

Considerations For
**Community
 Decision Making**

Published by the University of Missouri - Columbia Extension Division



Basic Procedures in Administration of Zoning Regulations

Appeals

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This guide has been prepared as a training aid for city and county officials and citizens. It illustrates the basic sequence of events in situations commonly involved with administration of local zoning regulations. It indicates the normal place and function of the various officials and bodies in the different kinds of procedures.

The illustration provides a framework that will help in considering many aspects and contingencies that ordinarily are a part of the zoning administration process. It is not intended to prescribe universally applicable procedures. Each city and county adopts its own set of zoning regulations, so the provisions of each specific zoning ordinance or order have to be taken into account for a thorough understanding of local procedures.

Brief commentaries on various elements shown in the illustration are included. These serve to clarify some basic points and provide supplemental information and assistance in evaluating administrative procedures.

Additional information about the role of the zoning enforcement officer and the board of adjustment is included in guide 7614, Roles of Enforcement Officer and Board of Adjustment.

Commentaries on Various Elements

Refer to the chart inside to trace the numbered step procedures described below.

1. Appeal (To Board of Adjustment)

An appeal to the Board of Adjustment involves a situation in which an interested party alleges the Zoning Enforcement Officer (Building Inspector) has made an error in the interpretation of the Zoning Regulations in a specific case. This usually arises when the officer refuses to issue a certificate of occupancy or a building permit,

though it can come up in other circumstances, e.g. when an interested party contends the officer was in error by issuing a particular permit. The function of the Board of Adjustment in an appeal is to make a judgment as to the interpretation of the zoning provisions in the context of the specific facts of the case. The Board, in an appeal, has no authority to set aside any provision of the zoning regulations or to authorize the issuance of a permit that violates the strict terms of the zoning provisions. (See guide #7614 section under powers and duties of the Board of Adjustment.)

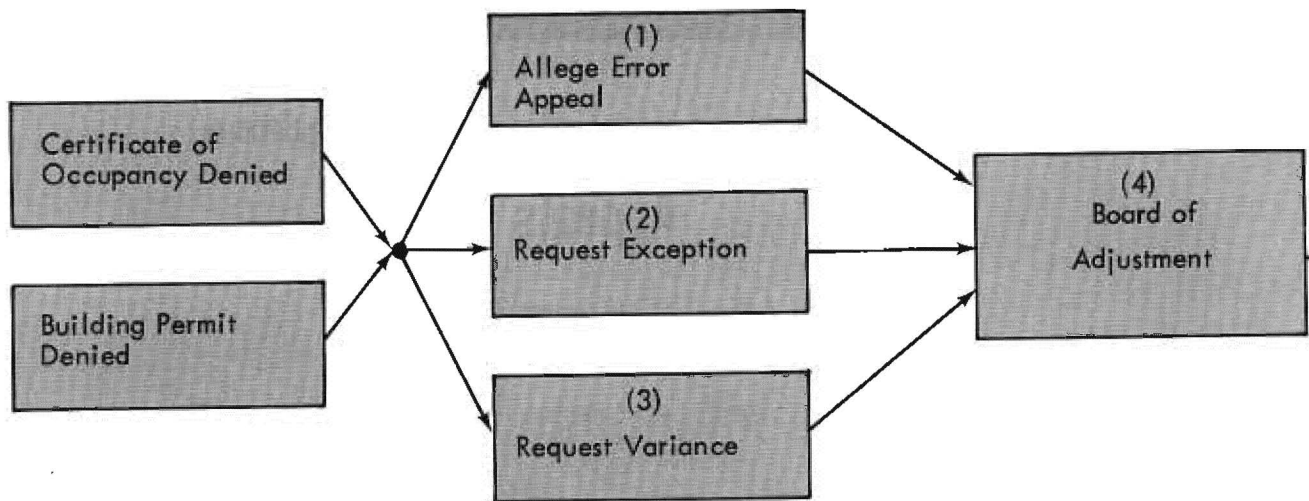
2. Exception

In most zoning regulations there are specific provisions which prohibit certain things except as the Board of Adjustment may allow them. The text of the zoning regulations usually includes some standards that must be met if an exception is to be made. In other words, for a request for an "exception" to be made to the Board of Adjustment there must be explicit mention of the authority to grant such an "exception" and the circumstances under which it can be granted in the particular situation. It is fairly common for provisions regarding "exceptions" to relate to some aspects of nonconforming uses. (See guide #7614, section under powers and duties of the Board of Adjustment.)

3. Variance

The most familiar action requested of a Board of Adjustment is to grant a "variance." This is to allow some variation in the dimensional requirements of the zoning regulations in cases where their strict application would involve undue hardship. Generally, variations in the use requirements *cannot* be granted by the Board. The authority of the Board to grant variances is limited to a very narrow range of situations. Often Boards of Adjustment have tended to overlook the great limitations on their power and acted in ways that go beyond their authority.

Figure 2. Illustration of Appeal Procedures When Certificate of Occupancy or Building Permit is Denied.

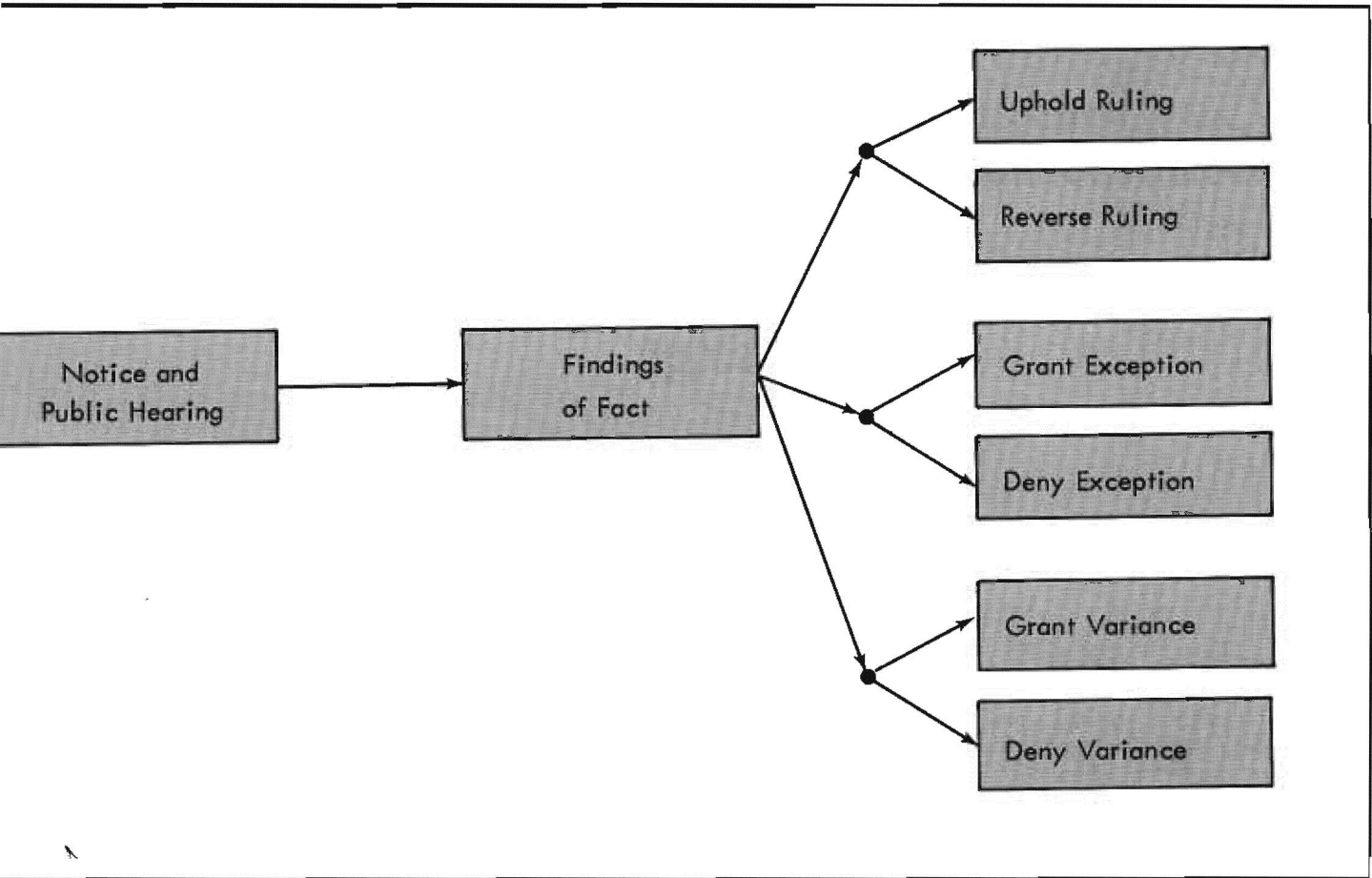


The Board should not authorize as “variances” things that amount to an amendment of the zoning provisions. The Board has no power to amend the Zoning Regulations. That power is rightly vested in the legislative body. A Board of Adjustment that tends to overstep its authority in granting variances confuses the situation, makes for erratic enforcement and zoning administration, and opens the way for charges of favoritism. (See guide #7614, section under powers and duties of the Board of Adjustment.)

4. Board of Adjustment

The Board of Adjustment is an important body in zoning administration. However, it has very specific and limited powers and duties. Fair zoning administration depends on the Board’s ability to do its work well, and to restrict its operations to matters within its jurisdiction. The Board of Adjustment and its members should be interested in equitable and effective zoning, and should be free to make recommendations to the Planning Commission

or the legislative body on matters of concern in zoning. The Board, however, should not interfere with the Zoning Enforcement Officer (Building Inspector) in the performance of his duties, or attempt to take to itself the functions of the planning commission or the legislative body. The Board must always keep in mind that it does not have the authority to amend the zoning regulations. The Board of Adjustment *does not* have a formal role in the amendment process. The Board should make clear to the public that it does not have power to amend the zoning provisions. If requests come to it of this nature it should refuse to hear them and advise those making the request as to the proper procedures through which to seek Zoning amendments. The decisions of the Board of Adjustment are subject to review in the circuit courts, but *not* by the County Court, City Council or Board of Aldermen. The legislative body itself does not have the authority to revoke or modify a decision of the Board of Adjustment, nor can it direct the Board to render a particular decision in a specific case. If the legislative body feels the Board of Adjustment is in error in a certain case, it may seek remedy through the judicial system □



Issued in furtherance of Cooperative Extension Work Acts of May 8 and June 30, 1914 in cooperation with the United States Department of Agriculture. Carl N. Scheneman, Vice President for Extension, Cooperative Extension Service, University of Missouri and Lincoln University, Columbia, Missouri 65201.

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