so severe that a granting of an otherwise prohibited use is rarely justified, yet the Board found that of 697 cases requesting permission to create new nonconforming uses, 75 percent had proved unnecessary hardship, unique and inherent within the properties in question.

In disposing of use appeals requesting changes from existing nonconforming uses to new nonconforming uses, the Board acted both properly and improperly. Proper action was taken in granting the majority of the cases requesting changes to nonconforming uses first permitted in the same or more restricted districts, since such action is permitted as defined in the ordinance and is also related to one of the basic objectives of zoning--the gradual elimination of nonconforming uses. At the same time, however, the Board abused its authority by granting the majority of the cases requesting

changes to nonconforming uses first permitted in less restricted districts.

In the disposition of nonuse appeals, which comprised 40 percent of the cases in the sample, the Board granted an overwhelming majority. The wholesale granting of nonuse appeals is difficult to criticize since the majority of the nonconformities requested were due to deficiencies in yards and areas of the tremendous number of lots platted before the adoption of the ordinance. The number of nonuse appeals coming before the Board could be decreased by the addition of adequate supplementary regulations in the zoning ordinance, which would cover certain specific deviations from the general rules and which, therefore, could be automatically invoked by the Department of Buildings and Safety Engineering. Such a procedure would permit the Board members more time to spend on the more complex use appeals.

The pattern created by the geographical distribution of use appeals granted indicates that there is a definite correlation between the granting of unjustified use permits and the physical deterioration of neighborhoods. About one-third of the appeals granted in redevelopment and major conservation areas permitted uses in zoning districts in which they were prohibited by the zoning ordinance. Since the granting of unjustified use permits is one of

the causes of urban blight and since nonconforming uses are to be, and need to be, eliminated in order to remove their adverse effect on surrounding properties, the Board must be restrained and made to stay within its proper jurisdiction and the limits of its discretionary powers. If its improper actions are not restrained, the price of replanning Detroit will become so high that it will be prohibitive.

The number of persons protesting had a definite effect on the Board's decisions, since the percentage of appeals objected to and granted was lower than the percentage of noncontested appeals granted. In comparison, the number of persons consenting had little effect on the Board's decisions, since the percentage of appeals consented to and granted was lower than the percentage of appeals granted that had no persons consenting. It is important, therefore, that the Board realize that it is the objections that are important in considering a case rather than the number of persons objecting.

The Board was also influenced by the number of appeals it had previously granted or denied in the block of the case in question. The Board granted a higher percentage of appeals in areas where it had previously granted appeals than it had in areas where no appeals had been granted in the past. Likewise, the Board

granted a lower percentage of appeals in areas where it had previously denied appeals than it did in areas where no appeals had been previously denied. The percentage of appeals granted in either instance is so high that the Board has, in effect, granted appeals in a manner that the only result will be the undermining of the entire zoning plan.

In general, the Board decided appeals in a manner inconsistent with the court decisions that have laid down the basic principles for guiding the Board in utilizing its limited discretionary powers. The explanation for the tremendous number of appeal cases is the apparent indiscriminate granting of appeals since the Board's inception, the substantive inadequacy of the present zoning ordinance, and the unrealistic zoning of certain areas of the city.

Fortunately, there are some remedies. The following recommendations should at least make the Detroit Board of Zoning Appeals an administrative body capable of performing its functions and responsibilities in relation to the objectives of zoning:

1. The Michigan State Zoning Enabling Act should be amended to provide that zoning must be based on a comprehensive plan of the municipality.

2. The undertaking of a comprehensive zoning study, based on contemporary principles of zoning, in order to implement the Detroit Master Plan.

3. The revision and adoption of a clearly written text specifying the separate powers of the Board and the grounds on which variances and exceptions may be granted.

4. The adoption of administrative forms that require the applicant to state the requirements for a variance or an exception and a statement of the findings of the Board in order that both the Board and the applicant consider only the essential issues.

5. Maps indicating the location of all appeals should be mandatory to show the effect of Board action and to understand that the grouping of variances indicates conditions of general hardship, which the Board cannot relieve.

6. The establishment of a definite relationship with the Plan Commission by either having a member serving on both agencies or having a staff common to both agencies with experience and knowledge of zoning concepts necessary for intelligent recommendations to the Board.

7. The elimination of the use variance, since it can be justified only in rare situations.

8. Establishment of a zoning administrator, protected by civil service, a specialist in the field to have complete charge of disposing of zoning appeals, whose decisions may be appealed to the Board of Zoning Appeals.

9. The adoption of rules of procedure that will enable Board members with little technical knowledge, to better understand their functions and responsibilities, their relationship to the objectives of zoning, and the determinations necessary for the findings of facts in order to grant proper and legal appeals.

Once the Board understands its functions and responsibilities in relation to the objectives of zoning, one of the basic obstructions to good zoning will have been removed.

APPENDIXES

APPENDIX A

**POWERS OF THE DETROIT BOARD OF ZONING APPEALS AS
DESIGNATED IN THE DETROIT ZONING ORDINANCE**

**POWERS OF THE DETROIT BOARD OF ZONING APPEALS AS
DESIGNATED IN THE DETROIT ZONING ORDINANCE**

- Section 3.3, paragraph G to approve or disapprove a change of tenancy, occupancy or use of a non-conforming structure provided the new use is not more detrimental than the existing nonconforming use.
- Section 3.6, paragraph B may permit an increase in the number of dwelling units in a multiple dwelling existing in single-family or double-family districts at the effective date of the zoning ordinance subject to certain conditions and limitations.
- Section 3.7 approve or disapprove extension, enlargement or addition of any building or structure as being in accordance with the original intent when such building or structure was erected prior to the effective date of the zoning ordinance.
- Section 10.1, paragraph G approve or disapprove certain light industrial uses in business zones.
- Section 20.7 interpretation of the literal terms of the ordinance.
- vary the literal enforcement of the ordinance where owing to special conditions the imposition of the provisions will result in unnecessary hardship or involve practical difficulties.
- to grant the following special exceptions:
- Section 20.7, A permit the erection and use of a building or an addition to an existing building of a public service corporation or for

public utility purposes in any permitted district to a greater height or with lesser yards on the lot occupied by such building than the district requirements established, and permit the location in any district of a public utility building, structure or use, under certain conditions.

Section 20.7, B

permit the extension of any building or use into a more restricted district.

Section 20.7, C

permit temporary and conditional nonconforming uses in undeveloped sections that are helpful to the development of such areas.

Section 20.7, D

permit modification of locational requirements of a specific parcel of land, which at the effective date of the zoning ordinance had such unusual physical conditions that it could not be improved without such modification.

Section 20.7, E

permit a partial or complete exception to the loading space provisions under certain conditions.

Section 20.7, F

permit an increase in height, enlargement or extension of a nonconforming use or structure.

Section 20.7, G

permit a temporary extension or addition of a nonconforming use, permissible first in a light industrial district, provided it is essential to the national defense.

Section 20.7, H

permit the temporary occupancy of any existing structure in any business district by a nonconforming use permissible in a light industrial district provided such use is essential to the national defense.

Section 20.7, I

permit the alteration and use of any existing dwelling for a greater number of families than is allowed under the zoning ordinance for the district in which the dwelling is located, provided such dwelling is located in a blighted area as determined by the city plan commission that rehabilitation by conversion is desirable.

Section 20.7, J

permit a modification in the use of and/or location of a building upon a lot which abuts directly a zoned district different than the district in which the lot is located, under certain conditions.

Section 20.7, K

permit a modification in the required location of off-street parking facilities or in the amount of off-street parking facilities required, or both, if such modification is necessary to secure an appropriate development of a specific parcel of land.

APPENDIX B

**POWERS OF THE DETROIT CITY PLAN COMMISSION AS
DESIGNATED IN THE DETROIT ZONING ORDINANCE**

**POWERS OF THE DETROIT CITY PLAN COMMISSION AS
DESIGNATED IN THE DETROIT ZONING ORDINANCE**

Section 3.3, paragraph H	to recommend condemnation of nonconforming uses.
Section 3.9	to determine and designate the proper location of zoning district boundaries where an uncertainty of any district boundary exists.
Section 3.10, paragraph L	to recommend, in conjunction with other city departments, condemnation of areas to provide off-street parking facilities.
Section 5.1, paragraph 4	to approve or disapprove educational, recreational, social, neighborhood or community centers in a single family district.
Section 5.1, paragraph 5	to approve or disapprove cemeteries in a single family district.
Section 5.1, paragraph 10	to approve or disapprove parking lots accessory to any non-residential uses permitted in a single family district.
Section 5.1, paragraph 10A	to approve or disapprove parking lots when located within an area designated on the generalized land use plan of the master plan as non-residential in a single family district.
Section 5.1, paragraph 11	to approve or disapprove the rental or leasing of parking spaces in rear yards.
Section 5.5	to approve or disapprove excess heights of buildings for non-dwelling purposes in a single family district.

Section 6.1, paragraph 2A	to recommend to the Common Council property suitable for multiple dwellings zoned for two-family use.
Section 6.1, paragraph 2B	to approve or disapprove medical or dental offices provided lots to be built upon are located along secondary or major thoroughfares in areas zoned for two-family uses.
Section 6.5	to approve or disapprove increases in heights of buildings used for non-dwelling purposes in two-family districts.
Section 7.1, paragraph 2A	to approve or disapprove multiple dwellings in which fifty percent or more of the living units are efficiency units in multiple dwelling districts.
Section 7.1, paragraph 2B	to approve or disapprove motels in multiple dwelling districts.
Section 7.1, paragraph 5	to approve or disapprove public utility buildings in multiple dwelling districts.
Section 7.1, paragraph 6A	to approve or disapprove the location of sports centers, polo fields or riding academies in multiple dwelling districts.
Section 7.1, paragraph 7	to approve or disapprove parking lots in multiple dwelling districts.
Section 7.4	to approve or disapprove increases in heights of buildings used for non-residential purposes in multiple family districts.
Section A7.1, paragraph 1	to approve or disapprove the development plan, including many details, of an apartment project.

Section A9.4, paragraph D	to modify the requirements of vehicle parking zones.
Section 10.1, paragraph E	to approve or disapprove the temporary location of transient amusement enterprises in business zoned areas.
Section 10.1, paragraph F	to approve or disapprove certain light industrial uses in business zones.
Section 10.1, paragraph H	to modify requirements of open air displays of householder's pneumatic tired utility trailers, cement mixers and wheelbarrows.
Section 10.2	to approve or disapprove increases in heights of buildings used for non-residential purposes in a business zone.
Section 14.1, paragraph 3	to approve or disapprove the storage and killing of small game for wholesale trade in heavy commercial districts.
Section 17.1, paragraph 3	to approve or disapprove certain obnoxious uses as to their locations in heavy industrial districts.
Section 20.7, paragraph I	to determine for the board of appeals' cases which request permission to increase the number of dwelling units to a number greater than is allowed under the ordinance for the district in which such dwellings are located, that such dwellings are located in blighted areas where rehabilitation by conversion is desirable.

APPENDIX C

RULES OF PROCEDURE OF THE DETROIT BOARD
OF ZONING APPEALS

BOARD OF ZONING APPEALS
OF THE
CITY OF DETROIT, MICHIGAN
RULES OF PROCEDURE
AS AMENDED JUNE 14, 1944.

RULE 1
MEETINGS

- A. All Board Meetings shall be open to the public.
- B. Board Meetings shall be held on each Tuesday at 9:00 A.M., except when such day falls on a legal holiday, then the subsequent Thursday at 9:00 A.M. shall be the day of the meeting.
- C. A resolution supported by four (4) members of the Board may temporarily suspend any rule of procedure or change the date or the time of regular meetings as set forth in paragraph B.
- D. Special meetings may be called by the Chairman of the Board or upon written request of three (3) members, provided twenty-four (24) hours' notice has been given to each member before the time set for such hearing, except that the announcement of a special meeting at any meeting at which all the members are present shall be sufficient notice of such meeting.
- E. The Board shall annually, on the first regular meeting of the year, elect its own Chairman, Vice-Chairman and Secretary, and in accordance with the provisions relative to Civil Service, shall appoint such additional assistants, clerks and subordinates as may be necessary. The Board shall prescribe their duties and shall, subject to the approval of the Common Council, fix their compensation.
- F. Four (4) members of the Board shall constitute a quorum for the conduct of its business. The concurring vote of four (4) members shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in

favor of the applicant any matter upon which the Board is required to pass by law, or to effect any variation in the Zoning Ordinance.

G. Every resolution not otherwise provided for shall require a majority vote of the members present at a legally constituted meeting.

H. The order of business at Board Meetings shall be as follows:

- (a) Roll Call.
- (b) Hearing of Cases.
- (c) Reading of Minutes of previous meetings and action thereon.
- (d) Adjournment of cases.
- (e) Communications.
- (f) Report of Committees.
- (g) Unfinished business.
- (h) New business.
- (i) Miscellaneous business.

RULE 2 APPEALS

A. An appeal may be taken by any person aggrieved by any officer, department, board or bureau of the City.

B. All applications to the Board of Zoning Appeals shall be made in duplicate and in writing, on forms adopted by said Board. Forms can be secured at the Office of said Board or at the Department of Buildings and Safety Engineering.

C. Applications of appeals for variance, modification of adjustment of the requirements of the Zoning Ordinance shall be made in the name of the owner of the premises affected. The application may be made, however, by an attorney or agent upon proper authorization. The Board of Zoning Appeals may require proper authorization in writing from the owner.

D. The duplicate of each application appealing from an order or determination of an administrative official shall be forwarded to such official, and such official shall forthwith transmit to the Board all the papers constituting the record upon which the action of appeal was taken.

E. In addition to the information required in said forms, all appeals shall contain all of the following information and data that is pertinent and applicable thereto:

- (a) The principal points upon which the appeal is made, based on the application for which the Department of Buildings and Safety Engineering issued a refusal, order, or decision.
- (b) Plans drawn to scale, showing the actual shape and dimensions of the lot, of the buildings and accessory buildings existing and lines within which the proposed building is to be erected or altered, the existing and intended use of each building or part of a building, the number of families or housekeeping units the building is designed to accommodate, and such other information with regard to the lot and neighboring lots as may be deemed necessary to properly provide for the hearing of the appeal.
- (c) A clear accurate description of the proposed work or use.
- (d) Specific reference to the section or sections of the Zoning Ordinance under which it is claimed the appeal may be granted.
- (e) In cases requested by the Board, the names and addresses of owners of all abutting lots, and also the names and addresses of all owners of record of land and property that may be directly affected.
- (f) A photograph or snapshot of buildings.

F. Every appeal shall be taken by the applicant within thirty (30) days from the date that the refusal of the permit by the Department of Buildings and Safety Engineering is transmitted to the applicant, or the date of the order, requirement, decision or determination of such department from which the appeal is taken, provided that the Board may, in exceptional cases and for good reason, find it necessary to grant additional time. The date of the decision of the Building Department shall not be counted, but the date of filing notice of appeal, together with Sundays and Holidays, shall be counted.

G. All available pertinent information shall be furnished by the applicant. All consents secured by, and copies of all notices given by the applicant shall be filed with the Board.

H. When deemed necessary or expedient the Board may require the applicant to give such further notice to all interested parties as it shall prescribe.

I. The Executive Secretary may require of the applicant such additional information and data as is deemed essential to fully advise the Board with reference to the appeal. Refusal or failure to comply on the part of the applicant shall be grounds for the dismissal of the application by the Board.

J. No appeal shall be accepted where an appeal case has been previously decided involving the same premises and Zoning Ordinance except in cases where new premises or new facts pertaining to the requirements of the Zoning Ordinance are presented, showing changed conditions or circumstances which, in the opinion of the Board, materially alter the aspects of the case.

K. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board on application, on notice to the officer from whom the appeal is taken and on due cause shown.

RULE 3 DOCKET AND CALENDAR

A. Each application properly filed with the required information and date shall be numbered serially, docketed and placed upon the Calendar of the board by the Executive Secretary, for a hearing within thirty (30) days or until the essential information and data can be properly assembled and prepared. The docket numbers shall be hyphenated with the number of the year and the initials indicating the type of case.

B. The docket book shall be kept posted to date by the Executive Secretary and shall record the name and address of the applicant,

the nature and type of the appeal, the location of premises, date of hearings and all discontinuances, postponements, dates of sending notice and other steps taken, or acts done, and the final disposition of the case.

C. When the applications are docketed and placed on the calendar, the Executive Secretary shall see that all inspections, maps, plats, and other required information and data are properly assembled and prepared for the Hearing.

D. Notices, by mail or by personal service, shall be sent to the parties in interest at least three (3) days prior to the date set on the Calendar for the Hearing.

E. A brief notice of every hearing shall be published in the official newspaper of the City prior to the date set for Hearing.

F. The Calendar of cases to be heard shall be posted in the office of the Board two (2) days before the date set for the Hearing.

RULE 4 HEARINGS

A. Appeals will be heard by the Board in the order in which they appear on the Calendar except that an appeal may be advanced, postponed or adjourned for hearing by order of the Board upon good cause being shown.

B. The applicant may appear in his own behalf or may be represented by attorney or agent at the hearings of appeals by the Board. In the event of the absence of the applicant the case of the opposition may be heard and the transcript thereof presented at the subsequent hearing.

C. The regular order of procedure of hearings shall be:

- (a) Presentation of official records of case by the Secretary of the Board.
- (b) Applicant's presentation of the case.
- (c) Interested property owners' presentation of the case.
- (d) City Official's presentation of the case.
- (e) Rebuttals in similar order.

D. A minute book shall be kept by the Executive Secretary in which shall be recorded the resolutions relating to each case acted on, together with the vote of each member of the Board, those absent being so marked together with all other actions of the Board.

RULE 5 REHEARINGS

A. No rehearing of any decision of the Board will be considered unless new evidence is submitted which could not reasonably have been presented at the meeting at which the decision was made.

B. A rehearing of any decision of the Board may be considered under the following conditions:

- (a) On request of a member of the Board, who desires to change his vote on the decision, which request must be made not later than two (2) weeks succeeding the meeting at which the decision was made.
- (b) On a request for a rehearing by any interested party.

C. If a rehearing is granted, the case shall be put on the Calendar for a rehearing under the procedure for a regular hearing.

D. In all cases, the request for a rehearing shall be in writing, except when requested by a member of the Board, reciting the reasons for the request and accompanied by the facts and evidence relied upon to justify the request.

RULE 6 FINAL DISPOSITION OF AN APPEAL

A. The Board may dismiss an appeal for lack of jurisdiction or prosecuting or may reverse, affirm, vary or modify any order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. The final decision shall be in writing, and so far as it is practicable, in the form of a general statement or resolution reciting the conditions, facts and findings of the Board. Unless otherwise recorded by action of the Board the final decision in each case shall not become effective until two days after the Board has voted thereon; provided, however, that during this interim any member of the Board may advise the Executive Secretary he intends to move for a reconsideration.

whereupon the Executive Secretary shall enter the time and date of such notice, together with the name of the member, in the record of the case and advise the Board relative thereto at its next meeting. In all such cases a new vote of the Board shall be required for a final decision.

B. When the final resolution and the decision of the Board is made the applicant shall be notified by mail.

C. In cases where no serious conditions exist and where apparently there are no objections, the Executive Secretary is authorized to notify the applicant verbally of the action of the Board prior to the mailing of the final resolution and decision of the Board.

D. Any applicant may, with the consent of the Board, withdraw his application at any time prior to the final action thereon, except if a motion has been made and is pending, such a motion shall have precedence.

E. Any decision of the Board favorable to the applicant shall remain valid only as long as the information or data relating thereto are found to be correct, and the conditions upon which the resolution was based are maintained.

F. Wherever any variation or modification of the strict application of the terms of the Zoning Ordinance is authorized by resolution of the Board, a building permit shall be obtained from the Department of Buildings and Safety Engineering within six (6) months from the date of this grant, and that failure to obtain such a building permit within that time will hereby invalidate and terminate this grant except that the Board may grant one additional six (6) months extension after expiration of original grant. As amended: May 24, 1949.

G. In every grant authorized by the Board there shall be included as a condition thereof a statement that the appellant agrees to abide by and comply with the provisions of the Building Code, Department of Health Regulations and/or any other ordinance or statute applicable to the location in question, and that the grant only authorizes a variance or exception of the regulation of the Zoning Ordinance and is not intended to waive the provisions of any other ordinance or statute. As amended: October 4, 1944.

RULE 7
OFFICERS AND DUTIES

- A. The chairman shall preside at all meetings of the Board. In case of the absence of the Chairman, the Vice Chairman shall preside.
- B. The Chairman, subject to these rules, shall decide all points of order or procedure, unless otherwise directed by a majority of the Board in session at that time.
- C. All committees that may be deemed necessary and advisable for the proper conduct of business, shall be appointed by the chairman, unless otherwise provided for by the Board.
- D. The Chairman and Board members shall report at each meeting on all official transactions that do not otherwise come to the attention of the Board.
- E. The Administrative Assistant shall be the Executive Secretary of the Board. Subject to these rules and the direction of the Board, the Executive Secretary shall conduct and administer the affairs of the office of the Board of Zoning Appeals; supervise in the arrangement of all cases and other matters that come before the Board; conduct all official correspondence, send out all notices required by these rules and orders of the Board; prepare all decisions of the Board; attend the meetings and hearings; keep the minutes of the Board's proceedings; compile the required records; maintain the necessary files and indexes, and direct all the clerical and technical work of the Board; and in particular cases make inspections of buildings, premises, etc.; connected with the cases before the Board, and report the result of the findings of the hearings and special investigations requested by the Board.

RULE 8
AMENDMENTS

Amendments to these Rules of Procedure may be made at any regular meeting upon the affirmative vote of three (3) members. The suspension of any rule of Procedure may be ordered at any meeting by unanimous vote of those present.

RULE 9
RECORDS

The records of appeals to the Board shall be kept in the office of said Board, in such manner as to be available to the public during regular office hours, upon request to an attendant, but shall not be taken from the office except by permission of the Board.

APPENDIX D

APPLICATION FOR APPEAL

NOTE: All applications must be
made and presented in
duplicate.

Case No. 312-54

Date Filed 3-12

APPLICATION FOR APPEAL

TO THE BOARD OF ZONING APPEALS, 735 Randolph, Detroit,
Michigan: March 6th, 1954, 19

<u>Carl Guarneri</u>	<u>1799 Sheridan</u>	<u>14</u>	<u>Lo. 7-1477</u>
(Applicant)	(Street Address)	(Zone Number)	(Telephone)

<u>Carl Guarneri</u>	<u>1799 Sheridan</u>		
(Owner of Premises)	(Street Address)	(Zone Number)	(Telephone)

<u> </u>	<u> </u>	<u> </u>	<u> </u>
(Lessee)	(Street Address)	(Zone Number)	(Telephone)

hereby makes application for a Hearing, seeking to Reverse
(reverse, modify,
or affirm)

the decision of the Department of Buildings and Safety En-
(order, decision)

gineering, dated March 1st, 1954, which reads as follows:

Deficient both side yards, deficient front, deficient lot area, deficient
lot area per room, use prohibited from R2 to RM in R 2.

The property in question is located on the West
(north, south, east or west)

side of 1799 Sheridan Ave. between Kercheval and St. Paul.
(street and number) (street) (street)

Give date property was acquired and type of ownership, and state
all deed, subdivision, improvement and property restrictions, in ef-
fect at this time together with their dates at expiration:

1932, by cash. Full ownership.

State the main arguments upon which this application for appeal is based. (A separate attached letter may be used if required or desired.)

There are to be no alterations on outside of building. Change to
be made on the inside only.

What particular Section of the Zoning Ordinance is claimed as the basis for this appeal?

Plat and plans drawn to scale (on reverse side of this sheet or on a separate attached sheet) showing the actual shape and dimensions of the lot, of the buildings and accessory buildings existing, and the lines within which the proposed building is to be erected, or altered, the existing and intended use of each building or part of a building, the number of families or housekeeping units the building is designed to accommodate and such other information with regard to the lot and neighboring lots as may be deemed necessary to properly provide for the Hearing of the appeal.

A PHOTOGRAPH OR SNAPSHOT OF BUILDINGS MUST BE PRESENTED WITH THE APPEAL.

A FEE OF \$15.00 IS REQUIRED WHEN THIS APPEAL IS FILED.

A COPY OF REJECTION FROM BUILDING DEPARTMENT MUST BE PRESENTED WITH THIS APPEAL.

OWNER'S AFFIDAVIT

STATE OF MICHIGAN)
 COUNTY OF WAYNE)^{ss.}

The undersigned being duly sworn, deposes and says that the foregoing statements and answers herein contained and accompanied

information and data are in all respects true and correct to the best
of his knowledge and belief.

Carl Guarneri

Subscribed and sworn before
me this 6th day of March, 19 54.

Leo F. Jaglowicz
(Notary Public, Wayne County, Michigan)

My Commission expires May 28th, 1957

Any decision of the Board favorable to the applicant will remain
valid only as long as the information or data relating thereto are
found to be correct and the conditions upon which the resolution was
based are maintained.

APPENDIX E

COPY OF TRANSCRIPT TAKEN ON APPEAL CASE NO. 312-54

COPY OF TRANSCRIPT TAKEN ON
APPEAL CASE NO. 312-54
REGARDING PREMISES AT
1799 SHERIDAN.

FROM A PUBLIC MEETING HELD BY THE BOARD OF ZONING
APPEALS ON TUESDAY, MARCH 30, 1954, AT 9:30 A.M. IN THE
BOARD ROOM, FIFTH FLOOR, WATER BOARD BUILDING.

SECRETARY MROSESKE: Case No. 312-54.

1799 Sheridan.

(THE WITNESSES WERE DULY SWORN)

SECRETARY MROSESKE: (reading)

"Application was made January 13, 1954 (rejected March 1, 1954) to change to a three-family multiple dwelling by conversion of the second floor to two (2) apartments.

"Premises are in an R-2 zoning district.

"The application was denied because of deficient side, front yard and lot area. Proposed use would be considered as an RM use in an R-2 district.

"Violation Notice No. BB 46940 has been issued with the following notation: (Present plans to this Department for approval and obtain Permit for new stairway or dismantle and remove). This notice is being held in abeyance pending decision of your Board.

"These premises contain a two-story, frame, two-family dwelling approximately 24' X 50' (1,200 square feet).

"The north side yard is 2' with a distance of 8' to a two-family dwelling. The south side yard is 4' with a distance of 6' to a one-family dwelling. The lot area is 4,050 square feet; 4,800 square feet required. Yard deficiencies are common in the district.

"In the block there are one and two family dwellings, a church and a store with a dwelling above at the south end.

"The block opposite contains one and two family dwellings and a store with a dwelling above at the south end."

CHAIRMAN CALLAHAN: Why do you want to do this?

MR. LENARDO: Sir, I am representing Carl Guarneri, he is my uncle and he wants to live there, a room for himself and it is just--he has two rooms and he wants to put a bathroom there.

CHAIRMAN CALLAHAN: Well, apparently he's already done this, hasn't he?

MR. LENARDO: He's got the stairway built and rooms, but he don't have the bathtub or anything.

CHAIRMAN CALLAHAN: We have a letter of protest here from one of your neighbors, 2118 Field. How many other protests do we have, Mr. Mroseske?

SECRETARY MROSESKE: None.

CHAIRMAN CALLAHAN: I don't think the Board has - - -

MR. MC BREARTY: (interposing) Is Charles your uncle?

MR. LENARDO: Carl Guarneri, sir.

CHAIRMAN CALLAHAN: Carl.

MR. MAC NICHOL: Are there any vacant stores on Kercheval Avenue from Field to Baldwin?

MR. LENARDO: None that I know of.

CHAIRMAN CALLAHAN: This isn't a store.

MR. MAC NICHOL: He wants to put a beauty parlor in there.

CHAIRMAN CALLAHAN: No, no, to convert two apartments to three apartments to three apartments. Case No. 312.

MR. MAC NICHOL: Pardon me.

CHAIRMAN CALLAHAN: Well, it is just another step in making a slum, that is a two family district and that house is just an ordinary sized house. Have you got plans for this?

MR. BURTON: I have, yes.

CHAIRMAN CALLAHAN: It isn't a large building or anything, is it?

MR. BURTON: Well, it is a moderately sized building.

CHAIRMAN CALLAHAN: It is a two family district.

MR. BURTON: They have got about six rooms, bathrooms, etc., on this floor and he is just cutting off - - -

CHAIRMAN CALLAHAN: (interposing) Well, are you going to make a three family house in a two family district?

MR. MC BREARTY: To permit his uncle to live there.

MR. LENARDO: Just one person.

MR. MC BREARTY: The owner. I'd suggest the matter be held over that the uncle can give more cogent reasons than the nephew as to why this Board should grant the right to convert. What is your name?

MR. LENARDO: Peter Lenardo.

CHAIRMAN CALLAHAN: Why does your uncle want to do this?

MR. LENARDO: So he can live in the house.

CHAIRMAN CALLAHAN: Why, has he no other means of support? What is his business.

MR. LENARDO: Well, he's employed, he gets rent from the place.

CHAIRMAN CALLAHAN: Does he live on the income?

MR. LENARDO: Yes, sir.

CHAIRMAN CALLAHAN: How old is he?

MR. LENARDO: Seventy-three or seventy-four, sir.

CHAIRMAN CALLAHAN: Well, if we granted it for his use only during his life would that be satisfactory?

MR. LENARDO: Yes, sir, that is all, it is just for himself, he just has two rooms for himself and he wants to put a bathtub and he has other people.

MR. MC BREARTY: He owns the house and wants to live there where he can control it? Have control of it?

MR. LENARDO: Yes, sir.

CHAIRMAN CALLAHAN: Why don't we grant it for his use?

MR. MAC NICHOL: I don't think this young man understands.

MR. MC BREARTY: What you're agreeing to is in the event of the death of your uncle this property must be put back into its former condition. Are you agreeing to that?

CHAIRMAN CALLAHAN: It becomes a two family again?

MR. LENARDO: Yes, sir, yes.

CHAIRMAN CALLAHAN: Is that satisfactory to you?

MR. LENARDO: Yes, sir.

MR. SCHMIER: Only two rooms up there.

CHAIRMAN CALLAHAN: Won't be much of a job.

MR. SCHMIER: No, it won't be. Mr. Chairman, I move that the petition be granted on condition that the additional apartment, the third apartment, be occupied by the petitioner himself and that in the event that he should pass away, that this grant shall automatically become void and it revert back to a two family; that this grant also be placed upon record with the Register of Deeds office so in the event he attempts to sell this property on those conditions, too, it will revert back--become a two family.

CHAIRMAN CALLAHAN: You say that he "passes away" or leaves the premises.

MR. SCHMIER: Or leaves the premises or sells.

CHAIRMAN CALLAHAN: Is the motion supported?

MR. MC BREARTY: I support that motion.

CHAIRMAN CALLAHAN: What is your pleasure? All vote "aye"?

(Unanimous affirmative vote)

CHAIRMAN CALLAHAN: It's granted for your uncle's use only.

MR. LENARDO: Yes, sir.

CHAIRMAN CALLAHAN: When he leaves the premises it reverts to a two family.

MR. LENARDO: Yes, sir.

* * * * *

APPENDIX F

BRIEF OF APPEAL CASE NO. 1555-50

(Regular)

Form C of D--8-DE

March 7, 1951

CASE NO. 1555-50 ML to ML Plus in ML and R2

STATE OF In Re: 830 CLAIRPOINTE, e.s. bet. Jefferson and
MICHIGAN Freud

In Re:

Appeal of ACTIVE TOOL AND MFG. CO., 888
Clairpointe, #14 (owner)

COUNTY OF
WAYNE

CITY OF For permission to: erect addition to tool and die shop,
DETROIT District Map as per plan, in an R2 District.
No. 31

The application for Permit was denied by the Department of Buildings
and Safety Engineering on November 13, 1950

because It would not be permitted to increase the area and
bulk of a structure which would be non-conforming
because the proposed addition is partially in an R2
District.

The application of appeal from this decision was received, numbered,
and placed on the Calendar of the Board on
November 24, 1950.

After publication of notice of time and place of Hearing in the De-
troit Legal News, and due notice to parties in interest, a Public
Hearing on the above case was held on December 5, 1950, and
was carried under adjournment by the Board for further hearing to
February 27, 1951.

Based upon the information obtained and evidence presented, the fol-
lowing is a brief of some of the more important facts and findings
determined by the Board in this case:

1. That District Zoning Map No. 31 shows the premises to be in an
R2 District.

2. That appellant proposes to extend this existing factory, now located in an ML District, into the R2 District immediately adjacent, as per plan.
3. That the Board found that this proposed extension and use would not be unduly harmful or injurious to other property owners in interest.
4. That eleven protesting property owners in interest appeared at the Hearing.
5. That field inspections of the premises were made, reports of which were given at the Hearing.

The Board, therefore, in accord with its Rules of Procedure, and in order that the spirit, intent, and purpose of the Zoning Ordinance shall be observed and substantial justice done, resolved that this appeal from the mandatory action on the part of the Department of Buildings and Safety Engineering to

erect addition to tool and die shop, as per plan, in an R2 District, be hereby GRANTED, subject to the following conditions:

- (a) That the south wall of the proposed addition shall be a masonry wall with no openings.
- (b) That the appellant agrees to abide by and comply with all of the ordinances of the City of Detroit and the regulations of every lawful agency or public authority now or hereafter in force, it being understood that this grant only authorizes a variance or exception of the regulation of the Zoning Ordinance and is not intended to waive the provisions of any other existing statute, ordinance, rule or regulation.
- (c) That the required Building Permit covering this grant shall be secured from the Department of Buildings and Safety Engineering before starting any construction, alterations, additions, change of use or change of occupancy, and, that failure to obtain such Building Permit within six (6) months after the date of the grant will thereby invalidate and terminate this grant.

BOARD OF ZONING APPEALS
Oscar L. Mroseske, Secretary

APPENDIX G

BRIEF OF APPEAL CASE NO. 754-50

(Regular)

Form C of D--8-DE

October 27, 1953

CASE NO. 754-50 ML to ML Plus in R2

STATE OF In Re: 12605 Greiner, n.s. bet. Barlow and Waltham
MICHIGAN In Re:
Appeal of EXPERIMENTAL TOOL AND DIE CO.,
12605 Greiner, #5 (owner)
Hindes and Matheny, 1502 National Bank Bldg.,
#26

COUNTY OF
WAYNE

CITY OF For permission to: make permanent the temporary
DETROIT District Map grant for second floor addition
No. 19 to shop in an R2 District.

The application for Permit was denied by the Department of Buildings and Safety Engineering on June 5, 1950

because the use would be prohibited
(ML in R1).

The application of appeal from this decision was received, numbered, and placed on the Calendar of the Board on June 13, 1950.

After publication of notice of time and place of Hearing in the Detroit Legal News, and due notice to parties in interest, a Public Hearing on the above case was held on July 11, 1950, and was carried under advisement by the Board to October 20, 1953.

Based upon the information obtained and evidence presented, the following is a brief of some of the more important facts and findings determined by the Board in this case:

1. That District Zoning Map No. 19 shows the premises to be in an R2 District.

2. That testimony was introduced to show that these premises had an existing non-conforming use since prior to the effective date of the Zoning Ordinance.
3. That under Appeal Case No. 547-42 the Board granted permission on a temporary basis to erect a second floor addition which permission was again extended on a temporary basis under Appeal Case No. 303-48 to May, 1950.
4. That the Board found the proposed addition and use would not be unduly harmful or injurious to other property owners in interest.
5. That several protesting property owners in interest appeared at the Hearing.
6. That field inspections of the premises were made, reports of which were given at the Hearing.

The Board, therefore, in accord with its Rules of Procedure, and in order that the spirit, intent, and purpose of the Zoning Ordinance shall be observed and substantial justice done, resolved that this appeal from the mandatory action on the part of the Department of Buildings and Safety Engineering to

make permanent the temporary grant for second floor addition to shop in an R2 District,

be hereby GRANTED, subject to the following conditions:

- (a) That the appellant agrees to abide by and comply with all of the ordinances of the City of Detroit and the regulations of every lawful agency or public authority now or hereafter in force, it being understood that this grant only authorizes a variance or exception of the regulations of the Zoning Ordinance and is not intended to waive the provisions of any other existing statute, ordinance, rule or regulation.
- (b) That the required Building Permit covering this grant shall be secured from the Department of Buildings and Safety Engineering before starting any construction, alterations, additions, change of use or change of occupancy, and, that failure to obtain such Building Permit within six (6) months after the date of the grant will thereby invalidate and terminate this grant.

clm et

DATE OF ENTRY: 10-27-53.

DATE MAILED: 10-27-53.

BOARD OF ZONING APPEALS

Oscar L. Mroseske

Secretary

APPENDIX H

EXAMPLE OF THE MINUTES OF THE DETROIT BOARD
OF ZONING APPEALS

(Minutes)

-4-

312-54 - C. Guarneri - 1799 Sheridan, bet. Kercheval and St. Paul. Lot 281 in Moses W. Field's Sub. Petition to convert two apartments to three apartments in a two-family residence zone.

GRANTED, with conditions.

313-54 - St. Philip Neri Parish - 2660 Dickerson, bet. Charlevoix and Vernor Hwy. Lots 1 thru 8 in Blk. 2, Jefferson and Mack Ave. Sub. Petition to erect church and rectory in one-family residence and multiple residence zones, notwithstanding deficient side and front yards and off-street parking.

ADJOURNED to 4-6-54.

314-54 - V. Dombrowski - 7577 Grixdale, bet. Van Dyke and Packard. Lot 95 in Packard Park Sub. Petition to convert one-family dwelling to a two-family in a one-family residence zone.

GRANTED for 5 years, with conditions.

315-54 - J. Kehn - 6250 W. Lafayette, bet. Livernois and Dragoon. E. 30' of W. 60' of Lots 860 and 861 in Daniel Scotten's Resub., P.C. 32. Petition to convert two apartment building to three apartments in a two-family residence zone.

GRANTED.

316-54 - C. Berry - 558 E. Elizabeth, bet. St. Antoine and Beaubien. Lots 44 and 45 in Crane and Wesson's Section. Petition to convert one apartment and ten sleeping rooms to four apartments in a business zone, notwithstanding deficient side, front and rear yards.

GRANTED.

317-54 - Fayette Roofing Co. - 1207 Elmwood, bet. Monroe and Macomb. Lots 76 and 77 in W. B. Wesson's Section. Petition to convert factory to offices and storage in a two-family residence zone.

GRANTED, with conditions.

318-54 - A. Urbani - 17608-14 Stoepel, bet. Thatcher and Santa Clara. Lots 151 and 152 in Ardenwood Sub. Petition to extend parking use now on rear of lots 151 and 152, 65.71' forward on these lots leaving approximately a depth of 29.29' of vacant property along Stoepel Ave. frontage in a two-family residence zone.

ADVISEMENT to 4-6-54.

APPENDIX I

1953 ANNUAL REPORT OF THE DETROIT BOARD
OF ZONING APPEALS

ANNUAL REPORT
of the
BOARD OF ZONING APPEALS

of the
City of Detroit, Michigan

1953

TO THE HONORABLE
THE COMMON COUNCIL:

Gentlemen:

The Board of Zoning Appeals herewith respectfully submits its annual report covering its activities for the year 1953.

Messrs. M. C. Callahan and Herman A. Schmier, whose terms on the Board expired on December 31st, 1952, were re-appointed by your Honorable Body for new three year terms.

On January 1st, 1953 the Board consisted of the following:

M. C. Callahan, Chairman
Henry N. Johnson, Vice-Chairman
Frank Burton
Herman A. Schmier
Wm. J. McBrearty
Allan C. MacNichol

Oscar L. Mroseske, Secretary

Mr. Arthur L. Barkey, Assistant Corporation Counsel, continued to serve as legal advisor to the Board.

John W. McClain, Senior Assistant Structural Engineer of the Department of Buildings and Safety Engineering, also continued to represent that department at all of the meetings of the Board.

During the year one thousand six hundred and seventeen (1617) new cases were filed and thirty-six (36) re-hearings were granted.

Weekly meetings and public hearings were held during the year in accordance with the requirements of the Zoning Ordinance.

Final decisions on one thousand five hundred and ninety-seven (1597) cases were made by the Board, the disposition of which is shown on the accompanying chart. The remaining cases were carried over into 1954.

Eleven (11) cases were withdrawn by appellants and eighteen (18) cases were dismissed by the Board.

As required by law, a total of 108,984 notices of Public Hearings to be held on appeal cases were sent to owners of property within three hundred (300) feet of the premises affected by the various appeal cases.

Filing Fees amounting to \$24,795.00 were collected for new appeals and re-hearings and turned over to the City Treasurer. Ten refunds amounting to \$150.00 were made by the Board.

The Board again wishes to thank the various City Departments for the assistance furnished its staff in the preparation of the appeal cases.

Respectfully submitted,

BOARD OF ZONING APPEALS

(signed) Oscar L. Mroseske

Secretary

FINAL DISPOSITIONS OF CASES HEARD IN 1953

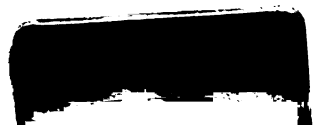
Appeals	Granted Outright	Granted Condi- tionally	Granted Tempo- rarily	Granted Condi- tionally and Tempo- rarily	De- nied
One-Family Dwelling (R1)	169	2	2	4	6
Two-Family Dwelling (R2)	110	12	2	21	59
Multiple Dwelling (RM, RM4, RMU)	351	4	2	11	37
Business (B2, B6, BL, BC)	242	53	6	88	41
Commercial (C6)	112	15	1	18	7
Light Manufacturing (ML, ML6)	60	38	4	41	9
Heavy Manufacturing (MH)	37	16	0	12	5
Totals	1,081	140	17	195	164

Date Due[illegible]

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