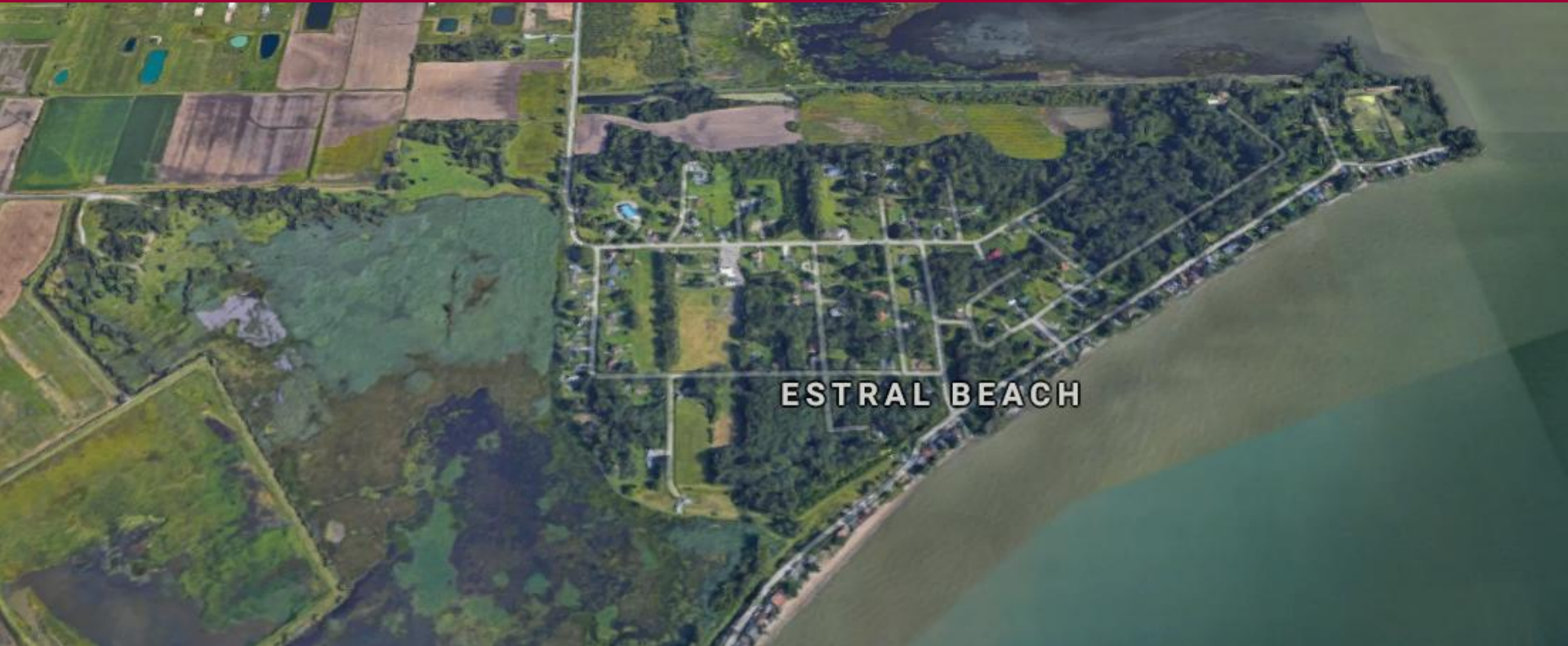


# Role of the Zoning Board of Appeals



Monday March 26, 2018

7:00 PM

Estral Beach Village Hall

Benjamin Tallerico

# Role of the Zoning Board of Appeals

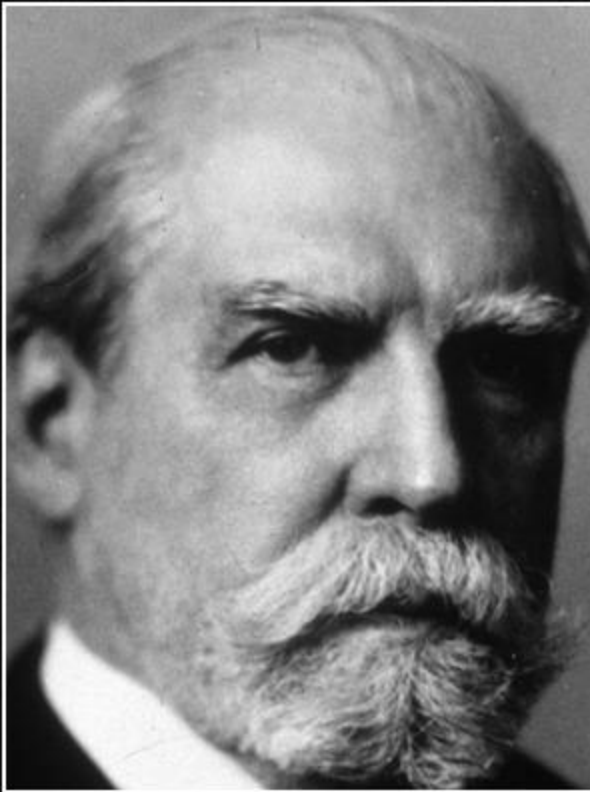
## The Law

Is the law Black and White?

# Role of the Zoning Board of Appeals

## The Law

Is the law Black and White?



The Constitution is what the judges  
say it is.

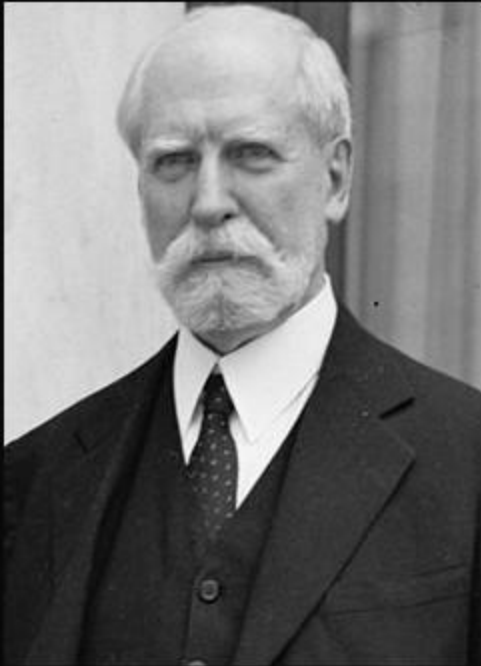
— *Charles Evans Hughes* —

AZ QUOTES

# Role of the Zoning Board of Appeals

## The Law

Is the law Black and White?



In a number of cases dissenting opinions have in time become the law.

(Charles Evans Hughes)

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# Role of the Zoning Board of Appeals

## The Law

### Is the law Black and White?



The constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.

(Thomas Jefferson)

izquotes.com

# Role of the Zoning Board of Appeals

## The Law

### **Trial Court**

Case must begin here

Cases of Fact

### **Appellant Court**

Courts of Procedures

# Role of the Zoning Board of Appeals

## Where does the variance process start?

Following receipt of a written request for a variance, the zoning board of appeals shall fix a reasonable time for the hearing of the request and give notice as provided in section 103.

 ZONING BOARD OF ADJUSTMENT <b>APPLICATION FOR APPEAL</b> CALENDAR # _____ (FOR OFFICE USE ONLY)	WHEN COMPLETED, MAIL TO: CITY OF PHILADELPHIA DEPARTMENT OF LICENSES AND INSPECTIONS BOARDS ADMINISTRATION MUNICIPAL SERVICES BUILDING, 11TH FLOOR 1401 JOHN F. KENNEDY BLVD. PHILADELPHIA, PA 19102
	APPLICANT MUST COMPLETE ALL INFORMATION BELOW. PRINT CLEARLY AND PROVIDE FULL DETAILS
LOCATION OF PROPERTY (LEGAL ADDRESS) 200 Levering Street, Philadelphia, PA 19128	
PROPERTY OWNER'S NAME: John Hunter	PROPERTY OWNER'S ADDRESS (INCLUDE CITY, STATE, AND ZIP) 4308 Terrace Street Philadelphia, PA 19128-4933
PHONE #: 215-487-2474	
E-MAIL: johnhunter28@gmail.com	
A CORPORATION MUST BE REPRESENTED BY AN ATTORNEY LICENSED TO PRACTICE IN PENNSYLVANIA	
APPLICANT: Owner	APPLICANT'S ADDRESS (INCLUDE CITY, STATE, AND ZIP) 4308 Terrace Street Philadelphia, PA 19128-4933
FIRM/COMPANY:	
PHONE #: 215-487-2474	E-MAIL:
RELATIONSHIP TO OWNER: <input type="radio"/> TENANT/LESEE <input type="radio"/> ATTORNEY <input type="radio"/> DESIGN PROFESSIONAL <input type="radio"/> CONTRACTOR <input type="radio"/> EXPEDITOR <input type="radio"/> OTHER	
APPEAL RELATED TO ZONING/USE REGISTRATION PERMIT APPLICATION # _____	
IF A VARIANCE IS REQUESTED, PLEASE PROVIDE AN EXPLANATION OF EACH OF THE FOLLOWING CRITERIA AS REQUIRED FOR THE GRANTING OF A VARIANCE:	
Does compliance with the requirements of the zoning code cause an unnecessary hardship due to the size, shape, contours or physical dimensions of your property? Did any action on your part cause or create the special conditions or circumstances? Explain. The existing property was constructed as 2 single family units. Previous owners had combined the properties into one unit and used it as a meeting hall. Restoring the property into two units cannot be achieved while meeting the open space requirements of the code.	
Will the variance you seek represent the least modification possible of the code provision to provide relief from the requirements of the zoning code? Explain. Yes, restoring the property to 2 single family units while complying with current codes is constrained by the original site area. The open area provided is the least modification of the open area requirement.	
Will the variance you seek increase congestion in public streets or in any way endanger the public? Explain. No, restoring the property to 2 single family units as originally constructed reduces the vehicular traffic from the previous use of the property as a Masonic Meeting Hall.	
81-49 (1) (Rev. 01/13)	Page 1 of 2

# Role of the Zoning Board of Appeals

## Who can appeal?

An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government.



# Role of the Zoning Board of Appeals

## Membership:

- In communities with less than 5,000 residents there must be no less than 3 members.
- In communities of 5,000 or more residents; no less than 5 members.
- The number of zoning board of appeals members shall be specified in the zoning ordinance.
- The regular members shall reside within the zoning jurisdiction of that local unit of government.

# Role of the Zoning Board of Appeals

## Board Makeup

### Membership:

- Term of office is 3 years.
- One member of the ZBA may also be a planning commissioner (for cities and villages only).
- One member of the ZBA shall serve on the township or county planning commission.
- One member of the ZBA may also serve on the legislative body; not as chair.
- The legislative body may appoint up to two alternate members

# Role of the Zoning Board of Appeals

## What does the ZBA do?

### Three Basic Responsibilities

#### 1. Appeals

- a) Appeals of enforcement matters
- b) Appeals on denied site plans
- c) Appeals of denied zoning permits

#### 2. Ordinance Interpretation

- a) Map
- b) Text

#### 3. Variances Requests

- a) Use
- b) Dimensional

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**BE CONSISTENT!!!**

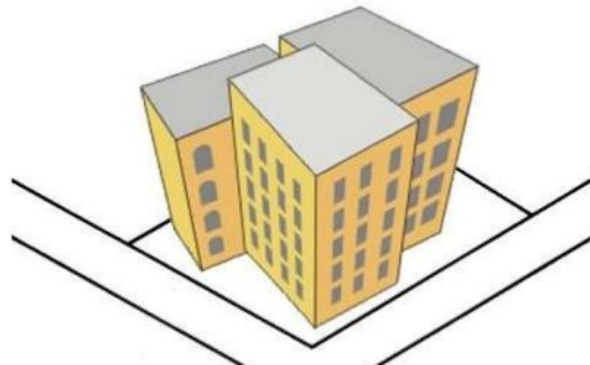
# Role of the Zoning Board of Appeals

What does the ZBA do?

## Other Responsibilities

If determined by local ordinances, the ZBA may have other duties

### Zoning and Nonconforming Use



# Role of the Zoning Board of Appeals

## Variance - The Primary Task

Primary role of the ZBA of appeals?

- Consideration of requests for variances

Those requests fall into two groups:

- Use variances
- Non use (Dimensional) variances

# Role of Zoning Board of Appeals

## Use Variance

A use variance permits a use of land that is otherwise not allowed in that district.

If you allowed them prior to Feb. 15, 2006, you can still grant them. (Only applies to Counties and Townships, not Estral Beach).

Use variances requires 2/3 vote of membership for approval.

Estral Beach.....

# Role of Zoning Board of Appeals

## Use Variance

### *Use Variance* considerations:

1. Can the property be used for a conforming use in the zoning district where it is located, and yield a reasonable return?
2. Is the plight of the property due to unique circumstances and would not generally be found elsewhere in the same zoning district.
3. The property owner must show the zoning ordinance gives rise to hardship amounting to confiscation or the disadvantage must be so great as to deprive the owner of all **reasonable** use of the property?
4. Is a hardship present, and if so, was it self-created?



# Role of Zoning Board of Appeals

## Use Variance

To obtain a *Use Variance*, applicant must show unnecessary hardship by:

1. Property cannot yield a reasonable return
2. The need for the variance is due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district.
3. The property owner must show the disadvantage must be so great as to deprive the owner of all reasonable use of the property.
4. Hardship is not self created

# Role of Zoning Board of Appeals

## Use Variance (not Estral Beach)

### **Sec. 46-140. Appeals to the zoning board of appeals**

(b) The appeals board shall have the authority to hear appeals concerning:

- (1) All questions that arise in the administration of this chapter, including interpretation of the zoning map.
- (2) All administrative orders, requirements, decision or determinations made by an administrative official charged with enforcement of this chapter can be appealed.
- (3) All decisions of the zoning administrator.
- (4) The zoning board of appeals shall have no authority to grant use variances or to appeal decisions made by the planning commission or township board.

# Role of Zoning Board of Appeals

## Non Use (Dimensional) Variance

Dimensional variances: approve if practical difficulty in complying with ordinance.



Use variances: approve if unnecessary hardship.



# Role of Zoning Board of Appeals

## Non Use (Dimensional) Variance

### What is a *Dimensional Variance*?

- Relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance.
- Landscaping regulations, development standards and various other requirements.



Photo Credit: Benjamin Tallerico

# Role of Zoning Board of Appeals

## Non Use (Dimensional) Variance

### What is a *Dimensional Variance*?

1. Requirements for yard setbacks, lot area, lot width, building height, and similar minimum dimensions required by the zoning ordinance.
2. And all other variance requests except those classified as use variances. Another words a request for a variance from landscaping regulations, development standards and various other requirements are all considered under the same general criteria as dimension variances.

# Role of Zoning Board of Appeals

## Non Use (Dimensional) Variance

### What is a *Practical Difficulty*?

Where front and rear yard setback requirements consume all available area on a lot leaving no development area even though the lot otherwise conforms to ordinance requirements.

# Role of Zoning Board of Appeals

## Non Use (Dimensional) Variance

### How is *Practical Difficulty* demonstrated?

1. Unique circumstances applying to the property.
2. Is consistent with the spirit of the ordinance and is fair to adjacent properties.
3. Need for the variance was not self created.
4. Variance is the minimum necessary.
5. Strict compliance with the zoning ordinance prevents the applicant from using the property for the permitted purpose.

# Role of Zoning Board of Appeals

## Non Use (Dimensional) Variance

Why is *Practical Difficulty* important?

Because it is required in order for the ZBA to grant a dimensional variance;

- By statute
- By case law



# Role of the Zoning Board of Appeals

## Dimensional Variance Requirements

In order for a *Variance* to be granted on the grounds of *Practical Difficulty* the *APPLICANT* must prove all of the following:

1. Without a variance from the provisions of this ordinance, the property cannot yield a reasonable return due to circumstances specific and particular to the property.
2. The plight of the owner is due to unique property circumstances and not to the general conditions of the neighborhood.
3. The modifications to be authorized by the variance will not alter the essential character of the neighborhood or be otherwise detrimental to the public welfare.

# Role of the Zoning Board of Appeals

## Dimensional Variance Standards

In order for a *Variance* to be granted on the grounds of ***Practical Difficulty*** the ZBA shall ensure each of the following standards are met;

1. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district.
2. The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken after the adoption of the ordinance. Any action taken according to lawfully adopted regulations preceding this ordinance will not be self-created.

# Role of the Zoning Board of Appeals

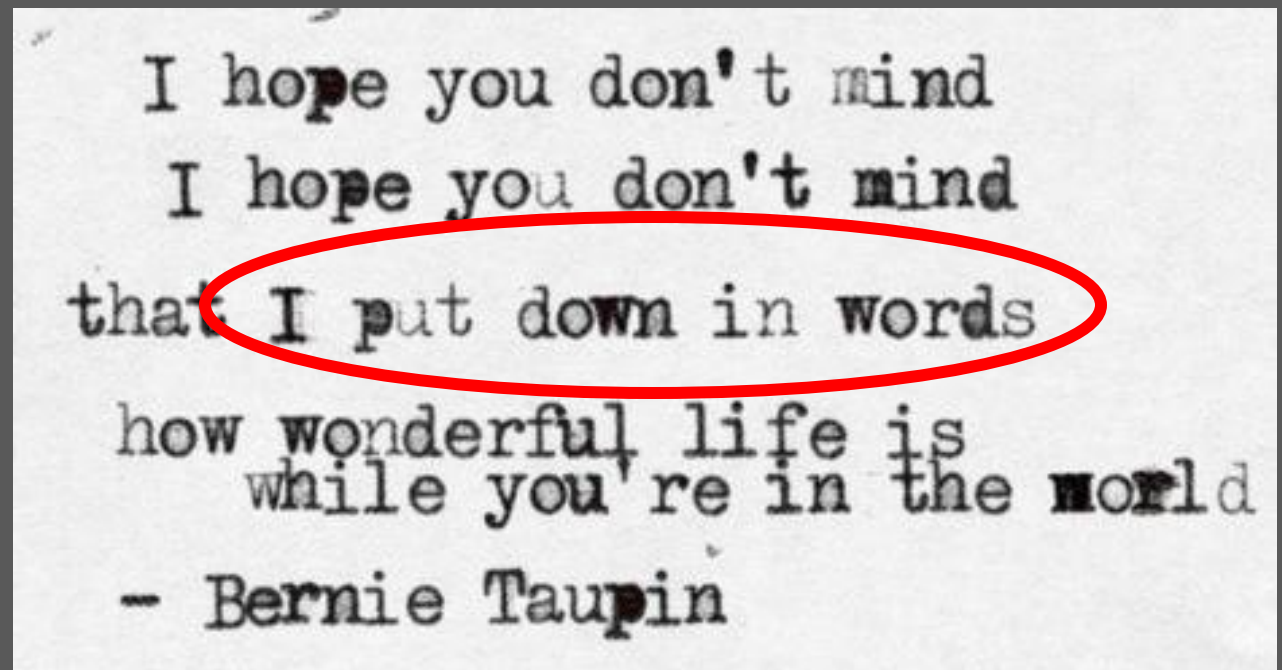
## Dimensional Variance Standards

3. That such variance is the minimum variance that will make possible the reasonable use of the land, building or structure and is necessary for the preservation of a substantial property right. The possibility of increased financial return SHALL NOT of itself be deemed sufficient to warrant a variance.
4. That the granting of the variance will not impair or be injurious to the neighborhood or adjacent properties or otherwise detrimental to the public health, safety or welfare with regard to light or traffic of other public interests.
5. That the condition of or situation as to the specific piece of property or intended use of the property for which the variance is sought is not of so general or recurrent nature as to make it more reasonable and practical to amend the ordinance.

# Role of the Zoning Board of Appeals Decisions

Put down in words

The ZBA MUST document in writing its decision and the rational for its decisions.....for every case.



# Role of the Zoning Board of Appeals Decisions

The APPLICANT must show Practical Difficulty,  
Hardship, NOT YOU.

.....and the problem is UNIQUE to the property and not  
shared by surrounding parcels and the problem cannot  
be self-created.



# Role of the Zoning Board of Appeals

## What does it take to reverse an decision?

The concurring vote of a majority of the members of the zoning board of appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance, or to grant a variance in the zoning ordinance.

# Role of the Zoning Board of Appeals Decisions

Remember, a DECISION has already been made. Ask yourself.....

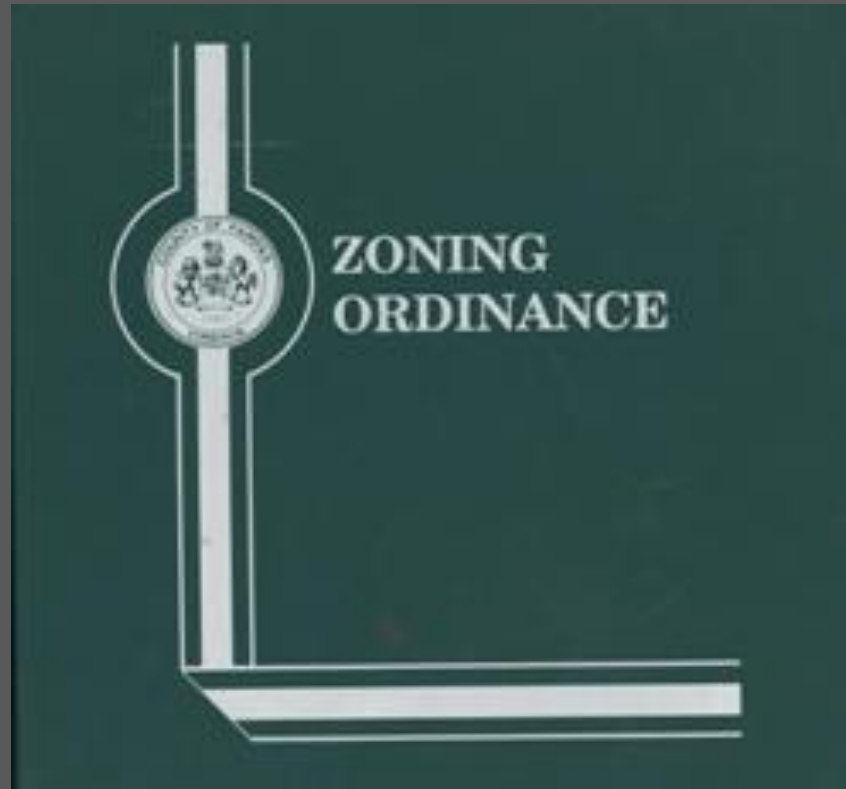
.....did the body or official properly apply the procedures and standards of the ordinance in making their determination?

And if granting a variance, Ask yourself  
.....was the spirit of the zoning ordinance observed, public safety secured, and substantial justice done.



# Role of the Zoning Board of Appeals Decisions

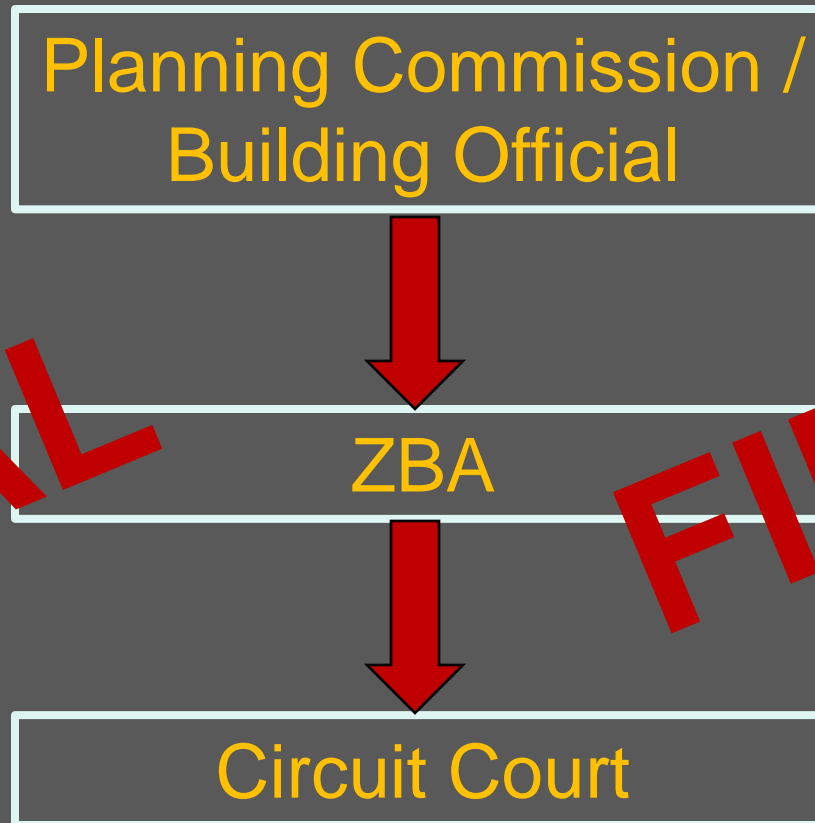
Remember, only the ZBA has the authority to interpret the ordinance





# Role of the Zoning Board of Appeals Decisions

Remember, the decision of the ZBA is final, an appeal has to go to the Circuit Court.



**FINAL**

**FINAL**

# Role of the Zoning Board of Appeals

## Motions

Motion to approve, deny, or approve with conditions should state the conclusion, and the rationale for the conclusion.

**FACTS SUPPORT THE CONCLUSION.**

# Role of Zoning Board of Appeals

## Recordkeeping

Keep complete records

- Finding of fact
- Conclusions
- Decisions

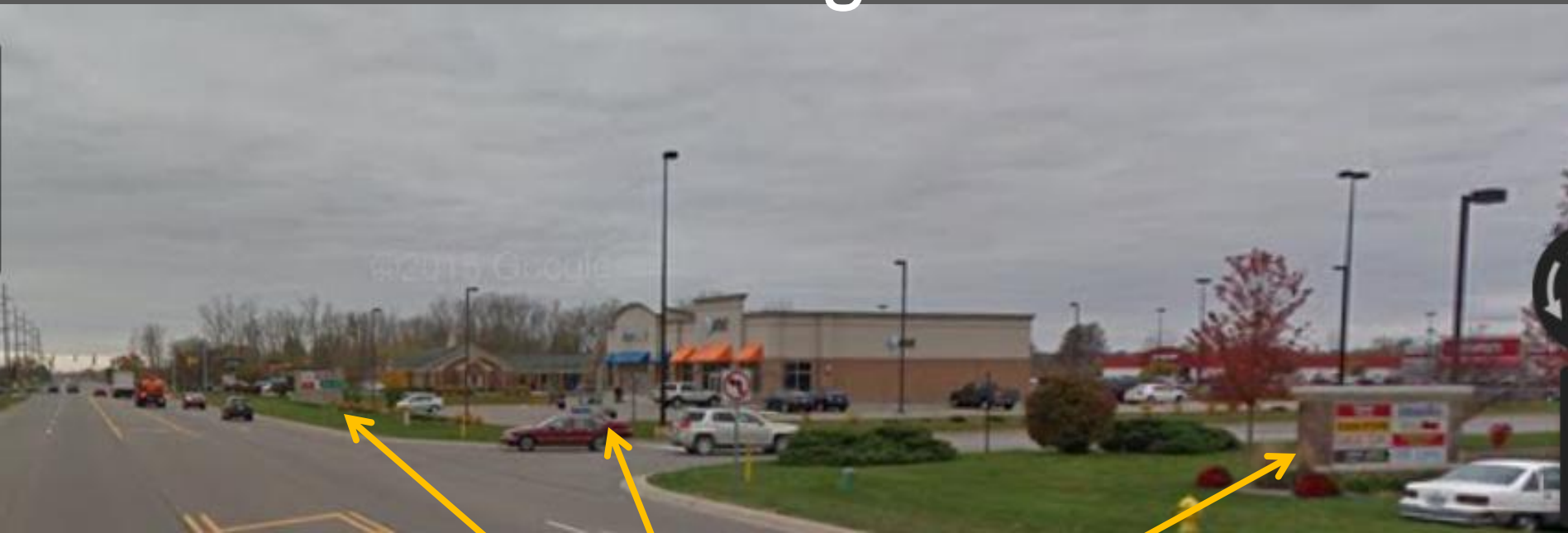
# Role of the Zoning Board of Appeals Cases

Should it have been given?



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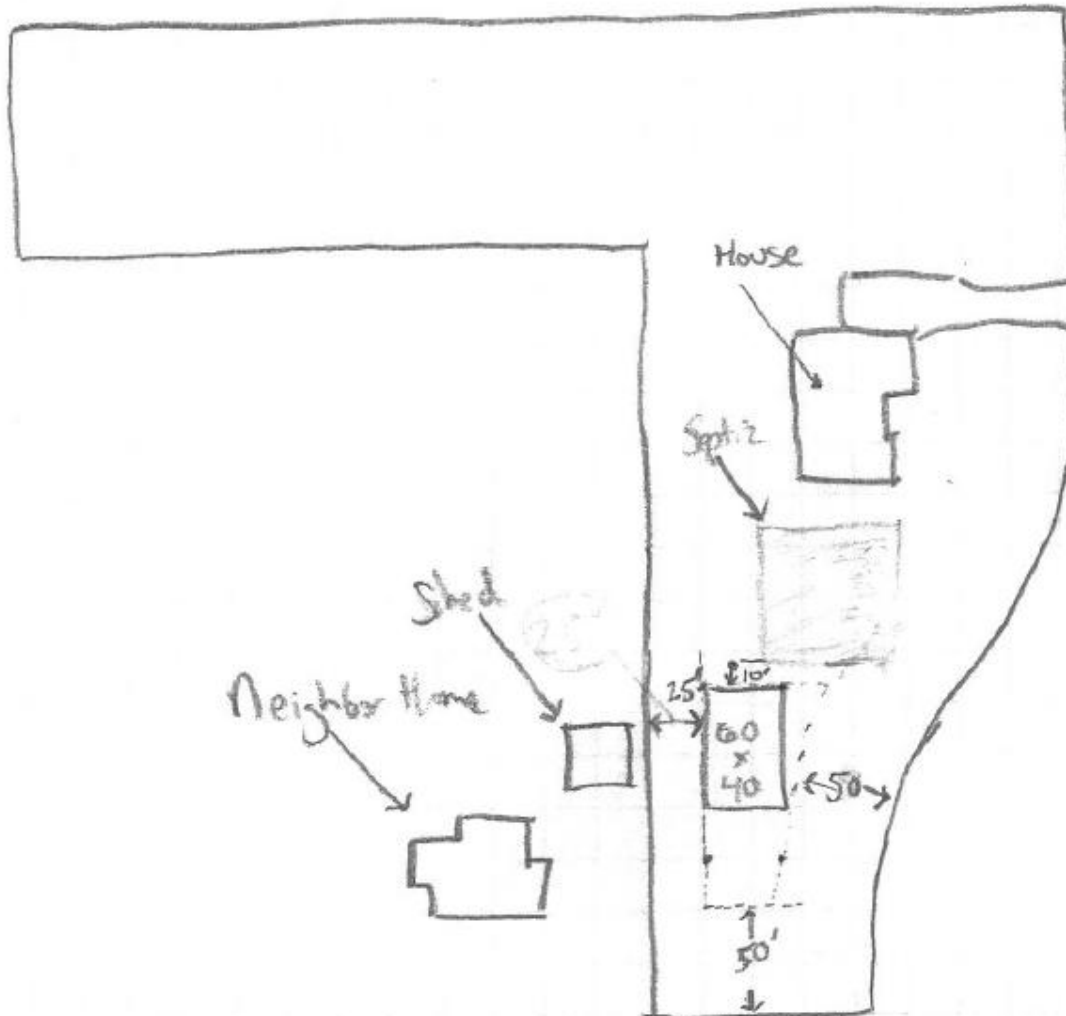
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# Role of the Zoning Board of Appeals Cases



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