

“ZONING 101” OUTLINE

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PLANNING

1. **Plan Commissions:**

- o State law allows municipalities to create Plan Commissions:
- o Members appointed by city council/village board;
- o Plan Commissions have authority to create a comprehensive plan for present and future development/redevelopment of the municipality;
- o Plan Commissions may have other authorities granted to them by city council/village board, such as conducting public hearings for special use permits, zone changes, zoning text amendments, planned unit developments and subdivisions;
- o Mission of the Plan Commission: The Plan Commission is the originator and guardian of the Comprehensive Plan:
 - The Plan Commission oversees the creation of the Comprehensive Plan, and periodically reviews and recommends any updates/revisions to the Plan;
 - The Plan Commission aids in the implementation of the Comprehensive Plan by:
 - o Conducting public hearings on creation of and changes to the zoning regulations;
 - o Conducting public hearings on zone changes, special uses, planned developments and subdivisions

2. **Comprehensive Plan:**

- o Covers all land within existing municipality, as well as territory up to 1½ miles surrounding municipality;
- o Sub-area plans covering parts of the municipality or planning jurisdiction may also be created and adopted;
- o Plan is advisory only and does not have the weight of ordinance;
- o Plan must be officially adopted (by ordinance or resolution) and copies must be available to public;
- o Plan is to be enforced through specific ordinances (zoning, subdivision, grading, architectural review, etc.) Zoning follows planning;
- o Plan should set forth a vision for the future of the community based on the community's background (history, current demographics, existing land uses) and including, at a minimum:
 - Future use of all land within municipality and planning jurisdiction in terms of general land use categories (low-, medium- and high-density residential, commercial, industrial, civic/institutional, open space, recreation, agriculture, conservation areas, etc.);
 - Existing and future capacity of roads and road extensions;
 - Goals and objectives for development; and
 - An implementation program;
- o **Comprehensive Plan should be the first document reviewed as part of every**

annexation and zoning action (special use, zone change, subdivision, planned unit development, variation, etc.);

- o Plan should be reviewed minimum every 5 years and, if appropriate, updated;

3. **The 1½-Mile Planning Jurisdiction:**

- o Municipality may plan for future land uses and developments within 1½ miles of its municipal borders;
- o When the municipality annexes contiguous property, the 1½-mile jurisdiction moves out from that annexed property;
- o Because the County has zoning, municipalities cannot exercise zoning authority within the 1½-mile jurisdiction. That authority comes with annexation;
- o Municipalities can forward to the County Board a resolution of support or opposition to any zoning action proposed within the 1½-mile jurisdiction, and compel a 3/4 majority vote on the part of the County Board if it chooses not to abide by the municipality's recommendation;
- o Municipalities can exercise subdivision review and approval authority within the 1½-mile jurisdiction:
 - This authority is not in place of the County's subdivision authority, but rather in addition to that authority;
 - This means a non-contiguous subdivision that is within a municipality's 1½-mile planning jurisdiction can be required to go through both the County and the municipal subdivision review and approval processes

ANNEXATION

1. General Notes:

- o Municipalities may annex contiguous property:
 - Courts have held that “contiguous” generally means 300 feet of adjacent property line:
 - o “point-to-point” is not valid for contiguity;
 - o Annexing a narrow strip or down a public right-of-way is not valid
 - Public utility and railroad rights-of-way do not present a barrier to contiguity, but are not annexed when the private property on the other side is annexed;
 - Toll highways are not a barrier to contiguity;
 - Forest preserves do not present a barrier to contiguity, provided:
 - o the private property to be annexed is not bounded on three sides by another municipality or by forest preserve property or both, and;
 - o the municipality seeking annexation is the closest municipality to the property to be annexed;The forest preserve is not considered annexed without consent of the forest preserve district;
- o The new boundary of the municipality extends across road rights-of-way and the roads are considered annexed (township must be notified of the pending annexation).
NOTE: The municipality gets maintenance/snow plowing responsibilities when it annexes land adjacent to a township road. The same is not true for County and State roads

2. Annexation Agreement:

- o Is a contract between municipality and property owner(s), where property owner petitions to be annexed, and municipality agrees to annex;
- o Is not required for annexation;
- o Can be entered into prior to property becoming contiguous and thus “annexable”, but this generally requires a term during which the agreement is valid (20 years is typical);
- o Can include zoning to be granted by municipality upon annexation, but not required to include zoning:
 - If zoning is not part of the annexation agreement, the most restrictive zoning is automatically applied to the property upon annexation (generally, the lowest-density zoning, either Agriculture or low-density residential);
 - If zoning is part of annexation, a public hearing must be held by Plan Commission prior to action on the annexation agreement, and city council/village board must pass a separate ordinance to grant the zoning;**NOTE:** If an annexation agreement contains any element that normally requires a public hearing (zoning, preliminary plat approval, creation of special service area, etc.), the hearing must be held before the annexation agreement is approved;
- o Can include any other elements agreed to between the two parties, such as impact fees, special service areas, school or park land donations, cash contributions to offset

other costs, etc. if a development is proposed

NOTE: For non-home rule communities, it is essential to include any impact fees or other developer exactions as part of the annexation agreement. Recent court decisions have made it clear that non-home rule communities cannot impose impact fees as part of subdivision approvals or development agreements, but can only require land donation for schools.

- o Municipality is required to hold a public hearing on annexation agreements. Hearing is conducted by the village board/city council.

3. **Annexation:**

- o May be initiated by a petition signed by majority of property owners, filed with municipal clerk, expressing desire to be annexed and describing property
- o Municipality must pass ordinance annexing property, including accurate map of annexed territory, by simple majority vote;
- o Copy of ordinance and map must be recorded with County Clerk;
- o Municipality cannot be forced to annex adjoining property;
- o Municipality cannot force a property to annex unless:
 - Property is less than 60 acres in area; and
 - Property is surrounded on four sides by municipality;
- o Annexing property does not obligate municipality to extend public utilities to the newly annexed property, but police protection must be provided

4. **General Procedure for Annexation:**

Simple Annexation (no zoning or development):

- a. Property owner(s)/developer informally contacts village/city about proposed annexation;
- b. City/village confirms that subject property is contiguous (see above) and that annexation will be consistent with recommendation of comprehensive plan;
- c. Property owner(s) submits **petition for annexation** and **annexation plat** to city/village clerk;
- d. City council/village board passes an ordinance annexing the property. Most restrictive zoning district is applied automatically, and municipal zoning map is amended to reflect the change. No public hearing is required;
- e. Annexation ordinance and plat of annexation filed and recorded with County.

NOTE: Once zoning is applied, property owner has right to use property for any permitted use in the zoning district.

Annexation with zoning and development:

- a. Property owner(s)/developer submits **concept plan** to village/city;
- b. City/village confirms that subject property is contiguous (see above);
- c. Concept plan is reviewed by Plan Commission or village board/city council or both. No public hearing required. Feedback should include review by village/city staff and consultants (planner, engineer, attorney, building official). **City/village should evaluate proposal against the recommendations of the municipal comprehensive plan:**
 - o If development proposal is substantially in agreement with comprehensive plan recommendations, goals and objectives, proceed;
 - o If development proposal is not in agreement with comprehensive plan, city should direct developer to revise plan or advise that annexation will not be approved;
- d. Property owner/developer submits **draft annexation agreement**. City/village reviews agreement and negotiates changes:
 - o Negotiation should include effected school district, fire protection district, park district, etc. Impact fees, land and cash contributions, needed public infrastructure upgrades, etc. should be included in the agreement if municipality is not home-rule community;
- e. Property owner(s) submits:
 - o **Petition for annexation**
 - o **Annexation plat**
 - o **Final annexation agreement**
 - o **Application for zoning**
 - o **Application for Preliminary Plat/Plan approval**
- f. Plan Commission conducts public hearing on zoning and preliminary plat/plan (see Zoning Action procedures). Forwards recommendation to the city council/village board;
- g. City council/village board conducts public hearing on annexation agreement. Notification of public hearing should be published in newspaper of general circulation in municipality, and direct mailing to all owners of property contiguous to property to be annexed
- h. City council/village board passes a resolution authorizing the annexation agreement;
- i. City council/village board passes an ordinance annexing the property, with plat of annexation attached;
- j. City council/village board passes an ordinance zoning the property and approving preliminary plat/plan;
- k. Annexation ordinance and plat of annexation, as well as preliminary plat/plan, filed and recorded with County.

ZONING

1. General Notes:

- o Zoning dates back to the 1920's and a Supreme Court decision that upheld the right of cities to divide their territory into districts;
- o The primary goal of zoning is to avoid conflicts between land uses by grouping similar uses and separating incompatible uses;
- o There are two primary functions of zoning:
 - To establish a list of land uses permitted in each district; and
 - To establish “bulk regulations” (see below) for each district;
- o Zoning districts are established on official maps approved by the city council/village board. Changes to the official zoning map requires a public hearing (see Zone Changes);
- o If a use is not included in the list of “permitted uses” in a zoning district, it is not permitted in that district:
 - A “variance” or “variation” should not be an option for those seeking to allow a use that is not permitted in a zoning district (see Variations);
- o Zoning also allows “special uses,” that is, uses which may or may not be appropriate and the city council/village board reserves the right to judge each one on its own merits (see Special Uses):
 - Special uses may be presented in a zoning code as a single list, with each special use being followed by notes as to which zoning district potentially allow them; or
 - Each zoning district may include it’s own list of special uses that are allowable in that district;
- o Each zoning district contains its own set of “bulk regulations” including, at least:
 - Minimum lot size;
 - Minimum lot width;
 - Minimum building set back requirements from front, side and rear lot lines;
- o Zoning districts may include other “bulk regulations” such as:
 - Maximum lot coverage (relates the area of the footprint of buildings, and sometimes of paved/impervious surface, to the area of the lot);
 - Maximum building height;
 - Maximum floor area ratio (relates the combined area of all floors of the building to the area of the lot);
- o Zoning codes generally include additional regulations that apply to all zoning districts, such as regulations related to:
 - accessory structures;
 - exceptions to setback and height regulations;
 - access;
 - parking;
 - signs;
 - nonconforming uses, lots and buildings;

- o The zoning code is an official document adopted by ordinance by the city council/village board. It can be a separate ordinance, or a chapter of the city code. Changes to the text of the zoning code requires a public hearing (see Text Amendment);
- o Zoning “Don’ts”:
 - “Spot Zoning”: is zoning of a small parcel that is out of harmony with comprehensive plan. Courts have held this is illegal;
 - “Contract Zoning”: is zoning of a parcel on the condition that the property owner perform certain acts. Courts have held that this is illegal. General rule: do not approve rezoning to a general zoning district to accommodate a specific use without guarantee that use will occur on the property. Once a zoning district is applied, any of the listed permitted uses in that district can take place on that property by right. Conditional zoning is appropriate, however, as part of a PUD.
- o Nonconformities:
 - Uses: Any use of land which lawfully existed prior to the adoption of the zoning ordinance, and is continuing, is a nonconforming use and may continue. Municipality can refuse to allow it to be re-established after the use has ceased;
 - Structures: Any structure or building which does not meet the bulk requirements of the zoning district is a nonconforming building. Municipality can refuse to allow it to be re-built after it has been damaged or destroyed
 - Lots: Any parcel of land which does not meet the minimum area and width requirements of the zoning district is a nonconforming lot. Municipality may refuse to allow such lots to be built upon if they are vacant

2. **Zoning Actions:**

- o Special Uses:
 - Every zoning district has a list of potential compatible uses which may or may not be appropriate, and the municipality reserves the right to evaluate each such use on its own merits;
 - Special Use Permit requests are subject to a public hearing process that requires a notice in the newspaper and direct mailing to adjoining property owners;
 - Public hearing for Special Use Permits may be held by the Plan Commission or the Zoning Board of Appeals. Generally, these bodies make a recommendation to the city council/village board, which then approves or denies the request
 - Each proposal should be evaluated on the basis of specific criteria for granting Special Uses, the criteria being contained in the zoning code. These include:
 - o The use will be designed and operated so as to protect the public

- o health, safety and welfare;
 - o The use will not be unreasonably detrimental to the value of properties in the area;
 - o The use will meet the other applicable standards of the zoning district;
 - o The use is necessary at that location for the public convenience;
 - What is essential is that the criteria be evaluated; the actual decision as to whether or not the proposed Special Use meets the criteria is secondary;
 - Special Use Permits are approved by ordinance, and may include any conditions deemed reasonably associated with the specific use;
 - Generally, a Special Use Permit runs with a property, not a property owner, although a condition of approval could tie the Permit to a specific user;
 - A Special Use Permit can be granted for a specific period of time (one or two or three years) and then terminate unless an extension is granted by the city/village;
 - If a Special Use Permit is challenged after it is approved, it is reviewed by the courts under Administrative Review law, which focuses on process, not the decision. The courts do not treat the case as *de novo*, that is, the issue does not start over from scratch as though the city/village has never reviewed the facts of the case
- o Zone Change:
- Also called Zoning Map Amendment, it is the application of a zoning district to newly annexed property, or the change of zoning district to property already zoned by the municipality;
 - Zone change requests are subject to a public hearing process that requires a notice in the newspaper and direct mailing to adjoining property owners;
 - Generally, the Plan Commission conducts the public hearing, and makes a recommendation to the city council/village board, which then makes the decision;
 - Each proposal should be evaluated on the basis of criteria for granting zone changes, the criteria being contained in the zoning code. These should include:
 - o The recommended future use of the subject property as set forth in the Comprehensive Plan. This is the most important criteria;
 - o The written Purpose and Intent of the zoning district being requested;
 - o The existing and future uses of surrounding properties;
 - o The existing zoning of the surrounding properties;
 - o The suitability of the property for the zoning requested; and
 - o The effect of the proposed zoning on the public health, safety and welfare;
 - Generally, a zone change approval cannot be tied to conditions. Either it is appropriate to grant the rezoning, or it is not (see “Contract Zoning). The exception would be for a change to a planned unit development zoning (see

- Planned Unit Development);
 - “Spot Zoning” is when a zoning district is granted to a single, isolated piece of property for a specific use that is totally different from the surrounding uses, is a detriment to surrounding properties, and is out of harmony with the comprehensive plan. This is illegal;
 - Proposed zone changes can be objected to by the owners of 20% of the property to be rezoned, or the owners of 20% of the land adjoining property to be rezoned. Such a protest is filed with the city/village clerk, and compels a 3/4 majority vote of the city council/village board to approve the zone change
- o Variation:
- Is a waiver of some requirement of a zoning district related to construction of a structure, such as allowing a building to be closer to a lot line than normally required;
 - Requires a formal application and a public hearing, generally before a Zoning Board of Appeals. The ZBA generally makes the decision on the requested Variation, although it can be required to make a recommendation to the city council/village board, which then makes the decision;
 - The zoning code should be written in such a way that Variations may only be granted from “bulk regulations,” that is, requirements related to physical dimensions (minimum building setbacks, lot width and lot area, maximum height of structures, etc.);
 - Variations should not be related to uses of land. It should not be an option to seek a Variation to allow a use not included in the list of permitted uses in the zoning district;
 - Variations are granted based on evaluation of specific criteria. These include:
 - o Is there a particular hardship or practical difficulty in meeting the requirement (as opposed to a mere inconvenience). The particular hardship or practical difficulty cannot be of the applicant’s own creation;
 - o As part of the evaluation of particular hardship or practical difficulty, ZBA must consider:
 - Is there a unique circumstance related to the request (something specific to the subject property or the property owner’s situation, and outside the control of the applicant, that is not generally the case elsewhere in the zoning district);
 - What is the effect on the general area if the Variation is granted (will it make the structure stick out like a sore thumb?);
 - Can the property yield a reasonable rate of return if the zoning regulation is enforced (an argument of “reasonable rate of return” cannot be made if the property owner paid too

accommodated by straight zoning:

- o If a city/village is inclined to waive certain zoning standards for a proposed PUD, it should only do so because it will receive something positive in return. It should be a *quid pro quo* arrangement;
 - o In return, the PUD will typically involve: a combination of uses not generally accommodated by straight zoning (such as a residential subdivision with a community “farm”); the provision of a public amenity (such as a park or community center); or the creation or preservation of a desirable natural feature (such as a stand of mature, quality hardwood trees or a wetlands);
 - Approval of the preliminary PUD plan should be conditioned on submission and approval of the final PUD plan within a specific time period
- o Text Amendment:
- Is a change to the regulations of the zoning ordinance;
 - Generally may be initiated by the city/village, or by any person seeking to change or add a regulation;
 - Is subject to a public hearing process, generally conducted by the Plan Commission, which makes a recommendation to the city council/village board;
 - If approved, it results in a permanent change to the zoning regulations;
 - Should be general in nature: changes that are too specific or relate to specific properties or entities amount to contract or spot zoning;
 - Should be reviewed in terms of precedent and effect on the community as a whole
- o Appeal:
- Is an objection to, or request for review of, a decision of the zoning administrator or other official charged with enforcing the provisions of the zoning ordinance;
 - Must be filed with the city/village clerk within 45 days of the action sought to be reviewed;
 - An appeal stops any related action until the appeal is decided, unless the official certifies that a stay would imperil life or property;
 - Appeal is reviewed by the ZBA, which makes the decision in the form of a findings of fact and decision. The review is at a public hearing

D. Subdivisions

1. General Notes:

- Subdivisions relate to the division of land;
- State “Plat Act” has provisions related to the division of land:
 - o These provisions generally apply to the division of large parcels of land;
 - o While the Plat Act may allow the division of land, it does not supercede city/village zoning regulations: the land may be divided, but it must meet city/village laws for use and bulk regulations;
- The proposed division of land not covered by the State Plat Act requires compliance with the city/village subdivision regulations;
- The city/village should set forth the regulations for subdivisions in a separate subdivision ordinance, or in a specific chapter dedicated to subdivisions in a unified development ordinance;
- Subdivision regulations contain detailed requirements for public streets, sidewalks, utilities and stormwater drainage;
- Subdivision of land presumes zoning is already in place, and that the proposed division of the subject property will comply with all the applicable standards (use and bulk regulations) of the zoning district;
- City/village exercises subdivision review and approval authority within its own boundaries, as well as within its 1½-mile planning jurisdiction. This applies even if a proposed subdivision cannot annex to the city/village;
- Generally, subdivision review and approval is split into preliminary plat and final plat:
 - o City/village usually delegates preliminary plat review to the Plan Commission;
 - o Preliminary plat review may or may not be subject to a public hearing, at the discretion of the city/village. It is recommended that the preliminary plat be subject to a public hearing if the subdivision request is not concurrent with a zone change request;
 - o Plan Commission can approve preliminary plat of subdivision, or forward a recommendation for action by the city council/village board;
 - o Plan Commission has 90 days from date of receipt of all required parts of application to take action on the preliminary plat;
- Generally, applicant has one year from the date of an approved preliminary plat of subdivision to file for approval of a final plat of subdivision;
 - o Final plat is a technical review of the engineering details of the subdivision;
 - o Final plat is typically reviewed by the Plan Commission, and does not involve a public hearing;
 - o City/village has 60 days from receipt of all required documents associated with a final plat of subdivision to take action on the plat;

- o Approved final plat of subdivision is recorded;
- City/village can require dedication of public streets, school sites, park sites and other public lands as part of subdivision;

2. Impact Fees:

- “Impact fee” commonly used to refer to all types of subdivision exactions. However, there are generally two different types of contributions being talked about:
 - o “School and park land/cash regulations” arise from Illinois State law, which grants municipalities the right to require subdivisions to include dedication of parks, playgrounds, school sites and other public grounds. It is common practice for municipalities to accept cash from the subdivider in lieu of land if the school or park site would be too small or not consistent with the district’s plans. The municipality collects the money and turns it over to the districts.
 - o “Impact fees” are other fees applied to new subdivisions which are intended to offset the impacts on public services and infrastructure that are specifically and uniquely attributable to that subdivision. These can include fees to recoup a proportionate share of capital costs required to accommodate the new subdivision, such as improvements to or expansion of the water and sanitary sewer systems, roads, library and fire protection services, etc. Impact fees are often negotiated as part of annexation agreements, as opposed to school and park land/cash regulations, which are usually contained in the municipal subdivision regulations.
- In non-home rule communities, it is essential to negotiate impact fees as part of annexation agreements. Recent case law has held that non-home rule communities cannot require development exactions beyond land for the purpose of constructing schools;
- Subdivision exactions do not offset all of the financial costs and impacts associated with new subdivisions. Rather, the fees and contributions help reduce the costs of development, especially in the first years before new property taxes are collected and new residents begin patronizing local businesses and institutions;
- Developers and subdividers are prepared to pay exactions. What they seek, however, is a clear understanding of how the amount of the fee is arrived at and to what purpose it will be placed, and a fair process for setting the fees;
- It is more fair to collect the school, park, library and fire protection contributions at the time a building permit is sought for each individual lot, rather than collecting the money up-front at the final plat of subdivision stage. In this way, the fee is passed on to the new residents who generate the additional demands on these services at the time the new residents arrive, rather than months and sometimes years in advance
- Other impact fees for capital improvements to roads and utilities are best

collected at the final plat stage, since those impacts are a consequence of the subdivision as a whole;

A. PUBLIC NOTICE

- o Required by State law for any public hearing;
- o Generally required to appear in a newspaper of general circulation within the community at least 15 days prior to the hearing date;
- o For Special Uses, required to send notification via mail to adjoining property owners.
NOTE: It is generally a good idea to do this for all zoning actions related to specific properties
Many communities require notification to all adjoining property owners within a specific radius of the subject property, for instance, 250 feet;
- o Many communities also place a sign on the subject property announcing that a public hearing will be held. Generally, the sign is installed not less than 15 days in advance of the hearing date;
- o Form of the public notice:
 - Should be comprehensible to the general public;
 - Should identify the subject property, including a legal description;
- o Sample form notice:

PUBLIC NOTICE

John Doe, owner of 123 Some Street, wants to build an addition to his house. However, the addition would be only five feet from the side property line. The Zoning Ordinance requires that houses be a minimum of 10 feet from the side property line. In order to build the proposed addition, a Variation must be granted from the requirement of the Zoning Ordinance. Before a Variation can be granted, a public hearing must be held before the Zoning Board of Appeals.

John Doe has requested such a Variation for the property at 123 Some Street. **A public hearing will be held by the (city/village name) Zoning Board of Appeals on Thursday, January x, 200x, at 7:00 p.m. in the (public hearing site building address).** All interested persons are encouraged to attend and be heard, as this will be the only opportunity for public input on the application. The application for the Variation, Petition xx-xx, is available for inspection at the (city/village building address).

The subject property is zoned R-1 Residential District, and is legally described as follows:

LOT 2 OF SOME SUBDIVISION, SOME TOWNSHIP, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY X, XXXX AS DOCUMENT #XX-XXXXXX IN PLAT BOOK "X" AT PAGE XXX, IN DEKALB COUNTY, ILLINOIS.

P.I.N.: xx-xx-xxx-xxx.

The requested Variation is from Section xx of the (city/village name) Zoning Ordinance in order to allow a building to be located five feet from a side property line in lieu of the minimum sideyard setback of 10 feet required in the R-1, Residential District.

(city/village clerk name and title)

Published: (newspaper name and date)

B. PUBLIC HEARING PROCEDURE

1. Chairman: announce time and open public hearing
2. Introduce self as Chairman of Plan Commission/ZBA
3. Introduce petition (read from Notice of Public Hearing)
4. Explain purpose of public hearing: To gather all testimony, exhibits and facts related to the petition and afford all interested persons an opportunity to be heard
5. Explain that this is the only opportunity to be heard on the petition (if the matter is to be forwarded to the city council/village board, will NOT be another opportunity to ask questions or make statements)
6. Explain public hearing process:
 - a. Petitioner makes presentation (ask them to address the criteria from the Zoning Ord.);
 - b. First Plan Commission/ZBA members, then audience, given opportunity to ask questions of the petitioner;
 - c. Audience members given opportunity to make statements in favor, opposed, or ask questions;
 - d. Staff makes any statements or asks any questions;
 - e. Petitioner gets last word;
 - f. All persons speaking must be sworn in (a tape recording is being made of proceedings) identify themselves and give their address;
 - g. Plan Commission/ZBA will gather all input and prepare a written Report and Recommendation:
 - 1). If a Variation, ZBA makes decision
 - 2). If a Special Use, Zone Change or Text Amendment, Report is forwarded to city council/village board at its next regularly-scheduled meeting;
 - 3). Petitioner encouraged to attend those meetings, not to make presentation, but to be able to answer any questions council/board members may have
7. Acknowledge for the record all materials received:
 - a. Notice of public hearing, and publication date and newspaper;
 - b. Petitioner's application with attachments;
 - c. Staff Report (ask if the petitioner has received a copy);
 - d. Any other correspondence received, and ask staff if there is any other correspondence to enter;
8. Ask all people who will speak, or think they MIGHT speak or ask a question, to be sworn in:

“Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth?”
9. Ask petitioner to make presentation. Allow petitioner as much time as needed to make complete presentation. Ask Plan Commission/ZBA members and audience to hold questions until presentation is concluded:
10. Questions of petitioner:
 - a. Plan Commission/ZBA members first -- Remember, questions only;
 - b. Audience members next:

1. Have each person asking question identify themselves and give their address;
 2. Limit them to questions only. If they start to go into statements for or against, cut them off and point out that an opportunity for statements pro or con will be given later;
 3. Questions should be directed to Chairman, who then redirects them to appropriate person to answer;
 4. Do not allow questions to degenerate into exchanges between audience and petitioner, or audience with each other;
11. After all questions to petitioner are done, invite statements from audience:
 - a. Each speaker should identify self and give address;
 - b. After each person speaks, ask if there are any questions of the speaker from the petitioner, from other audience members, or from Plan Commission/ZBA members;
 - c. Take statements from audience in following order:
 1. Statements from all persons in favor of petition;
 2. Statements from all persons opposed to petition;
 3. Statements from persons neither in favor nor opposed;
 12. Ask final time if there are any statements from or questions of anyone who has spoken.
 13. Invite petitioner to make final statement.
 14. Announce that public input portion is closed, and open floor to deliberation by Plan Commission/ZBA members:
 - a. Members should avoid asking further questions, as any response given must be subject to cross-examination by any member of audience;
 - b. Discussion should focus on merits of the case and the specific criteria related to granting the petition.
 15. Call for motion to approve, approve with conditions, or deny the petition. Take vote and announce outcome.
 16. Announce that decision will be put in the form of a written Findings of Fact, which will be a document open to public review. If recommendation is forwarded to city council/village board, announce expected meeting where issue will be taken up, and remind audience that there will not be the opportunity for further input but that they are invited to attend the meeting and hear the proceedings.
 17. Thank everyone for their attendance and interest and close the hearing.

NOTE: A public hearing can be continued to another date and time, if the Commission/Board determines that such is appropriate. This does not require additional notice in the newspaper, but the date, time and location of the continued public hearing should be announced before the end of the first hearing.

C. PUBLIC HEARING “DOs and DON’Ts”

- o DO remember that, as Commission or Board, it is your hearing to run
- o DO lay out the procedure for the hearing at the start of the hearing, then stick to it
- o DO allow everybody to speak
- o DO require all people who speak to do so under oath
- o DO allow anyone and everyone who wishes to cross-examine anyone else who speaks an opportunity to do so. Do this after each person speaks
- o DO allow anyone and everyone who wishes to review an exhibit or piece of information that has been submitted an opportunity to do so
- o DON’T allow members of the audience and the petitioner to get into a back-and-forth exchange; all questions should be directed through the Chair
- o DON’T feel obligated to read letters into the public record; simply acknowledge that the letter has been received and that its contents will be read and factored into the decision

For public hearings on controversial and contentious issues:

- o DO advise audience that cheering and jeering is neither appropriate nor helpful to the proceedings;
- o DO allow equal time to opponents’ presentation as you do to the petitioner
- o DON’T set a time limit of two minutes or less for each person to speak; courts have held that this is not enough time. If there are a large number of people who wish to speak, allow each five minutes. If you set a time limit, DO stick to it
- o DON’T allow duplicative testimony; advise audience that, if the point they wish to make, or the question they wish to raise, has already been made, they need not repeat it. Similarly, if they only want to say that they are in favor or opposed, they need only indicate as much without need to explain themselves

3. DECISIONS ON ZONING ACTIONS

A. Findings of Fact:

1. Is a report that summarizes all testimony and exhibits from the public hearing. Is not required to be a verbatim transcript:
2. Should include:
 - a. Date, location, time of public hearing, and who is conducting it (ZBA);
 - b. Summary of petition (who is asking for what, where and why)
 - c. Reference to every speaker, whether applicant, expert witness, attorney or member of the public, by name and address, and summary of their questions/comments;
 - d. Summary of questions/comments from ZBA members;
 - e. Evaluation of criteria from zoning ordinance that applies to the type of request (criteria for granting variation, special use, zone change, etc.)
 - f. Record of decision/recommendation.
3. In the case of administrative review by the courts of a zoning action, the findings of fact is the key document that will be reviewed.

B. Taking Additional Input:

1. The public hearing is the place for input on a zoning action. The petitioner, members of the public and others should not be afforded an opportunity outside of the hearing for additional questions/comments/documents/exhibits;
2. This is a matter of due process -- input at the public hearing is given under oath, with an opportunity for cross-examination by all parties. If additional input is received by the decision-makers outside of the hearing, it can be construed as depriving other interested parties of due process;
3. If new data that was not considered at the public hearing surfaces before the city council/village board or ZBA makes a decision on the zoning petition, the public hearing can be re-opened;
4. Decision-makers must evaluate whether or not new information submitted after the close of the public hearing warrants re-opening the hearing;
5. Re-opening a public hearing does not require new public notice.

C. Referencing the Findings from the Hearing:

1. The ordinance granting a zoning action should reference the Findings of Fact from the public hearing as the basis upon which the decision is made;
2. The Findings of Fact should be referenced to and attached as an exhibit of the ordinance for the zoning action. This makes it clear that the decision is based upon the hearing;
3. Attaching the Findings of Fact also helps reduce the length of the ordinance, since the ordinance can simply state that the recommendation in the Findings of Fact are the conclusions of the city council/village board.

D. Sample Ordinances: Content and Form (see attached models)

FOR A VARIATION

STATE OF ILLINOIS)
)SS
CITY OF _____)

ORDINANCE 2004-XX

**AN ORDINANCE GRANTING A VARIATION FROM
SECTION XX OF THE ZONING ORDINANCE
FOR PROPERTY LOCATED AT 123 SOME ROAD**

WHEREAS, John Doe, owner of the property at 123 Some Road, has filed an application for a Variation to allow an addition to the existing house that will be set back five feet from the side lot line in lieu of the minimum setback of 10 feet required in the R-1, Residential District, the subject property being legally described as shown in Exhibit “A” attached hereto; and

WHEREAS, following due and proper notice by publication in the Daily Chronicle not less than fifteen (15) nor more than thirty (30) days prior thereto, and by mailing notice to all owners of property abutting the subject property at least ten (10) days prior thereto, the Zoning Board of Appeals of (city/village name) conducted a public hearing on (date), at which the petitioner presented evidence, testimony, and exhibits in support of the requested Variation, and xx members of the public testified in favor of the petition and xx in opposition thereto; and

WHEREAS, the Zoning Board of Appeals, having considered the evidence, testimony and exhibits presented has made its findings of fact and recommended that the requested Variation be approved, as set forth in the Findings of Fact of the Zoning Board of Appeals of (city/village name), dated (public hearing date), a copy of which is appended hereto as Exhibit "B"; and

WHEREAS, the (city council/village board) has considered the findings of fact and recommendations of the Zoning Board of Appeals, and has determined that granting the Variation to allow the building addition on the subject property would be consistent with the requirements established by Section xx of the (city/village name) Zoning Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE (CITY/VILLAGE NAME), ILLINOIS, as follows:

SECTION ONE: The Findings of Fact and Recommendation of the Zoning Board of Appeals of (city/village name), Exhibit "B" attached hereto, is hereby accepted, and the findings of fact set forth therein are hereby adopted as the findings of fact and conclusions of the (city council/village board).

SECTION TWO: Based on the findings of fact set forth above, a Variation from Section xx of the (city/village name) Zoning Ordinance is hereby granted for property located at 123 Some Road to allow an addition to the house on the subject property to be five feet from the side property line, said property legally described in Exhibit “A” attached hereto.

SECTION THREE: This Ordinance shall be in full force and effect upon its adoption by the

(city/village name), Illinois.

PASSED BY THE COUNTY BOARD THIS XTH DAY OF XX, 2004, A.D.

(mayor/president, city/village name)

ATTEST:

City Clerk

FOR A SPECIAL USE PERMIT

STATE OF ILLINOIS)
)SS
(CITY/VILLAGE NAME)

ORDINANCE 2004-X

**AN ORDINANCE GRANTING A SPECIAL USE PERMIT
FOR A (type of use)
ON PROPERTY COMMONLY KNOWN AS 123 SOME ROAD**

WHEREAS, John Doe, the owner of property located at 123 Some Road, has filed an application for a Special Use Permit to allow (description of special use) on the subject property, said property being zoned R-1, Residential District and legally described as shown in Exhibit "A" attached hereto; and

WHEREAS, following due and proper notice by publication in the Daily Chronicle not less than fifteen (15) nor more than thirty (30) days prior thereto, and by mailing notice to all owners of property abutting the subject property at least ten (10) days prior thereto, the Plan Commission of (city/village name) conducted a public hearing on (hearing date), at which the petitioners presented evidence, testimony, and exhibits in support of the requested Special Use Permit, and xx persons testified in favor of the petition and xx in opposition thereto; and

WHEREAS, the Plan Commission, having considered the evidence, testimony and exhibits presented at the public hearing, has made its findings of fact and recommended that the requested Special Use Permit be approved, subject to conditions, as set forth in the Findings of Fact and Recommendation of the Plan Commission of (city/village name), dated (hearing date), a copy of which is appended hereto as Exhibit "B"; and

WHEREAS, the (city council/village board of city/village name) has considered the findings of fact and recommendations of the Plan Commission, and has determined that granting the Special Use Permit to allow (brief description of special use) on the subject property is consistent with the requirements established by Section xx of the (city/village name) Zoning Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE (CITY COUNCIL/VILLAGE BOARD OF CITY/VILLAGE NAME), ILLINOIS, as follows:

SECTION ONE: The Findings of Fact and Recommendation of the Plan Commission of (city/village name), Exhibit "B" attached hereto, is hereby accepted, and the findings of fact set forth above are hereby adopted as the findings of fact and conclusions of the (city council/village board).

SECTION TWO: Based on the findings of fact set forth above, a Special Use Permit is hereby granted to allow (description of special use) on property located at 123 Some Road and legally described in Exhibit "A" attached hereto.

SECTION THREE: This Special Use Permit is subject to the following conditions:

1. list conditions of approval.

SECTION FOUR: This Ordinance shall be in full force and effect upon its adoption by the (city council/village board of city/village name), Illinois.

SECTION FIVE: Failure of the owners or other party in interest or a subsequent owner or other party in interest to comply with the terms of this Ordinance, after execution of such Ordinance, shall subject the owners or party in interest to the penalties set forth in Section xx of the (city/village name) Zoning Ordinance.

PASSED BY THE (CITY COUNCIL/VILLAGE BOARD OF CITY/VILLAGE NAME)
THIS XTH DAY OF XX, 2004, A.D.

(mayor/president of city/village name)

ATTEST:

City Clerk

FOR A ZONE CHANGE

STATE OF ILLINOIS)
)SS
(CITY/VILLAGE NAME)

ORDINANCE 2004-XX

**AN ORDINANCE APPROVING A ZONING MAP AMENDMENT
TO REZONE A X-ACRE PROPERTY LOCATED AT 123 SOME ROAD
FROM R-1, RESIDENTIAL TO B-1, BUSINESS**

WHEREAS, John Doe, the owner of the property located at 123 Some Road, has submitted an application for a Zoning Map Amendment the subject property, legally described as shown in Exhibit "A" attached hereto, to rezone the property from R-1, Residential District to B-1, Business District, said application being in accordance with Section xx of the (city/village name) Zoning Ordinance; and

WHEREAS, following due and proper notice by publication in the Daily Chronicle not less than fifteen (15) nor more than thirty (30) days prior thereto, and by mailing notice to all owners of property abutting the subject property at least ten (10) days prior thereto, the Plan Commission of (city/village name) conducted a public hearing on (hearing date) at which the petitioner presented evidence, testimony, and exhibits in support of the requested Zoning Map Amendment, and xx members of the public spoke in favor of the request and xx in opposition thereto; and

WHEREAS, the Plan Commission has considered the evidence, testimony and exhibits presented, and has made its findings of fact and recommended that the Zoning Map Amendment be approved, as set forth in the Findings of Fact and Recommendation of the Plan Commission of (city/village name), dated (hearing date), a copy of which is appended hereto as Exhibit "B"; and

WHEREAS, the (city council/village board of city/village name) has reviewed the exhibits at the aforementioned public hearing and has considered the recommendation of the Plann Commission, and has determined that the requested Zoning Map Amendment to change the zoning on the property located at 123 Some Road from R-1, Residential District to B-1, Business District is consistent with the findings required by Section xx of the (city/village name) Zoning Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE (CITY COUNCIL/VILLAGE BOARD OF THE CITY/VILLAGE NAME), ILLINOIS, as follows:

SECTION ONE: The findings of fact set forth above are hereby adopted as the findings of fact and conclusions of the (city council/village board of city/village name).

SECTION TWO: Based on the findings of fact and the recommendation of the Plan Commission of (city/village name), the property located at 123 Some Road and legally described as shown in Exhibit "A," attached hereto, is hereby rezoned from R-1, Residential District to B-1, Business District, and the Zoning Map of (city/village name) shall be Amended to reflect said zone change.

SECTION THREE: This Ordinance shall be in full force and effect upon its adoption by the

(city council/village board of city/village name), Illinois.

PASSED BY THE (CITY COUNCIL/VILLAGE BOARD OF CITY/VILLAGE NAME)
THIS XTH DAY OF XX, 2004, A.D.

(mayor/president of city/village name)

ATTEST:

City Clerk

E. Conditions of Approval:

1. Must be reasonably related to the zoning request;
2. Must be implementable:
 - a. Within the means of the petitioner to accomplish;
 - b. Within the means of the city/village resources to enforce or confirm;
 - c. Measureable;
3. Must be in a written document such as an ordinance.

F. Implementation:

1. Approval of zoning actions must be implemented, whether by a simple change to the zoning map, or follow-up on conditions of approval;
2. Records of zoning actions must be created and maintained -- someone, somewhere in the future will ask how an approval was given in the first place

Paul R. Miller, AICP
Director, DeKalb County Regional Planning Commission
January 5, 2004