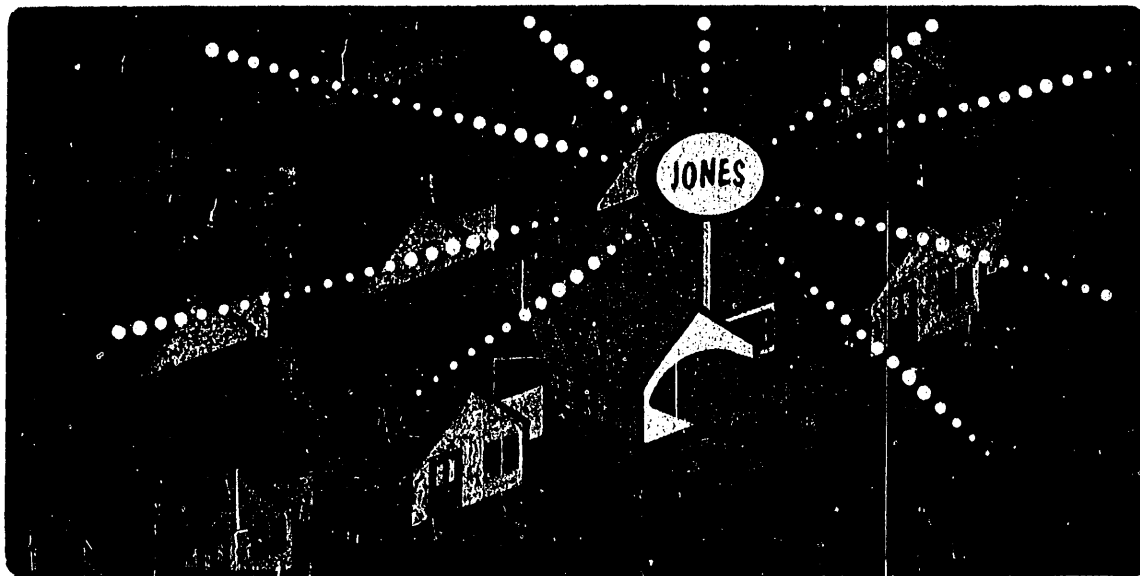


# Getting the zoning board to see it your way



***The board's job is to uphold local law, but it will listen to reasons for making changes. If you plan to do battle, bone up on what's likely to persuade it.***

IN A WAY, zoning is a system for maintaining the status quo. It puts similar activities together in suitable locations, thereby protecting you against, say, having a gravel-loading plant move in as your next-door neighbor.

Most people think that the zoning system is a pretty good thing and they're for it. Yet somebody is always trying to tinker with it. Perhaps someone spots an opportunity to turn an honest dollar by draining Jones Farm Pond and replacing it with 140 Tudor townhouses. Or it occurs to someone to open a beauty salon at home. Or someone else thinks it would be nice to extend his porch two feet beyond that invisible setback line in the front yard.

Such endeavors generally conflict with zoning rules, so before the interested parties can go ahead, they have to get the zoning changed or obtain special permission to proceed despite the existing rules. They often succeed if nobody objects or if nobody objects effectively.

The body with the power to grant zoning changes and exceptions is the local zoning board. Before it says yea or nay, however, it must hold public hearings. It is at these hearings that those who want changes or exceptions and those who oppose them get to have their say.

Whichever side you're on in one of these confrontations, the outcome could depend on how well you present your position when you're before the board.

## **All that the board can do**

The zoning board, you should understand, has a rather narrow purview. It is not in business to right wrongs, reward virtue or maximize values. Its sole task is to administer the zoning ordinance as enacted. The issue it must decide in each case to come before it is, Does the zoning ordinance permit this proposal or forbid it?

This means that you can't expect to win the board's consent simply by arguing that justice is on your side or that esthetic considerations favor your plans or that there is an economic gain at stake. Any or all of those considerations may be present, but they are not relevant. What counts is conforming with the requirements of the ordinance.

The particular arguments you might put forward depend, of course, on what kind of dispensation you seek. Most zoning board cases are requests for what are known as special exceptions or variances, which are not the same thing.

A special exception permits some land use or type of building that, although not usually sanctioned in the zone, is nevertheless provided for in the ordinance under certain conditions. That beauty salon, for instance, might be generally forbidden in its residential zone but be

allowable if the residence is next to a commercial zone.

A variance, on the other hand, authorizes an outright departure from a zone's requirements, a bending of the rules in situations in which applying the rules strictly would be unduly harsh. That man who wished to enlarge his porch, for instance, might win a variance to do it if he could show that the peculiar size and shape limitations of his property warranted the special consideration he seeks.

Two other types of cases—appeals and rezonings—are much less frequent and considerably more complicated. In an appeal the applicant begs relief from a zoning rule that he feels has been improperly or mistakenly applied to his property. A rezoning classifies land from one zoning category to another, as when property is switched from residential to commercial use or from single-family residential to multifamily residential. Usually it is real estate developers who seek rezonings. Big sums of money can ride on the outcome of rezonings, and sometimes they ignite community fireworks.

#### Who will speak for you?

If you are to appear before a zoning board either as an applicant or to oppose somebody else's application, begin your preparation by reading the zoning ordinance itself, then the application to be considered. Those two documents are basic to the case and must be basic to your argument.

As you ponder your approach, you may wonder whether speaking for yourself is such a smart thing to do. Wouldn't it be better to get an expert to speak for you or to get organized groups to back you up or at least to hire a lawyer?

Zoning board hearings are not legal proceedings in the sense that court trials are, so there is nothing wrong or improper about doing your own talking. Yet a lot of people who try it harm their own cases, through ineptness or too single-minded a concern for their own interest or by introducing controversial issues

A competent attorney could avoid such blunders as well as provide important help in mapping strategy, bringing out the most persuasive points, cross-examining witnesses if necessary and making an effective summation. He would also take care to lay groundwork for a possible

appeal later if it becomes necessary.

Expert witnesses may be useful, too, if they are truly expert. Their credentials will be scrutinized in open hearing. You are better off with a concerned layman speaking for you than an expert whose credentials don't impress the board.

Organizing a public outcry has its dangers, too. It is one thing for a broad-based community organization to come in, explain whom it represents and why it advocates or opposes a particular proposal. It is something else to stage a parade of repetitive witnesses or to pack a hearing room with a demonstrative throng. The board is not supposed to swing with public sentiment and may resent an effort to sway it in this way.

The late Charles P. Mills, a 30-year veteran of zoning boards in Pennsylvania whose *Meet Your Zoning Hearing Board* is about the only extant handbook for laymen, said the constant question in the minds of board members is why, why, why? "The board is not overly concerned with the fact that one is for or against an application," he said. "They want to know why. The reasons given have to have a legal bearing on the case." And the worst you could do, he wrote, is to overact, speechify, deal in personalities or acrimony, shout, harangue or otherwise behave in ways calculated to impress an audience or intimidate the board.

#### Some winning arguments

If those are the worst sins you could commit, what would be the most potent arguments you could offer?

Whether you're for or against a proposed change, probably your most powerful argument would be a plea of undue hardship. Note, though, that being prevented from making as much money as possible is not necessarily undue hardship. But being denied some use of your property that your neighbor freely enjoys with his is undue hardship.

Another powerful argument you might muster is that the change would or would not damage community safety, morals or general welfare.

A few years ago two Georgians, Prof. Nicholas Ordway of Georgia State University and William C. Weaver, an Atlanta real estate consultant, studied the effectiveness of arguments fielded in several hundred rezoning cases. These were not cases

involving minor variances and exceptions but cases involving the rezoning of substantial parcels of land.

In the 360 cases in which rezoning was contested by the community, they found, the most successful arguments for rezoning were stimulation of the local economy, insignificant effect on traffic, a likelihood of commercial success and the support of affected communities. Arguments that implicitly threatened dire consequences if the rezoning was not granted were the least successful.

The most effective arguments put forth by those who opposed rezonings were that the proposed changes were inconsistent with existing land uses or the master plan; that the changes sought to gain a private profit at community expense; or that they constituted "spot zoning"—small-scale revisions that would confer preferential benefits on the applicants. The most frequently used opposition argument was that the residential character of the neighborhood must be preserved. This argument prevailed 73% of the time. The study found only one surefire opposition argument, adverse effect on neighborhood restoration efforts. It came up in only 18 cases but was 100% successful.

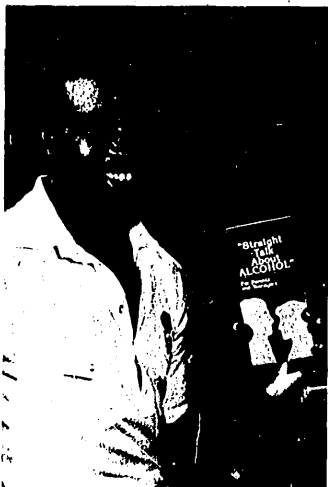
The same study also suggested what may be the very best way of all to get your way with the zoning board. It is to avoid asking for anything that anyone would object to. Of the 701 rezoning applications studied, 70% of those that had no opposition were approved. When there was opposition, the win ratio sank to 43%. □



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## *New kinds of board games*



***They're for people who like games that make them think rather than ones that are mostly luck.***

IF ELECTRONIC GAMES turn you off but you refuse to pass Go and collect \$200 one more time, you may have given up on games. Don't. There are some new kinds that may surprise you. Although luck is still a factor in most of them, they offer entertainment for those who prefer exercising their own skill rather than risking everything on a roll of the dice.

The games aren't cheap, especially compared with what you paid for the games now gathering dust in your closet. But they're a bargain when you consider the current cost of a night on the town. Any one of them could improve an evening spent around a bowl of popcorn at the kitchen table in the company of a few friends.

You probably won't see these games advertised on TV or featured in many toy stores. Their developers tend to be individuals or small companies, so some games are available only by mail. You may find others in the stationery or toy departments of better department stores, in hobby shops and in a few bookstores.

**Strike Price.** This is a good game to invest in before you try the real options market. Its young designer was inspired by his economics classes at Columbia University to try to simulate the mechanics of stock option trading. The brokerage firm of Paine Webber was so impressed with the results that it bought 1,000 of the games to use as gifts for customers and to train brokers. The board game can be enjoyed by those with no experience in stock option trading, but it was "designed to challenge the skills and strategies of the shrewdest

investor." You accumulate assets until one player completes one year—four turns around the board. The player with the highest net worth wins.

□ Two to five players, age 14 and up. Major stores. Mail order: The Willem Co., P.O. Box 4, Madison, N.J. 07940. \$25 plus \$2.50 postage.

**The Farming Game.** Idealists tired of city smog envision the answer to it all as a rocking chair on the front porch from which to view the golden sunset and their very own 40-acre spread. The designer of this game learned through experience that farming—weekend or otherwise—means 12-hour workdays spent bumping around on a tractor seat. There's a lot of chance in farming (the weather, for one thing), so dice and Farmer's Fate cards play a major role in this game. A few lucky rolls of the dice may make you temporarily prosperous, but if your judgment has been poor, you're not likely to end up with \$250,000. That's what it takes to turn your weekend labor of love into a profitable full-time operation. Each turn around the board represents a year in Washington's Yakima Valley, where the family farm can produce a wide variety of crops. The game is relatively easy to play but realistic enough that some schools of agriculture use it to teach farm economics.

□ Up to six players, age 10 and up. Mail order: The Weekend Farmer Co., P.O. Box 896, Goldendale, Wash. 98620. \$14.95 ppd.

**Limit Up.** The name refers to the daily price movement restrictions some of the nation's ten commodity exchanges impose on commodity