



Michigan State University Extension Land Use Series

Check List # 6: For Processing a Zoning Appeal and Variance in Michigan

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This is a step-by-step procedure for planning, land use and zoning. This particular checklist (#6) is for administratively reviewing appeals and variances in Michigan. This checklist is designed to provide a list of steps – in order – which leads to a well-planned and zoned community. This outline is based on Public Act 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et. seq.*), and recommendations of Kurt H. Schindler, MSU Extension educator. This version of the checklists includes to the Michigan Zoning Enabling Act through February 12, 2008 (P.A. 12 of 2008).

There are also separate procedural checklists for performing other zoning and planning functions. They are listed in Appendix B.

The Michigan Zoning Enabling Act is a new statute that changes how various zoning procedures are done. The entire purpose of this act was to create a single set of procedures to follow regardless if zoning is being done in a city, village, township, or county. After July 1, 2006 (the effective date of the act) only the procedures in the Michigan Zoning Enabling Act should be used (and the following statutes must not be used any more). Even if local zoning has a different procedure, the procedures in the Michigan Zoning Enabling Act have to be used starting July 1, 2006.

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*“Thirty seven million acres is
all the Michigan we will ever have”*
William G. Milliken

This is a checklist was developed by experts on the topic(s) covered within MSU Extension. Its intent and use is to assist Michigan communities making public policy decisions on these issues. This work refers to university-based peer reviewed research, when available and conclusive, and based on the parameters of the law as it relates to the topic(s) in Michigan. This document is written for use in Michigan and is based only on Michigan law and statute. One should not assume the concepts and rules for zoning or other regulation by Michigan municipalities and counties apply in other states. In most cases they do not. This is not original research or a study proposing new findings or conclusions.

Within a year (July 1, 2007) local zoning has to be amended to reflect the procedures in the Michigan Zoning Enabling Act. This act replaces the following statutes. Only for matters that took place before July 1, 2006 should the old statutes be referenced:

- P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.201 et seq.) See MSU Extension Land Use Team's Land Use Series "Checklist # C2; For Adoption of a County Zoning Ordinance in Michigan".
- P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.271 et seq.) See MSU Extension Land Use Team's Land Use Series "Checklist # T2; For Adoption of a Township Zoning Ordinance in Michigan".
- P.A. 207 of 1921, as amended, (being the City and Village Zoning Act, M.C.L. 125.581 et seq.) See MSU Extension Land Use Team's Land Use Series "Checklist # M2; For Adoption of a City and Village Zoning Ordinance in Michigan".

For any step of this process, the Michigan State University Extension members of the MSU Land Use Team can assist with sample materials; coordinating efforts between the township, county, and the state; and providing guidelines.

This outline is not designed as a substitute for reading and understanding the Michigan Zoning Enabling Act. This outline is not a substitute for legal advice. There is no substitute for hiring an attorney. **Do not** attempt to adopt or amend an ordinance without an attorney.

It is **important** to document each step of the process in planning and zoning a community. Keep detailed minutes, affidavits of publication and mailing, open meeting notices, letters of transmittal, and communications all on file, so years from now they are still available.

This checklist is divided into three columns. The first column has a place to check when the task is done, and a place to check when the documentation has been placed in a permanent file. The second column is the step, or task, to complete in order to adopt a proper plan/zoning ordinance, or amendment to either. The third column is what should be included in a permanent file to document the work that has been done. Sometimes the middle column is further divided into two columns. The heading will indicate which one should be followed in your community's case. It is always a matter of doing one or the other, never both.

This check list is intended to be linear, with each step being done in order, and most requiring the previous step to be done before starting the next.

Checklist # 6;

This is the step-by-step process for processing an appeal (variance) in Michigan.

Check when task is done	Step, or Task	Copy in the permanent file
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 1. A demand for a zoning appeal is received, usually by the zoning administrator (but can be whomever the appeals board's general rules specify (§604(2), M.C.L. 125.3604(2)).)</p> <p>Appeals can be filed by (§604(1), M.C.L. 125.3604(1)):</p> <ul style="list-style-type: none"> ▪ a person aggrieved, or ▪ an officer, department, board, or bureau of the state or local unit of government. 	<p>The demand for appeal.</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 2. The zoning administrator (usually) reviews the demand for appeal to determine if it is complete:</p> <p>If the demand for appeal is complete, a time when the case is to be heard is scheduled, and the administrator prepares a staff report on the demand for appeal/variance.</p> <p>If the demand for appeal is not complete, it is returned to the applicant with a list of what is deficient.</p>	<p>The zoning administrator's review for completeness.</p> <p>Finding the demand for appeal is complete.</p> <p>Copy of list of deficiencies.</p> <p>The staff report.</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 3. The zoning administrator verifies what is sought is within the jurisdiction of the appeals board (§603(1), M.C.L. 125.3603)):</p> <ul style="list-style-type: none"> ▪ Dimensional variance ▪ Use variance ▪ Zoning Ordinance text interpretation ▪ Zoning map interpretation ▪ Appeal of an administrative order, requirement, decision or determination made by an administrative official or body charged with enforcement. ▪ Appeal of a special use/PUD permit (if specifically permitted by the zoning ordinance: § ____.) ▪ Other: _____; (if specifically authorized by the zoning ordinance: § ____. 	<p>Finding the demand for appeal is within the appeals board jurisdiction.</p>
<input type="checkbox"/> Task is done	<p>Step 4. The appeals board shall fix a reasonable time for a hearing of the appeal and the appeals board or zoning administrator prepares notices concerning the appeal (variance). (§604(5), M.C.L. 125.3604(5))</p>	

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Check when task is done	Step, or Task	Copy in the permanent file
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 5a. The notice shall include the following information:</p> <ul style="list-style-type: none"> ▪ Describe the nature of the request (§103(4), M.C.L. 125.3103(4)). ▪ Indicate the property(ies) which is(are) subject of the hearing (§103(4)(b), M.C.L. 125.3103(4)(b)). ▪ If the appeal involves less than 11 adjacent properties (§202(3), M.C.L. 125.3202(3)), then a listing of all existing street addresses within the property(ies) which is(are) subject of the appeal. (Street addresses do not need to be created and listed if no such addresses currently exist. If there are no street addresses another means of identification may be used (§103(4)(b), M.C.L. 125.3103(4)(b)). ▪ A statement of when and where the issue will be considered (§103(4)(c), M.C.L. 125.3103(4)(c)). ▪ An indication of when and where written comments will be received concerning the issue (§103(4)(d), M.C.L. 125.3103(4)(d)). <p>The notices shall be given not less than 15 days before the date of consideration for approval (§103(3), M.C.L. 125.3103(3)). Notices shall be:</p> <ul style="list-style-type: none"> ▪ Given to the person filing the appeal. ▪ Published in a newspaper of general circulation in the local unit of government (§103(1), M.C.L. 125.3103(1)). (Note: “General circulation” means a newspaper which has a paid subscription, and does not mean a free-distribution advertiser or similar type publication.) If the appeal does not involve a specific parcel of property, notice only has to be published in a newspaper of general circulation in the local unit of government and person filing the appeal. ▪ If the appeals case involves a specific parcel of property(ies) (§604(5), M.C.L. 125.3604(5)), then send the notice by mail or personal delivery to owners of property(ies) for the land which is the subject of the notice/hearing/appeal/variance (§103(2), M.C.L. 125.3103(2)). ▪ If the appeals case involves a specific parcel of property(ies) (§604(5), M.C.L. 125.3604(5)), then send the notice by mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property(ies) which is the subject of the notice/hearing/appeal/variance regardless of whether the owner and property are located in the zoning jurisdiction or not. (§103(2), M.C.L. 125.3103(2)) ▪ If the appeals case involves a specific parcel of property(ies) (§604(5), M.C.L. 125.3604(5)), then send the notice by mail or personal delivery to one person occupying each structure, unit or spatial area within 300 feet of the property(ies) which is the subject of the notice/hearing/appeal/variance regardless of whether the structure and occupant are located in the zoning jurisdiction or not. If a structure contains more than four dwelling units, notice shall only be sent to the manager to be posted near the main entrance. (§103(2), M.C.L. 125.3103(2)) 	<p>Copy of notices of hearing,</p> <p>affidavit notices were delivered,</p> <p>affidavit of publication,</p> <p>list of who notices were sent to.</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 5b. Appeal is for a dimensional variance or use variance. Go to step 6.</p> <p>Step 5b. Appeal is seeking an interpretation of the zoning ordinance (text or map) or an appeal of an administrative decision.</p> <p>In addition to whom the notices are sent to (step 5a) the notice shall also be sent to:</p> <ul style="list-style-type: none"> ▪ the person requesting the interpretation (§604(5), M.C.L. 125.3604(5)). 	<p>Copy of notices of hearing,</p> <p>affidavit notices were delivered,</p> <p>affidavit of publication,</p> <p>list of who notices were sent to.</p>

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Check when task is done	Step, or Task	Copy in the permanent file
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 6. The appeal stays all proceedings in furtherance of the action appealed, unless the body or officer from whom the appeal is taken certifies to the zoning board of appeals that by reason of facts stated in the certificate, a stay would, in the opinion of the body or officer, cause imminent peril of life or property, in which case proceedings may be stayed by a restraining order issued by the zoning board of appeals or a circuit court. (§604(3), M.C.L. 125.3604(3))</p>	<p>The certificate.</p> <p>Appeals Board minutes.</p> <p>Restraining order.</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 7. An appeals hearing is held. A party may appear in person, by agent, or attorney. (§604(6), M.C.L. 125.3604(6))</p>	<p>Minutes of the appeals hearing</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 8. After the hearing the appeals board deliberates on the case. Such deliberation should be based on the following standards. The standards to base a decision concerning a dimensional variance (nonuse variance) are “practical difficulties” (§604(7), M.C.L. 125.3604(7)). These are court-established standards that must be followed. See Part II “Sample checklist to guide decisions on Dimensional Variances” in <i>Michigan Zoning Guidebook: for Citizens and Local Officials</i>. Additional standards may be in the zoning ordinance (§604(7), M.C.L. 125.3604(7)).</p> <p>The standards to base a decision concerning a use variance are “unnecessary hardship” (§604(7), M.C.L. 125.3604(7)). These are court-established standards that must be followed. See Part II “Sample checklist to guide decisions on Use Variances” in <i>Michigan Zoning Guidebook: for Citizens and Local Officials</i>. Additional standards may be in the zoning ordinance (§604(7), M.C.L. 125.3604(7)). Standards for ordinance interpretation are not so formal. For one set of sample standards see Part II “Sample Checklist to Guide Decisions on Ordinance Interpretation” in <i>Michigan Zoning Guidebook: for Citizens and Local Officials</i>.</p>	<p>Minutes of the appeals board</p> <p>Copy(ies) of any check lists used.</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 9. The motion, or minutes of the meeting where the case was decided shall include:</p> <ul style="list-style-type: none"> ▪ The decision (the appeals board may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination and may issue or direct the issuance of a permit (§604(6), M.C.L. 125.3604(6)); for variances the appeals board may grant a variance relating to the construction, structural changes in, equipment, or alternation of buildings or structures, or the use of land, buildings, or structures; so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done (§604(7), M.C.L. 125.3604(7))); ▪ Reasons (conclusions) for the decision; ▪ A findings of fact upon which the reasons are based; ▪ (Optional) conditions of approval (§604(7), M.C.L. 125.3604(7)). 	<p>Minutes of the appeals board meeting which contains this motion.</p>

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Check when task is done	Step, or Task	Copy in the permanent file
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 10. Vote on a Use Variance.</p> <p>To grant a use variance, there shall be a concurring vote of $\frac{2}{3}$ of the members of the appeals board. The zoning ordinance shall specify if and when use variances can be granted (§604(7), M.C.L. 125.3604(7)).</p> <p>(The authority to grant use variances is limited to:</p> <ul style="list-style-type: none"> ▪ cities and villages; ▪ townships and counties that, as of February 15, 2006, had a zoning ordinance provision that expressly authorized granting use variances (e.g., uses the phrase “use variance” or “variances from uses of land”); or ▪ townships and counties that actually granted a use variance(s) before February 15, 2006. <p>Any local unit of government (including cities and villages) may choose to not issue use variances.) (§604(8)-604(9), M.C.L. 125.3604(8)-125.3604(9)).</p> <p>Step 10. Vote on all other Appeals Board Actions.</p> <p>To reverse an administrative decision, make an interpretation, or grant a nonuse variance there shall be the concurring vote of a majority of the members of the appeals board. (§603(2), M.C.L. 125.3603(2))</p>	<p>Minutes showing the vote, and quorum present, or at least $\frac{2}{3}$ present.</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 11. If a variance is approved with conditions, arrangements should be made for a performance guarantee (cash deposit, certified check, irrevocable letter of credit, or surety bond acceptable to the local unit of government) which covers the estimated costs of the required improvements for the special use.</p> <p>The performance guarantee is deposited with the clerk of the legislative body.</p> <p>There shall be procedures for rebate of any cash deposits in proportion to the ratio of work completed. (§505(1), M.C.L. 125.3505(1))</p>	<p>Copy of performance guarantee, or record of deposit.</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 12. The appeals board’s decision is final. The decision shall be in writing and shall be:</p> <ul style="list-style-type: none"> ▪ certified; or ▪ reflected in its approved minutes. 	<p>Certified written decision,</p> <p>OR</p> <p>Approved minutes.</p>
<input type="checkbox"/> Task is done or time has passed.	<p>Step 13. Within 30 days of the appeals board’s decision (certified in writing or in an approved copy of its minutes, step 11) it may be appealed by any aggrieved party to circuit court for the county in which the property is located (§606(1), M.C.L. 125.3606(1)).</p> <p>The circuit court’s decision may be further appealed to the court of appeals (§606(3), M.C.L. 125.3606(3)).</p>	

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Appendix A - Glossary

The following terms are used in this publication, and have the following specific meanings.

§ means the section number of Public Act 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 et. seq.),

Chief administrative official means the manager or other highest nonelected administrative official of a city or village.

Chief elected official means the mayor of a city, president of a village, supervisor of a township, or chair of a county board of commissioners.

Ex officio member means a member of a planning commission, with full voting rights unless otherwise specified by city or village charter, by virtue of holding another office.

Legislative Body means the county board of commissioners of a county, the board of trustees of a township, the council of a city or village, or other similar duly elected representative body of a county, township, city, or village.

Local Unit of Government means a county, township, city, or village.

Municipality means a city, village or township.

Plan means any plan adopted under the Michigan Planning Enabling Act or one of the three former planning acts, regardless of what it is titled.

Planning Commission means the local unit of government planning commission created under the Michigan Planning Enabling Act or one of the three former planning acts, regardless of what it is titled. In a few communities it may still be a “zoning board” (townships) or “zoning commission” (city and villages). Has used here, the use of the term “planning commission” includes all of these terms.

Zoning jurisdiction means the area encompassed by one of the following:

- legal boundaries of a city or village for a city or village respectively;
- legal boundaries of a township outside the limits of a city(ies) and village(s) for a township;
- legal boundaries of a county outside the limits of a city(ies) and village(s); or the county including any city(ies) and village(s) which has adopted the county plan (See §209, M.C.L. 125.3209).

Appendix B – Related Publications

There are also separate procedural checklists for performing other planning and zoning functions. They are:

- *Land Use Series*: “Check List #1A; To Create a Planning Commission or Amend an Existing Planning Commission Ordinance.”
- *Land Use Series*: “#1B; Sample Ordinance to create a planning commission”
- *Land Use Series*: “#1C; Summary of changes between new Michigan Planning Enabling Act and the three old planning acts: Municipal Planning Act, County Planning Act, and Township Planning Act.”
- *Land Use Series*: “Checklist #1D; Steps to Transition an Existing Planning Commission to Comply with the Michigan Planning Enabling Act”

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- *Land Use Series*: “#1E; Sample Bylaws for a planning commission.”
- *Land Use Series*: “Checklist #1F; What Should be in a Master Plan”
- *Land Use Series*: “Checklist #1G; For Adoption of a Plan in Michigan”
- *Land Use Series*: “Checklist #1H; The Five Year Plan Review.”
- *Land Use Series*: “Checklist #1I; For Adoption of an Amendment to a Plan”
- *Land Use Series*: “Checklist #1J; Adopting and Updating a Capital Improvement Program”
- *Land Use Series*: “Checklist #1K; Review of Infrastructure and Public Capital Expenditure”
- *Land Use Series*: “Checklist #1L; Adoption or Amendment of Subdivision Rules”
- *Land Use Series*: “#1M; How Governments Make Submissions on a Neighbor’s or County’s Proposed Plan”
- *Land Use Series*: “#1N; How a Planning Commission Should Respond to Submissions”
- *Land Use Series*: “#1O; Sample joint Planning Commission Ordinance and Agreement”
- *Land Use Series*, “Checklist #2; for Adoption of a Zoning Ordinance in Michigan.”
- *Land Use Series*, “Checklist #3; for Adoption of an Interim Zoning Ordinance in Michigan.”
- *Land Use Series*, “Checklist #4; for Adoption of a Zoning Ordinance Amendment (Including PUD) in Michigan”
- *Land Use Series*, “Checklist #5: for Processing a Special Use Permit (Including PUD) Application in Michigan.”
- *Land Use Series*, “Checklist #6: for Processing a Zoning Appeal and Variance in Michigan.”
- *Land Use Series*, “#7: Sample Zoning Board of Appeals Rules of Procedure”
- *Land Use Series*, “#8: Sample Planning Commission and Zoning Board of Appeals Code of Conduct”

All of these are available at www.msue.msu.edu/lu/.