THE ZONING BOARD OF APPEAL:
A STUDY OF ITS ROLE IN THE
IMPLEMENTATION OF MUNICIPAL PLANNING POLICY
IN BRITISH COLUMBIA

by

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We accept this thesis as conforming to the
required standard.

THE UNIVERSITY OF BRITISH COLUMBIA

April, 1966
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Date April, 1966.
ABSTRACT

Zoning is a municipal land use control adopted to protect the public health, safety, general welfare and to provide the economic, social and aesthetic advantages resulting from the orderly planned use of available land. The concept of zoning has changed from a simple restriction to certain uses of land, to a key technique in the implementation of municipal planning policy. Logically the progress of a municipal plan would depend on how strictly its zoning by-law and other regulations are enforced; however, in some instances the strict enforcement of these regulations may cause undue or unnecessary hardship to the owner of a property.

Just as the Chancellor's Courts arose in England in order to provide individual justice in cases where the harsh and universal mandates of the common law caused obvious hardship, the Zoning Board of Appeal has been created in order to provide flexibility in the administration of the zoning by-law, where its strict enforcement would cause undue or unnecessary hardship.

Zoning enabling legislation provides some standards which are intended to guide a Zoning Board of Appeal in its operation; however the statutory standards specified under
the enabling legislation for determination of "undue or unnecessary hardship" and the directions for issuance of the "Notice of Hearing" are vague. The enabling legislation does not indicate the details to be included in the "Notice of Hearing" or the details of information required in a "Notice of Appeal". In addition to the deficiencies of the legislation there generally exists an inadequate relationship between a Zoning Board of Appeal and its respective municipal planning department. The members of the Board are not supplied with adequate information about the zoning and planning objectives of the municipality. They do not feel concerned about such information and tend to confine themselves to the zoning by-law and to make decisions without full understand of the planning context; as such, their decisions tend to be inconsistent with the zoning and planning objectives of the municipality.

The hypothesis is advanced that "a positive statement of zoning objectives and planning principles together with a uniform set of procedures to be followed by the Zoning Board of Appeal is necessary for effective implementation of municipal planning policy".

Following a review of the traditional and contemporary concepts of zoning and planning, a Case Study is conducted to explore reasons for inconsistencies in the decisions of the
Zoning Board of Appeal. For the Case Study three Zoning Boards of Appeal in the Vancouver Metropolitan Area of British Columbia are selected. The conclusions drawn from the Case Study together with observations based on a review of the contemporary experience provide evidence that members of the Zoning Boards of Appeal are not provided with a positive statement of zoning objectives and planning principles. Because of ambiguities in the enabling legislation and lack of definition of standards and format, every Zoning Board of Appeal tends to follow inconsistent procedure in its operation. It is also observed that the members of the Zoning Boards of Appeal are not appraised of the potential impact of their decisions, a situation which can work both ways, that is, it may help in the implementation of municipal planning policy or alternatively it may cause obstructions by granting incompatible relaxations.

Investigation of the hypothesis has provided a needed focus in reviewing the position of the Zoning Board of Appeal in the implementation of municipal planning policy. It is concluded that the hypothesis appears to be a reasonable and practical solution for making the Zoning Board of Appeal an effective tool in the implementation of municipal planning policy. Certain feasible legislative and administrative improvements are recommended and a method of implementation
of these recommendations at the provincial and municipal levels of government is suggested.
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CHAPTER I

THE ROLE OF ZONING BOARDS OF APPEAL
IN THE IMPLEMENTATION OF
MUNICIPAL PLANNING POLICIES

The growth of communities into large cities has necessitated the adoption of detailed and complex legislation in planning the use of land. The dangers of disease, crime, delinquency, fire, and injury from traffic, are rapidly multiplied as the housing, business, and industry of large cities absorb the open space which formerly insulated people against these dangers. Recognizing these problems created by the concentration of people, there has evolved the concept that people have the right to protect themselves against these and other similar hazards by long-range planning and by developing techniques for implementing these plans in order to obtain an environment conducive to urban living. Before the adoption of modern zoning laws, at the beginning of the twentieth century, the owners of property were restricted in the use of their property only by prohibition of land uses recognized by the common law or statute as detrimental to the rights of the public. Those interested in the encouragement of planning, saw zoning as a legal tool for effectuating a rational land use pattern for a community. The courts concomitantly have built up a
body of case law recognizing planning as a legal basis for modern zoning, however, "the general principles of law with respect to zoning by-laws are that they must be reasonable and not arbitrary or discriminatory."\(^2\) It has been the general consensus that while the by-laws should have primary consideration for the "health, safety, morals, comforts, conveniences and welfare of the community"\(^3\) these should not cause unnecessary hardship to any individual. The Zoning Boards of Appeal have emerged to protect the interests and rights of the individual.

I. USEFULNESS OF THE ZONING BOARDS OF APPEAL

Zoning may be defined simply as a legal administrative device whereby a municipality divides its territory into a number of districts and applies to each district a number of regulations to control the use of land, the height and bulk of buildings, and the land coverage. The first comprehensive zoning plan, embodying these three basic types of controls, was adopted by New York City in 1916.\(^4\) Since then the practice of zoning has become established as a normal municipal function. It is employed as a key technique in the implementation of municipal planning policies.

Logically achievement of the goals of a municipal plan depend directly on how strictly the municipality's zoning
by-law or other techniques of implementation are enforced. The increasing complexity of modern living and the desire to raise standards of development in North America have resulted in the use of zoning by-laws which have become so complex that it is practically impossible to draft zoning by-laws which cover all ramifications of planning concepts and still avoid unnecessary hardship in exceptional cases. Although the by-laws are intended for the public good it is generally accepted that no individual should be made to suffer unnecessary hardship for the public good. To safeguard the interests of every individual from unnecessary hardship the American courts have held that when a city adopts a zoning ordinance it must also establish a Zoning Board of Appeal to carry out the spirit and intent of the law under which it creates such zoning ordinance. In Canada, the provinces have included this mandatory requirement in the relevant enabling legislation under which necessary power is delegated to the municipal councils to adopt a zoning by-law.

The British Columbia Municipal Act as well as the Vancouver Charter, provides for the establishment of Zoning Boards of Appeal with the inherent intention that "the imposition of manifest injustice or unnecessary hardship be prevented." These Boards function as quasi-judicial bodies and hear and determine appeals arising out of interpretation of the zoning by-laws or any portion thereof. They also deal
with matters concerning restrictions on structures constituting non-conforming uses, and restrictions on the repair of damaged buildings having non-conforming uses.

Neither the Municipal Act nor the Vancouver Charter explains the concepts of zoning or planning underlying the municipal planning policies, also they do not provide any guide to interpretation of the term "unnecessary hardship" upon which most of the relaxations granted by the Zoning Boards of Appeal are justified. The Boards' members are generally neither conversant with the planning process, nor proficient in the interpretation of laws. The result is that decisions are made without full understanding of the context, and as such tend to be inconsistent with municipal zoning and planning objectives as well as rules of natural justice and judicial review. In this respect the implementation of municipal planning policies is to a great extent dependent on the proper administration of the Zoning Boards of Appeal.

The Hypothesis.

Every scientific enquiry requires the formulation of a hypothesis (or hypotheses) which defines the scope and frame of reference of the study. Thus defining and testing a hypothesis ensures the objectivity of the study. Subsequent to the formulation of a hypothesis, the objective is to test
it, normally empirically, with the ultimate purpose of establishing its validity.

The hypothesis of this thesis is that "a positive statement of zoning objectives and planning principles together with a uniform set of procedures to be followed by the Zoning Board of Appeal is necessary for effective implementation of municipal planning policy."

II. OBJECTIVES OF THE STUDY

The primary objective of this thesis is to present not only a critical review of contemporary concepts of zoning and planning and their administration, but also to present an analysis of what appear to be dominant features of the Zoning Boards of Appeal in the Vancouver Metropolitan Area. The intention is not only to determine the potential usefulness of the Zoning Boards of Appeal as a tool for dispensing justice in cases arising because of undue or unnecessary hardship caused to some individuals by the enforcement of zoning by-law or subdivision regulation of municipal planning policy. One method of determining this potential usefulness is to utilize a case study. This should identify the constitution and jurisdiction of the Zoning Boards of Appeal; measure their standards of judicial review; determine consistency with accepted zoning concepts and the municipal planning policies; and identify the causes of inconsistencies in administration
of Zoning Boards of Appeal. It is suggested that it is only by such an analysis that one can appreciate the usefulness of the Zoning Boards of Appeal and develop recommendations to make these Boards function more efficiently in granting relaxations which are complementary to municipal planning policies, and which thus indirectly help in the implementation of municipal planning policies.

III. RELATIONSHIP OF THE FUNCTIONS OF THE ZONING BOARDS OF APPEAL TO COMMUNITY & REGIONAL PLANNING

Sound community planning involves the coordination of manifold activities and the orderly arrangement of space for their proper functioning. It involves the adjustment of these activities for better service to the community as a whole, as well as for the highest possible satisfaction of the needs of the private individual in our free society. Planning is the process by which an attempt is made to provide for present and future social and economic needs in a more orderly fashion and in this respect it is much broader in scale than the conventional idea of correcting errors through the use of police power. Community Planning, in the modern sense, involves something more than a mere attempt to avoid the evil of unplanned, haphazard development of the community. It is a positive guide both to community renewal and to new growth and expansion.
The governmental administration unit through which community planning occurs is the municipal council which is delegated the authority to legislate on local matters. It is through the use of this authority to promote the general welfare of the community as well as the public health and safety that use of land is regulated through zoning, subdivision control and other planning measures. Zoning is perhaps the most important control device and has two primary functions: to control the use of land and buildings; and to regulate size and shape of buildings in relation to each other.

In devising and applying a zoning by-law a planner is confronted with several problems. Of these the drafting of a zoning by-law is most critical. It must deal with all land uses and control of improvements in a manner which will avoid difficulties of inequitable enforcement and yet aid in the implementation of municipal land use control and planning policies for the public good. It is generally accepted that no individual should suffer unnecessary hardship for the public good. To ensure the protection of the individual's rights one has the right to appeal to the Zoning Board of Appeal for relaxation from the strict enforcement of the zoning by-law. These Boards have limited power and jurisdiction, and the majority of their members hardly possess the training or experience needed to relate each request to the highly technical criteria for judging variations in relation
to the overall requirements of the municipal plan. One variation tends to establish precedent for a well-grounded request for subsequent relaxation. This leads to the undermining of the effectiveness of the zoning by-law. These circumstances are aggravated both by ambiguities in the zoning by-law and by the lack of proper instructions to the members of the Zoning Boards of Appeal.

For successful implementation of municipal plans the community planner depends on effective enforcement of accepted regulations through the zoning by-law. It is suspected that the Zoning Boards of Appeal, by acting arbitrarily or without any knowledge of the municipal planning policy, can in some cases hamper the implementation of municipal planning policies. These Boards can on the other hand help in the implementation of municipal planning policies if they make decisions with due consideration to the consequences of the relaxations granted by them. It is therefore considered that a study of the relative effectiveness of the Zoning Boards of Appeal would be of great significance to community planning. Implementation of municipal planning policies is dependent on efficient enforcement of the zoning by-law, which itself is dependent on action of the Zoning Boards of Appeal.

IV. ASSUMPTIONS

It is assumed that every Zoning Board of Appeal
operating under uniform enabling legislation functions under similar circumstances, or in other words, experiences similar advantages and disadvantages in its operation. Since a Zoning Board of Appeal does not make written decisions to indicate the reasons or basis for its decisions, it is assumed that the basis of these decisions or the criteria used in reaching these decisions is reflected in the basic attitudes of the members of the Zoning Boards of Appeal, that is, in their conception of the purpose of the Board, and in their expression of the way in which they feel this purpose should be accomplished.

V. DEFINITIONS

In investigating the stated hypothesis, certain specific meanings have been assigned to particular terms. Although there may be some objection to the use of the word "uniform" related to procedure, because of unusual local problems requiring unique solutions, nevertheless the concept of a "uniform set of procedures" is used here to mean the development of a uniform set of criteria which may be used to evaluate each individual situation in a consistent manner.

The term "unnecessary hardship" does not lend itself to a precise definition, and has not been satisfactorily documented in any reported decisions of a North American court. However the following condensation from numerous court deci-
The application of the unnecessary hardship doctrine is not governed solely by the size of the area or particular piece of property upon which unnecessary hardship is imposed. No single factor determines what constitutes unnecessary hardship, but all relevant factors, when taken together, must indicate that the property affected cannot reasonably be put to a conforming use because of the limitation imposed upon it by reason of the classification in which it is placed in terms of the zoning by-law.

In this thesis a "district municipality" or "district" means any area incorporated or re-incorporated as a "township or district municipality" under the Municipal Act of the Province of British Columbia, and a "city municipality" or "city" means a city municipality incorporated or re-incorporated under the Municipal Act. However the City of Vancouver does not fall into this definition because it is incorporated under a special charter.

Here "enabling legislation" means any legislation enabling "persons or corporations to do what they cannot do otherwise." The word "ambit" means "the limits or circumstances" of jurisdiction and "jurisdiction" means an authority by which judicial or quasi-judicial bodies take cognizance of, and decide cases. "Quasi-judicial" is a term applied to the action or discretion of public administrative officers, who are required to investigate facts, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature. "Ultra
"Vires" acts are those acts which are beyond the scope of the powers of a corporation, as defined by its charter or act of incorporation. This term has a broad application and includes not only acts which are prohibited by the enabling legislation, but acts which are in excess of powers granted and not prohibited. It is generally applied either when a corporation has no power whatever to do an act, or when the corporation has the power but exercises it irregularly.

"Judicial discretion" means discretionary action of a judicial body, where discretion is bounded by the rules and principles of law and is not arbitrary, capricious, or unreasoned. It is not the indulgence of judicial fancy, but the exercise of judicial judgment, based on facts and guided by Law.

VI. LIMITATIONS & SCOPE OF THE THESIS

Due to the limited time available for the study, the Case Study has been restricted to an investigation of the functioning of three Zoning Boards of Appeal in the Vancouver Metropolitan Area of British Columbia. These Boards represent the Municipal Corporation of the City of Vancouver, the District of Richmond, and the City of North Vancouver. Although the investigation is limited to the areal jurisdiction of these three Boards, it is suggested that the scope of the thesis is not unduly narrowed by this limitation. In spite of this areal limitation, these three Boards represent
a stratified sample encompassing most of the probable municipal administrative areas to justify reaching necessary general conclusions. These three Boards represent:

1. a relatively large central city in a metropolitan area with a large planning department;
2. a small township with a small but well organized planning department;
3. a suburban city which does not have a planning department, but which is facing a boom in construction and subdivision development.

These three areas are indicated on the location map, Figure 1 on page 13.

VII. SOURCES OF DATA

The empirical data employed in this study are gathered from various sources. Most of the information was collected through attendance at the Zoning Boards of Appeal hearings; extensive notes were also gathered through meetings with the Boards. The minutes and files of the Zoning Boards of Appeal were used to gather information regarding the number and characteristics of appeals made to the Boards.

Other information was obtained through conducting extensive interviews with:

1. members of the three Zoning Boards of Appeal;
FIGURE I

Source: Lower Mainland Regional Planning Board, New Westminster, B.C.
2. planning officials in the Municipal Corporations of the City of Vancouver and the District of Richmond, and with the municipal engineer in the case of the City of North Vancouver, which does not have a planning department;

3. Some persons who appeared at the hearings to voice either approval of, or objection to, the appeals.

Individual opinions of the members of the Zoning Boards of Appeal were obtained with the help of a mailed questionnaire. Finally, data were obtained from official files, publications and legal documents of the various municipal departments and through personal inspection of selected sites.

VIII. ORGANIZATION OF THE THESIS

The chapters that follow have been designed to support an investigation for testing the hypothesis stated in this introductory chapter.

A survey of the traditional and contemporary concepts of zoning and planning is presented in Chapter II. The original concept of zoning is reviewed in Part One, along with the theory and purpose of zoning, and the changed concepts which are being revised in the light of changing circumstances. The objectives of planning are defined in Part Two, with emphasis on planning goals, development standards and plan.
implementation. The functions of the Zoning Boards of Appeal as regards their constitutional authorization, their operation, their ambit of jurisdiction, and the influence of their decisions on planning policies, are explored in Chapter III. This theoretical approach is tested in Chapter IV through data and information gathered in the Case Study, the emphasis of investigation being on the constitution of the Zoning Boards of Appeal, types of cases heard, and relaxations granted, and planning principles as reflected in these decisions. The standards of judicial review and the consistency of the decisions of the Zoning Boards of Appeal in relation to planning objectives and policies are evaluated. Recommendations as to the constitution, operation and ambit of jurisdiction of the Zoning Boards of Appeal are made in Chapter V, these recommendations are based on the observations from the Case Study and knowledge gained from contemporary experience in other parts of Canada and the United States. A summary of the study and an evaluation of the validity of the hypothesis are provided in the concluding chapter along with directions for further research.

IX. SUMMARY

The increasing rate of the process of urbanization has accentuated our urban problems, zoning and planning have developed to ameliorate some of these urban problems. The Zoning Boards of Appeal are constituted as safety valves to
protect the interests of individuals against unnecessary hardship caused by decisions made in the public interest. It is hypothesized that if the Zoning Boards of Appeal follow a uniform procedure and are supplied with a clear statement of zoning objectives and planning principles, then these Boards can support the implementation of municipal planning policies. An investigation of conventional and changing concepts of zoning and planning and the characteristics of Zoning Boards of Appeal is made to form a background for the Case Study. Three Zoning Boards of Appeal for communities in the Vancouver Metropolitan Area are analyzed. These observations are compared with similar experiences found in other North American communities to arrive at some recommendations for improving functioning of the Zoning Boards of Appeal. The study is concluded by reviewing the evidence in support of the hypothesis and suggesting directions for further research.
FOOTNOTES


2 Edward M. Bassett, Zoning, The Law, Administration, and Court Decisions During the First Twenty Years (New York: Russell Sage Foundation, 1936), p.27.

3 Village of Euclid (Ohio) v Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114 (1926).

4 Walker, op. cit., p.21.


6 Province of British Columbia, Municipal Act, R.S.B.C. Chapter 255 (Victoria: Queens Printer, 1964), Section 572.


8 In this regard see Vancouver Charter (ibid.,) Section 573(1) and 573(2).


15 Province of British Columbia, op. cit.

16 Ibid.

17 Province of British Columbia, Vancouver Charter, op. cit.


19 Ibid., p.105.

20 Ibid., p.991.

21 Ibid., p.1411.

22 Ibid., p.1692.

23 Ibid., p.588.
The principal purpose of every organization is to make possible the attainment of some objective or a series of objectives. These objectives have an important bearing upon the form which an organization utilizes to attain its goals. In order to gain a better understanding of any process; it is perhaps necessary to have some conception of the purposes and objectives that these institutions seek to accomplish. The objectives and purposes of zoning and planning are reviewed in this chapter.

I THE OBJECTIVES OF ZONING

The current status of zoning is the product of a number of historical circumstances, the explanation of which is beyond the scope of this study. The following will however provide a brief survey of: the early history of zoning; the theory and purpose of zoning; and the current concepts of zoning.

Early History of Zoning:

The early history of zoning may be traced from the ancient Roman Law which recognized the need for zoning to protect the streets from encroachment and to regulate
building heights. Lewis, in writing about the development of zoning concepts, mentions that zoning or "districting", as the Germans called it at the time of its conception in 1884, sought only to remedy the severe instances of population density in congested urban areas. The population density was regulated by dictating the size of buildings in proportion to the lot area they occupied. Similar uses were grouped together through zoning techniques.

There is a lack of agreement as to the precise origins of zoning in North America. However, the growth, defense, and acceptance of zoning seems to be related to two phenomena: the City Beautiful movement which started with the Columbian Exposition held in Chicago during 1893; and the rapid growth of cities in the early 1900's. The problems of congestion and safety, the problem of controlling nuisances, and the problems of use and development of land in such a way as to benefit the individual and the community, demanded controls on land use and land development.

Early attempts to control development of land were not oriented toward regulating the height, bulk or density of buildings. These initial regulations were aimed at protecting the individual property owner from encroachment upon his right to the peaceful enjoyment of his land.
Municipalities of North America were slow in employing zoning regulations to prescribe and direct their growth. In 1903 Boston, Massachusetts, was the first city to adopt a building height district ordinance. Los Angeles adopted the first zoning ordinance which applied to the whole city. These ordinances tended to be in contravention of the common-law and constitutional rights of the individual to use of his property. Cities were initially reluctant to adopt such ordinances. But cities soon came to realize the bad housing conditions caused by the influx of immigrants from abroad and rural areas, who sought jobs in the fast developing industrial communities. The general consensus developed that there ought to be some means of controlling these adverse effects through legislation. The first step towards zoning control was exclusion of undesirable industrial developments from residential areas.

Prior to these restrictions commercial and industrial structures could cover 100 per cent of the lot area without any height restrictions. With the technical advances in building construction, the use of steel and high speed elevators, these tall structures obstructed free penetration of light and air into adjacent buildings and so tended to be health hazards. Furthermore, increasing land values forced commercial and industrial enterprises to exploit residential locations. These shortcomings gave rise to the general
recognition of the necessity for having some type of control
over the use of land.

New York City, in 1916, became the first municipality
to adopt a complete zoning ordinance covering the entire city
and embodying the three major types of regulations: land use;
building height; and building area. Identifying reasons for
the need for zoning in New York City, Bassett states:

... The most accessible spots were overbuilt. There was danger that the subways would greatly
increase congestion... Some cities in this
country had laws limiting the height of buildings,
but there were no such laws in New York City. A
building could legally rise to any height what­
ever, assume any form, be put to any use, and
cover 100 per cent of the lot from the ground to
the sky... A high building so erected prevented
other similar buildings from being constructed
in its immediate vicinity. The reason for this
was that the desired building would have no light
on the side toward the existing building.

The study of building height proved that
prevention of chaotic conditions required much
more than height regulations...

It also became evident that improper uses
caused injury to homogeneous areas and were
especially productive of premature depreciation
of settled localities...

It became apparent that regulations might
be adopted that would tend to stabilize some
localities for one family, detached homes, others
for apartment houses free from stores and offices,
others from stores and factories... Thus it came
about that the new zoning clauses of the Charter
provided for the preparation of regulations
affecting height, area and use of buildings, and the use of land.  

This statement of objectives introduced zoning in New York City. Similar reasons in other cities raised the demand for some legal means of ameliorating the many weaknesses in urban development.

Prior to the introduction of zoning, American cities tried to solve these problems by other means, namely: nuisance laws, restrictive covenants, building regulations, and fire regulations. These measures were employed on the basis of public safety and were applied by different, often unrelated, authorities. The uncoordinated controls provided only sporadic and piecemeal protection and solved only a negligible portion of urban problems. It became imperative to develop some integral legal tool capable of controlling not only the use of land, but also bulk and height of buildings. Following adoption of the New York City ordinance, zoning not only spread rapidly but also gained legal recognition. Woodbury indicates that "during the 1920's, zoning flourished rapidly. Hundred of cities adopted ordinances. A very substantial body of state and some federal decisions gradually established its legal respectability."  

Zoning gained recognition in expansion of the concept "which is basic to law and order, health and safety, property
protection and tranquillity within communities, small or large. In America such power rests with the State Legislature. In Canada, under Sub-Section 8 of Section 92 of the British North America Act, the provinces have been assigned this power. In British Columbia this power is delegated to the municipalities under the Municipal Act or by special Charter (the Vancouver Charter, in the case of the City of Vancouver) to adopt zoning by-laws for regulation of use of land within their municipal boundaries. With this brief historical background it is now considered necessary to look into the theory and purpose of zoning.

Theory and Purpose of Zoning:

Bassett's reasons for zoning in New York City, mentioned in the earlier in this chapter, indicate the emerging theory of zoning. Although objectives for zoning were promotion of health, safety, morals and general community welfare, nevertheless individual acceptance of the control over common law rights of property was met with animosity. Initially the courts were of the opinion that the zoning by-laws were in contravention of common-law as they deprived the owner of a property of a use thereof which would otherwise be lawful. The courts always tended to protect the rights of the property owner, "the American judges tended to be impatient with rules that restricted the individual's dominion over his land."
The prevailing attitude was that a man has a right to do what he wants on his land. Beuscher has quoted Blackstone in this context, "So great, moreover, is the regard of the Law for private property that it will not authorize the least violation of it; no, not even for the general good of the whole community." Since the theory and purpose of zoning was often disputed and it gained public and legal recognition through court decisions, it is suggested that this can best be demonstrated by citing decisions of a selected number of cases which reflect the early theory.

It has been said that the theory of zoning is to foster improvements by confining certain classes of buildings and uses to certain localities without imposing any unnecessary or undue hardship on the property of the owners. This view has been supported by another court decision which held that the ultimate purpose of zoning was to confine certain classes of buildings and land uses to certain specified areas. Some courts held to the theory that zoning by-laws stabilized the property values by confining certain uses to certain area. The famous Euclid case emphasized that the purpose of zoning was to promote orderly physical growth in a city by establishing various use districts in which certain land uses are sanctioned while other uses, thought to be incompatible with those sanctioned, are excluded. The Euclid case reflects change in objectives of zoning from mere
control of building height, bulk, and use to comprehensive zoning of the whole city. It stated that "zoning is a comprehensive plan of land use based on the police power."\(^{18}\) Another very important aspect of the Euclid case is that its decision made it clear that a community may determine the nature of its development, and that it may plan and regulate the use of land in the public interest.\(^{19}\)

The changing trend in the objectives of zoning may be seen further through another United States Supreme Court decision which stated that "zoning looks not only backward to protect districts already in existence but forward to aid in the development of new districts according to a comprehensive plan having as a basis the welfare of the City as a whole."\(^{20}\) This decision recognized zoning as an instrument for bringing the whole city into some kind of a comprehensive plan. In his paper "What is Comprehensive Zoning?", Bartholomew emphasizes that:

Zoning was but one element of a comprehensive plan, which required not only studies of population and land uses directly contributing to zoning regulations, but also studies of major streets, transit, transportation, parks and public buildings.\(^{21}\)

Several examples of the statement of objectives of zoning, it is hoped, will clarify the current picture. A typical statement of the objectives of zoning is found in the Illinois Enabling Act:

To the end that adequate light, pure air, and the safety from fire and other dangers may be secured;
that taxable value of land and buildings throughout the municipality may be conserved; that congestion in the public streets may be lessened or avoided; and the public health, safety, comfort, morals, and welfare may otherwise be promoted. ... 22

This statement is based on the theory that zoning should not be based on private or neighbourhood considerations and that it should promote the general welfare of the entire community. The Municipal Act of the Province of British Columbia is one of the few pieces of enabling legislation in Canada that attempts to define the purpose of zoning. The Zoning Study Committee of the Royal Architectural Institute of Canada in its report mentions the following as a statement of purpose of zoning in the Province of British Columbia: 23

1. The promotion of health, safety, convenience and welfare of the public.

2. The prevention of the overcrowding of land and the preservation of the amenities peculiar to any zone.

3. The securing of adequate light, air and access.

4. The value of land and nature of its present and prospective use and occupancy.

5. The character of each zone, the character of the buildings already erected, and peculiar suitability of the zone for particular uses.

6. The conservation of property values.
The Zoning and Development By-law No. 3575 of the City of Vancouver, British Columbia, very clearly reflects the changed concept of zoning in its preamble which states:

A By-law to regulate, within the City of Vancouver, the development of land, as defined herein, with respect to the use of the same, and the location, design, construction, and use of buildings and structures for residence, commerce, trade, industry, recreation, culture, and other purposes; to regulate and limit the height, number of storeys and the size of buildings and other structures to be erected hereafter or the alterations of existing buildings and structures; to regulate and determine the size of yards, courts and other open spaces; to prescribe building lines, to regulate and limit the density of population; to conserve and stabilize the value of property; to provide adequate open spaces for light and air; to protect and improve amenity; to lessen congestion on streets; to promote health, safety and general welfare; and for all or any of the said purposes to divide the City into districts of such number, shape and area as may be deemed best suited to carry out these regulations in accordance with a Town Plan and to provide for the granting or refusal of development permits in accordance therewith including where necessary the imposition of conditions relative to the granting of such permits, and to provide for the enforcement of this By-law and to prescribe penalties for the violation of its provisions.24

These examples when compared with the original concept, which defined zoning as a device to prevent nuisance, exhibit the changed concept of zoning. The change is from a negative technique of prevention to a positive technique used in the implementation of a plan.

The Current Concept of Zoning:

Traditional zoning by-laws simply divided the city into different functional parts, or more accurately into three
parts: Residential; Industrial and Commercial. Different height and bulk controls were applied to these parts. These by-laws succeeded in separating incompatible uses and in controlling density etc. But with the advent of modern technology, namely: new sources of power; new building techniques; and new modes of fast transport, the zoning by-laws based on the status quo did not work satisfactorily. These tended to emphasize the distinctions between uses rather than the relationships which tie them together, and besides this these were very simple and exceptions had to be made. Although at the same time these by-laws did not cover many aspects of development which required control. Delafons states that the result of these deficiencies has been the development of new techniques and ordinances which go far beyond the traditional scope of control". The changing trend is to relate controls more closely to the planning policies with emphasis on efficiency and convenience rather than on the old objectives of health and safety. The types of land uses are separated by type of use and locational requirements with little emphasis on differentiation of uses as an end in itself. In this current system the trend is to restrict specific land uses to different districts, but here land uses are defined more precisely and prior consideration is given to their relationship among uses. This enables the controls to be more flexible and gives the
property owners more latitude in development. Dissatisfaction with the traditional system because of its rigidity has led to acceptance of the criterion that control should not be on use but on the effect. This has led the modern zoning controls to be based on performance standards. Earl Levin in his paper "Zoning in Canada" commenting on two recent papers on the subject mentions:

Both these papers argued that each land use should be tested by its direct and indirect effect on adjacent land use, on governmental services, and on the community growth, and that industry, business, and homes could be located in any zone so long as the intended use met adequate performance standards.

It is apparent that in order to meet all complexities and problems arising from the control of the use of land, a zoning by-law can no longer remain a stereotyped document which may be drafted by a lawyer alone. It has tended to become an important instrument in the implementation of municipal planning policies which are framed by systematically anticipating and achieving adjustment in the physical environment of the city and which are consistent with social and economic trends and sound principles of community planning.
II THE OBJECTIVES OF COMMUNITY PLANNING

Recent urban growth in North America has indicated that zoning based upon preservation of the "status quo" does not work satisfactorily in a growing community. In order to meet the demands of a growing community, adequate provision has to be made not only to meet the growing demand for traditional places to live but also arrangements have to be made to provide places for work, places for recreation, and places for community services. In addition to the requirements of growing communities to provide services to new areas there is also a need to make provisions for the renewal of old communities.

Community planning is a continuing process which determines and adjusts all such spatial requirements and desires of the community within the context of a comprehensive plan. Carl Feiss emphasizes that "community planning has the social objectives of providing a better community for all people in which to live, raise families, work and play." The planning process may be an effective instrument for achieving in this objective of determining and adjusting all of these land use requirements and of visualizing all needs and aspirations of the Community.

The planning process, which is continuous, may be divided into three parts: the formulation of goals; the
development of a plan; and the development of techniques and policies to implement the plan. These three functional parts may be explained in simplified form as: "the aim; the way; and the how" of the planning process. Different breakdowns have been suggested by various authorities but the basic pattern of organization is the same. Whatever mode or terminology is adopted, the process starts with the formulation of a goal or a set of goals; including a specific set of standards that are to be achieved. These are reflected in the development of a plan; the cycle is completed by the adoption of implementation techniques for achieving these goals, plus a follow-up study and adjustments to the plan.

The establishment of a goal, the development of means by which it is to be achieved, and the normative system for its accomplishment are all interdependent functions. Any variation at any stage will have considerable effect on the cyclic motion of the process. Carrothers supports this contention, while describing planning in Manitoba. He states that "community planning must be a continuous process, forever adapting itself to changing objectives, which result from changing needs and conditions." These three functional parts of the planning process are discussed below.
The Goals:

The standards of planning are determined by the goals of each community. The extent to which improvements can be made initially depends on the present conditions in the community and the desired standards of the community. In other words the goals of a well developed community will differ from the goals of an older community with sub-standard housing and public facilities. Furthermore goals must be established in relation to the level of government, whether it is a community, region or nation and among any combination thereof.

The planning process in the United States, according to the Housing and Home Finance Agency, has as its goal "the creation of an environment in which people can live and work usefully, productively, healthfully, and happily." This goal is to be achieved by progressively raising standards in four basic areas of human needs, namely, "shelter, facilities and services, supplies, and employment." On adoption of these goals at the national, state and municipal level, it may be said, that these goals in fact become a standard against which community planning proposals may be measured. Those proposals which are consistent with the nationally adopted goals will be considered good and worthy of implementation and those proposals which are inconsistent with the nationally adopted goals will be discarded.
Delafons, in his study of land use controls in the United States, has commented that it is rare to find a city which has tried to define goals of its planning policy in more than a cursory manner. The goals are defined in vague terms, such as: efficiency in communications and use of land; utility in terms of production and distribution; economy in terms of provision of public services; and convenience for living and working. Kevin Lynch discusses these goals as "the goals of choice, interaction, participation, growth and adaptability, continuity, and imageability." These goals are too general for conversion into a workable programme. Delafons has summarised the objectives and methods of American planning as follows:

1. Preventing conflicts of private interest in land (zoning).
2. Preventing conflicts of private and public interest in land use (master planning).
3. Preventing conflicts of various public interests (master planning and capital investment programming).
5. Facilitating private development and encouraging private investment (the whole planning process, including urban renewal).
6. Making our town a better place to live and do business in - efficiency, convenience and economy and criteria.

A specific example of typical objectives of American planning principles can be found in the Master Plan for San Francisco (Appendix I).
The Development Plan:

The development Plan evolves out of the definition of goals of a community and it contains "all essential features to provide a perceptible order of development, and standards to ensure a stated degree of amenity and convenience for its citizens."\(^{39}\) The development plan has different connotations within different planning contexts.\(^{40}\) The problem of making a development plan for a small town will differ from that of a metropolitan city in scale and complexity. But regardless of any variants, a development plan should set out the essential features of land use and circulation patterns to provide orderly development. It should also define "standards to ensure a stated degree of amenity and convenience."\(^{41}\)

Any development plan should include the following components:

1. **A land use plan** of the entire area, designating areas for development of various land uses: residential; commercial; industrial; and open spaces.

2. **A circulation plan** showing the circulation pattern of people and goods.

Chapin writing on "The Plan and Its Analytical Framework" has given a summary of the contents of a land use plan, as follows:
The land use plan reflects an analysis of urban activity systems and a carefully studied estimate of future land requirements for expansion and renewal, showing how development in the area should proceed in the future to ensure the best possible physical environment for urban living, the most economic use of land, and the proper balance in use from a cost-revenue point of view. Fundamentally, then, the land use plan embodies a proposal as to how expansion and renewal should proceed in the future, recognizing local objectives and generally accepted principles of health, safety, convenience and the general amenities of urban living.42

The various uses proposed in the land use plan will effect the circulation pattern of people and goods. The anticipated volume of traffic will effect the designed traffic capacity of the streets which may in turn cause a series of changes in the land use patterns in order to keep the circulation pattern efficient.

To cover most of these contingencies, the National Industrial Zoning Committee, at its meeting in Nashville in July 1956 adopted the resolution that both the land use plan and the circulation plan should be coordinated with:

1. The physical characteristics of the area especially as they effect usability of land for various purposes.

2. Present and probable future characteristics of the population and economy of the area.

3. A utility policy taking account of the feasibility of future extensions of existing water, sewer, drainage, power gas and other services.

4. A programme for providing community facilities, including school, park, playground, health public safety, and other governmental buildings and facilities.43
The plan on adoption should be capable of being translated into a series of standards which can be enforced through a zoning by-law and other development regulations. Hence the definition of standards becomes an essential part of a plan. The importance of standards in the formulation of a plan is expressed by T. J. Kent, who suggested that it is not possible to make a plan that does not express significant value judgments concerning standards. If standards play such a significant part in planning, one must inquire further into their characteristics.

**Standards:** The word 'standards' is used loosely and has been poorly defined in planning. This is mainly due to the fact that there is a hierarchy involved in terms of standards, and in terms of what they control. Standards are a result of the formulation of a goal or a set of goals, in other words they evolve when goals are converted into tangibles. One cannot enforce an intangible goal, such as the creation of an environment in which people can work usefully. To create an environment in which people can live and work usefully, certain standards have to be enforced through adoption of a plan. Charles Haar suggests that when a master plan which is in fact a community plan is adopted, it becomes a kind of gross standard. It could easily be argued that the goals or objectives must then be realistically set in terms of present and proposed standards, which can be
enforced in the community in order to attain the goals. Every community has individual needs, attitudes, aspirations, and resources. It is therefore very difficult to evolve a standard of development generally applicable, since as each situation needs individual evaluation, Hubbard points out "each community presents an individual problem not to be solved by being pointed into a common mould." These standards may vary not only from community to community, but they may also change in time. It has been suggested that "standards cannot remain static but should be improved in terms of contemporary conditions."  

Some planning standards are measurable in terms of engineering requirements, such as, safe street design, air and water pollution control, water and sewer treatment etc. Such standards can be defined by subjecting the relevant system to controlled testing and measurement. These standards can be defined precisely and can be tabulated for each situation. The performance standards are based on the fact that if objectionable features of a use could be removed the use could then be permitted anywhere. These standards can only account for measurable obnoxious characteristics, such as smoke, noise and some odours. But at the present state of scientific knowledge "the objectivity of performance standards rests on a subjective foundation."
for it is very difficult to say to what point people find these characteristics offensive. These standards are difficult and expensive to enforce for they require more specialized instruments and technical personnel for their enforcement. Another category of standards is related to social goals and activities, which are intangible. These can only be measured by a set of personal values which will tend to be a subjective judgment dependent on the social and cultural background of the investigator, and his personal preferences and prejudice. These standards tend to be vague and implicit and so are very difficult to enforce.

Planning standards become a measure of functional, areal, or performance quality, and quantity of a land use. In this way these are guidelines and constraints which the planner and the public use in their attempt to secure a desired level of environmental conditions. One must look into the characteristics of the planning standards in order to be able to use them with greater sensitivity and thus to be assured of achieving the desired goals of the community. "These standards should neither be the lowest common denominator nor less than what is readily acceptable." 50

**Plan Implementation:** Before a development plan can have any value to the community it must include some provision for its implementation. A zoning by-law adopted
under the enabling legislation is one of the more important tools of implementing a plan. A zoning by-law divides the municipality into districts within which permissible uses of land are prescribed, and in which restrictions on the height, bulk, layout of the buildings may be defined. Enforcement of a zoning by-law is a means of plan implementation having significant impact on private property, the development of which would otherwise be beyond the control of the municipality. Normally, the private development of property depends on its owner; unless an overall system of control exists it is difficult to guide such development towards a preconceived pattern of development. A zoning by-law is in many ways the most comprehensive legal tool available to control private development.

As a point of caution, it may be mentioned that the zoning by-law as considered here is closely based on planning criteria. It should not be understood according to its traditional meanings, previously explained, where zoning was considered as a separate entity from community planning.

Other means of plan implementation, such as subdivision control, building code enforcement, and capital budgeting may be combined with the zoning by-law to guide the future growth of the community along the lines of a
consistently higher quality of development. All these controls are equally important, but as this thesis is particularly concerned with zoning these other means of plan implementation are not considered in detail here.

The zoning by-law performs a dual function in the planning process. Firstly, it may have the effect of correcting portions of existing development deemed undesirable by the community. Such improvement comes about when non-conforming use provisions are properly enforced, thus ensuring that improperly located land uses will eventually be relocated in a more appropriate zone, and thus contribute to the improvement of the community. Secondly, the zoning by-law aids in preventing the recurrence of past mistakes, within the city's newly developing areas. This is achieved through its permitted and prohibited land use requirements, and its space standards which ensure development of a more desirable quality.

It is a function of the zoning by-law to guide future growth along preconceived lines according to the comprehensive plan. It also functions as a guide for the relocation of uses which were poorly located due to careless decisions made prior to enforcement of zoning. The zoning by-law is one of the principal means in an urban renewal program designed to correct a situation within the portion of the city which has become built up, and where preventive
action taken before the problem arises cannot now provide a solution. It is also a function of the zoning by-law to be one principal means of making certain that growth in newly developing areas avoids the mistakes of the past. But these functions are highly dependent on the characteristics of the plan (or planning policies where there is no plan) of a municipality. It is true that "good planning is essential to good zoning."\(^{50}\)

The zoning by-law in the plan implementation process has four administrative aspects: the daily enforcement of zoning by-law regulations; the hearing of appeals arising out of undue or unnecessary hardship cases; the zoning by-law amendments; and the scope for judicial review for administrative action. These aspects are reviewed in chapter III, consideration of the zoning by-law amendments is considered beyond the scope of this thesis and so the zoning by-law amendment process is not included.

III SUMMARY

Contemporary zoning is the product of historical circumstances. Zoning techniques and concepts have advanced in recent years. Zoning now is enforced and accepted as a tool to implement municipal planning policies as against the traditional concept of control on the basis of nuisance laws, restrictive covenants etc. It is now well recognized that
zoning can be neither completely comprehensive nor permanently effective unless it is undertaken as a part of a comprehensive city plan. The current concept of zoning, as a positive technique in the implementation of a plan, is reflected in the enabling legislation of some provinces in Canada. Now the zoning by-law forms an important part of the community planning process, which is a continuous process comprised of: the formulation of goals; the development of a plan or planning policy, which involves definition of standards; and the adoption of implementation techniques. This process has the general objective of providing a better place in which to live, raise families, work, and play. The zoning by-law is only a tool for implementation, actual development is conditional on having a good municipal plan or a good planning policy. Some aspects of zoning by-law administration are reviewed in Chapter III.
FOOTNOTES


5 Ibid.


8 Ibid.


14 Goodrich v Seligman, 298 Ky.863, 183 S.W. (2d)625.

15 State ex rel. Chathes v Rowland, 131 Conn.261, 38 A(2d) 785.

16 Abbadessa v Board of Zoning Appeals of City of New Haven, 134 Conn.28, 54 A.(2d) 675.

17 Village of Euclid v Ambler Realty Company, 272 U.S., 365, 47 S.Ct. 114 (Ohio).

18 Ibid.

19 Ibid.

20 Zahn v Board of Public Works (Oct. 1926) 274 U.S.324; 71. L.Ed. 1074.


22 Illinois Revised Statutes, 1951, Chapter 24, Section 73(1).


26  Delafons, op. cit., p.34.

27  Delafons, op. cit.


32  F. Stuart Chapin, in Urban Land Use Planning (Urbana: University of Illinois Press, 1965), breaks down the process into three stages: Goal specification; Decision making stage; and plan execution, evaluation and reorientation stage.


35 Ibid.


38 Ibid., p.36.


40 It is also known as the General Plan, Master Plan, Comprehensive Plan etc.

41 Royal Architectural Institute of Canada, op. cit.


43 National Industrial Zoning Committee, op. cit.

44 T. J. Kent, Jr., The Urban General Plan (San Francisco: Chandler Publishing Co., 1964), p.20.

45 Broderick, op. cit.


48

49
Royal Architectural Institute of Canada, op. cit., p.16.

50
Ibid.

51
National Industrial Zoning Committee, op. cit.

52
CHAPTER III

A REVIEW OF THE OPERATION

OF

ZONING BOARDS OF APPEAL

The passage of a zoning by-law is a legislative function. The operation of a zoning by-law is an administrative function. With the complexity of physical situations numerous legal problems arise relating to the administration and constitutionality of the zoning by-law. To keep the operation of the zoning by-law within the inherent intention of the enabling legislation by avoiding imposition of manifest injustice, the zoning by-law contains a mandatory provision for introducing a degree of flexibility into its administration. This provision is the basis for the establishment of the Zoning Board of Appeal. The constitutional authorization leading to the creation of the Zoning Board of Appeal, its operation, and its ambit of jurisdiction along with the principles of judicial review and the influence of its decisions on the formulation and implementation of municipal planning policies are discussed in this chapter.
I CONSTITUTIONAL AUTHORIZATION

Since the zoning power is an exercise of the police power, this power has to be derived from the constitution through enabling legislation. The most logical place to review the constitutional authorization is to start with the highest legislative authority in the country.

Canada does not have its own constitution, it derives legislative authority from the British North America Act of 1867. Under Section 92 of this Act, the Provinces are delegated the exclusive power to make laws regarding "Municipal Institutions in the Province" and "Generally all matters of merely local or private nature in the province." It is under these provisions that municipalities receive authority to control the use of land and to pass necessary legislation for community planning.

Operation of the Zoning By-law:

The Zoning by-law is one of the most common legal tools used in the implementation of municipal planning policy. The primary purpose of a zoning by-law is to control the use of land according to prescribed standards within the bounds of enabling legislation. The modern trend towards precision in all matters demands that the zoning by-law should make it explicit for every one as to
what one can, and cannot, do with one's property and that it should cover all situations. This demands that the zoning by-law should be very precise and inflexible. It is universally accepted, that under the rules of natural justice, the zoning by-law should be general in its terms and should not favour or discriminate against any one individual or group:

The prohibition must... be of general application within the district and to all buildings to which it applies; and it is... beyond the competence of the Council to single out one particular building within the district to which the general prohibition is otherwise applicable to extend to it exceptional or discriminatory treatment.

Ideally, the zoning by-law should meet all the peculiar requirements that may exist or may develop in the future within the municipality. But unfortunately it is impossible to draft a zoning by-law which can predict and meet all the requirements of future development. The practical impossibility of preparing such a by-law, as a tool for implementing concepts of planning, which will deal with all property and use thereof and still avoid unnecessary hardship in individual cases has led to the necessity of furnishing some machinery to carry out the intention of the enabling legislation, under which such by-laws are enacted. The inherent intention of the enabling legislation is that the imposition of manifest injustice or unnecessary hardship
be prevented. In a New York case the learned judge writes:

Zoning ordinances are not intended to be and cannot long continue to be strait-jackets to be applied and held rigid by purely bureaucratic authority. The letter of the ordinance must yield, in instances of extreme hardship, and according to conditions of irrepressible growth and development.

The validity of a zoning by-law depends on its reasonableness. If its enforcement causes an undue or unnecessary hardship, any person so aggrieved has the locus standi to apply for a writ of mandamus and thus bring the question of unreasonableness to the courts. If the courts find the by-law unreasonable, in the absence of provision for any relief, they may declare the by-law unconstitutional and thus void. The position is, "If one person is discriminated against then the courts are willing to strike down the down."

The need to devise some means of introducing a degree of flexibility into the zoning by-law, within the premise of enabling legislation, has created the Zoning Board of Appeal. "Few jurisdictions today are lacking some kind of machinery of appeal to help smooth the rough edges of zoning by-laws." Most enabling legislation under which zoning by-laws are enacted make the establishment of a Zoning Board of Appeal
mandatory. In British Columbia, the Municipal Act, with the exception of the City of Vancouver, under Section 708(1) makes it compulsory for a council which has adopted a zoning by-law to establish by by-law a Zoning Board of Appeal of three members. 12

II STRUCTURE OF THE ZONING BY-LAW

A zoning by-law by very definition is an act passed by a municipal council, under the provisions of enabling legislation. Its purpose is to help in the implementation of a municipal plan, (or municipal planning policy where there is no formally adopted plan). Robert M. Clark writing on "Zoning in Canada" suggests that a zoning by-law usually contains at least three parts: One part consists of definitions of the terms used in the zoning by-law; another part underlines the delegation of powers to the officials who are responsible for the enforcement of zoning by-laws and defines the procedures for appeals arising out of enforcement of zoning by-laws; the third part consists of a series of schedules and regulations about the uses permitted in various zones. 13 Different municipalities may divide their by-laws into different parts, which are not necessarily limited to the aforesaid three parts, but whatever the division may be it can be broadly considered under these three general parts. A zoning map is an integral part of
the by-law. This map shows the boundaries within which
the zoning by-law is applicable. It identifies all the
different districts into which the zoning by-law divides
the municipality and also differentiates between the land
uses allowed in each district. The zoning map is supple­
mented by schedules which specifically set out the uses
which are permitted in each district. These schedules
also contain regulations governing the height of buildings,
the front and side yard requirements, and any other factors
such as, off-street parking, loading and unloading, bill­
boards, etc.

A local example will be useful in demonstrating the
over-all pattern of a zoning by-law. The Vancouver Zoning
& Development By-law No.3575 (hereafter known as the
Vancouver Zoning By-law) is divided into the following
parts:

1. Definitions
2. Administrative Section
3. Zoning Districts
4. Zoning District Schedules
5. General Regulations
7. Off-Street Vehicular Parking Facilities.
Section two of the Vancouver Zoning By-law contains definitions of many of the terms used therein. Sections three, seven and eight contain the administrative provisions of the by-law including the development permit system. Section three of the Vancouver Zoning By-law makes it the duty of the Director of Planning to carry out and enforce the provisions of the by-law and empowers him to make rules and regulations for the management of the Planning Department. Subsection two of Section three of the Vancouver Zoning By-law makes it the duty of the Technical Planning Board to exercise on behalf of the Council such powers as are expressly delegated to it under Sections seven, eight and nine of the by-law, subject to the condition that in granting any relaxations pursuant to these powers the Board shall adhere to the spirit of the By-law. Section four of the by-law was concerned with any Appeal arising out of the enforcement of the by-law, it was repealed on 5th July, 1960 by the by-law No.3844 which established a Zoning Board of Appeal under provisions 572 and 573 of the Vancouver Charter. The Director of Planning is charged with the responsibility of enforcement of the Vancouver Zoning By-law, Sections five and six contain enforcement and penalty provisions. The penalty provisions are authorized by Section 92(15) of the British North America Act, wherein local authorities have
powers to impose penalties by way of fine or imprisonment in respect of any legislation they are competent to pass. Section 571 of the Vancouver Charter also makes provisions for the enforcement of the zoning by-law.\(^{18}\) This section pertains to injunctions which can procure effective enforcement of the by-law but it is a costly and time consuming process to be practical enforcement tool. Section ten contains the general regulations of the by-law and covers such things as projections into yards, main access to sites, the number of principal buildings allowed on a site, fences, advertisements and signs. Section ten also contains, pro-tem, several regulations which are to be transferred to other by-laws because they are not considered to be zoning matters. Section eleven of the Vancouver Zoning By-law contains detailed special regulations controlling development of peculiar types of subdivisions, details regarding industrial parks, details pertaining to living accommodations in basements of apartment buildings and similar other peculiar matters which are not otherwise covered elsewhere in the by-law. Sections twelve and thirteen of the Vancouver Zoning By-law prescribe requirements for off-street parking, loading and unloading facilities. Section fourteen of the by-law prescribes building lines for many major streets in the City which are to be widened.
Draftsmanship & Interpretation

The Supreme Court of Canada in Augrignon v Bonnier, (1935) 1 D.L.R. 417 at 423, held that "effect must be given to it according to the common usage of men", the basis of this view was that the language of the statute is not the language of lawyers. But this does not mean the municipal zoning by-laws, and other enactments, may not follow the accepted rules of draftsmanship. In Sexton v Bates, it was stated that "in the construction of a municipal ordinance, words and phrases must be read and construed with the context and should be given their generally accepted meaning, according to the approved usage of the language." Although it has been held that "judicial notice cannot be taken of municipal zoning ordinance" which implies that these ordinances have to be pleaded and proved like other facts, still the zoning (and other) by-laws have to follow the accepted rules of draftsmanship. Precision in the use of words and cautions, and harmonic incorporation of the new law with the existing law are important prerequisites of good draftsmanship. To achieve uniformity in the drafting of legislation for minimizing interpretation problems, a set of "Rules of Drafting" was recommended at the Conference of Commissioners on Uniform Legislation in Canada (in 1948).
The Leading Motive Section of any statute facilitates and guides interpretation of statutes for the public, the administrators of delegated powers as well as the courts. The leading motive may pertain to overall zoning or planning or administrative policy or may relate to a specific area. The object of the zoning by-law being the implementation of the intentions of the legislature, the best way of expressing that intention is to have a statement in the form of a Leading Motive section in the beginning of the relevant section.

In the interpretation of a zoning by-law, words in common use must be given their plain and natural meaning in the absence of any showing that in the enactment of such a by-law words and expressions contained therein were used in any other than the usual and ordinary sense.23

The zoning by-law, to be enforceable should be properly structured so as to leave no possibility of misinterpretation. The City of Vancouver, in the well known Kalman Benko case,24 was not able to prosecute Kalman Benko, who was charged with the violation of the zoning by-law, because of the faulty construction of the zoning by-law. The judge in this case noted that "... whatever construction is placed on the two by-law sections ... they both fall
short of necessary clear, unambiguous intent required in any enactment depriving a person of a property right. The Kalman Benko case derived its legality through loopholes created by defective draftsmanship of the zoning by-law.

Frank Sohn, in an American Society of Planning Officials clinic on Zoning, suggests the following general essentials of a zoning by-law:

(a) Must be easy to read, so that a lawyer is not required to interpret it at every stage.
(b) It should have a close relationship to the master plan and should help to bring about its provisions.
(c) It should help bring about the planned density of population in all Sections of the City.
(d) It should present alternate proposals.
(e) It should be flexible with regard to design, height, special uses, transitional uses, and industrial zoning.
(f) It should be comprehensive.
(g) It should provide protection for all uses.
(h) It should provide for the gradual elimination of non-conforming uses.
(j) It should provide for plans and elevations to be submitted when zoning changes are requested, with provisions for re-submission if any substantial changes are made.
(k) It should embody requirements for floor area ratios for location of buildings on a lot, rather than requiring a uniform set back line and yard requirements.
Besides these requirements, Sohn has suggested requirements for Industrial and Residential Zoning By-laws, parking regulations, and for the administration of zoning. An extract of these is appended.  

Allen Fonoroff, in an annual workshop seminar of the American Institute of Planners cited inept draftsmanship as a basic reason for the failure of zoning. He suggested that "incompetent and careless planners, engineers, lawyers and others have seemingly dedicated their lives to the cause of turning words that have little practical application". Fonoroff further suggested that "Zoning can do much for it if it is based upon good planning, if it is written clearly and unambiguously, and if it is specifically designed for the city's needs."

It should be emphasized that a zoning by-law cannot improve bad zoning or bad planning, and that a zoning by-law is only as good as are the objectives and principles of planning upon which it is based.

III OPERATION OF THE ZONING BOARD OF APPEAL

In the Province of British Columbia, a Zoning Board of Appeal operates under the authority of the British Columbia Municipal Act. Section 708 of the Municipal Act specifies
that the Zoning Board of Appeal shall be comprised of three members: one appointed by the municipal council; one appointed by the Lieutenant-Governor in Council; and a Chairman, who shall be appointed by these first two members. No special qualifications are demanded of the members; the current composition of the Boards indicates that the members are generally drawn from the business community. Section 708(3) restricts any members of the Advisory Planning Commission of the municipality or any of its employees from being appointed as a member of the Zoning Board of Appeal. The tenure of membership on the Board is three years. While a member can be removed, further reappointment is also permissible. It is provided by Section 708(4) that two members of the Board shall constitute a quorum. In order for the two who sit to constitute a body competent to hear the appeal before it, the following conditions must be satisfied:

(a) no member of the Board must be, by any provision of the enabling legislation, disqualified from so sitting; and

(b) no member thereof must be, by reason of his own peculiar interest in the subject of the appeal, disentitled for hearing and deciding such appeal.
Section 708(9) of the Municipal Act makes it the duty of the Zoning Board of Appeal to set out its own procedure in respect of the operation of the Board. This section gives a totally free hand to the Board to set out the procedure to be followed including the manner in which appeals are to be lodged and the issuance of notices. One fact to be noted here is that there is no stipulation to the effect that the procedure adopted by the Zoning Board of Appeal has to be approved by any local or provincial authority. No general format or instructions are provided for the formulation of the procedure; this is totally left in the hands of the members who, it may be said without any prejudice, may not be capable of devising a procedure which is most efficient.

The Ambit of Jurisdiction of the Zoning Board of Appeal:

The ambit of jurisdiction of the Zoning Board of Appeal is determined by Section 709 of the Municipal Act:

Section 709(1) The Zoning Board of Appeal shall hear and determine any appeal

(a) by a person who is aggrieved by a decision of any official charged with the enforcement of a zoning by-law or a by-law under Section (5) of Section 711 in so far as that decision relates to an interpretation of the by-law or by-laws or any portion thereof; and
(c) by an applicant for a permit who alleges that enforcement of a zoning by-law with respect to siting, size, or shape of a building or of a structure would cause him undue hardship, in which case the effect to its determination, exempt the applicant and subsequent owners of the building or structure from the applicable provisions of the zoning by-law; and

(2) Notification of the appeal shall be given by the Board to the owners and occupiers of all real property located adjacent to the property with respect to which the appeal is being heard, and public notice of the hearing shall be given if the manner is deemed by the Board to be of sufficient importance.

(3) The decision in writing of all or of a majority of the members of the Board is the decision of the Board.36

It is submitted that, as with any municipal enabling legislation, the language of the statute is not the language of lawyers and that "effect must be given to it according to the common usage of men."37 On this premise, with the exception of subsection 709(1)(c), the intention of the Legislature, in defining the ambit of jurisdiction of the Zoning Board of Appeal has been clearly expressed.

Section 709(1)(c) is of potential importance, because it is out of the provisions of this subsection that the jurisdiction of the Zoning Board of Appeal to allow or disallow appeals is derived. At this point it is pertinent to consider parallel provisions provided under Section 573(2) of the Vancouver Charter:
The Board shall not allow any appeal solely on the ground that if allowed the land or buildings in question can be put to a more profitable use nor unless the following conditions exist:

(a) The undue or unnecessary hardship arises from circumstances applying to the applicant's property only; and

(b) The strict application of the provisions of the by-law would impose an unreasonable restraint or unnecessary hardship on the use of the property inconsistent with the general purpose and intent of the zoning by-law; and

(c) The allowance of the appeal will not disrupt the official development plan.38

On initial comparison of these two sections it is apparent that the Section 709(1)(c) leaves the Board with vague jurisdiction as to the interpretation of the term "undue hardship". Besides this it is short and too general as compared with the above quoted Section 573(2) of the Vancouver Charter. From Section 573(2) it is apparent that the fact that lands or buildings which are subject to the appeal could be put to a more profitable use in the event that the appeal allowed, is not, *per se*, to contribute a basis of appeal. Thus, the Board may disallow an appeal if it finds that a pecuniary loss is the basis of the appeal.39 On the other hand, it may not be accepted that the facts of such loss may absolutely not be considered by the Board as a factor in the appeal. The only restriction is that this should not be the sole factor.
It may be pointed out that the Municipal Act does not stipulate any conditions to the allowance of an appeal as are laid down in subsections (a), (b), and (c) of Section 573(2) of the Vancouver Charter. The Zoning Board of Appeal has complete discretion in determination of these conditions.

The Question of Undue or Unnecessary Hardship:

The question of what constitutes "undue or unnecessary hardship", which is to be proved by the appellant, has neither been satisfactorily defined in any legislation nor been particularized in any reported decision of a Canadian Court. The following condensation from important court decisions may be accepted as a good workable definition:

The application of the unnecessary doctrine is not governed solely by the size of the area or particular piece of property upon which the unnecessary hardship is imposed. No single factor determines what constitutes unnecessary hardship, but all relevant factors, when taken together, must indicate that the special conditions are such that the property affected cannot reasonably be put to a conforming use because of the limitation imposed upon it by reason of the classification in which it is placed in terms of the ordinance (by-law).

It may be noted that the Municipal Act does not mention any conditions as are mentioned in subsection (a), (b), and (c) of Section 573(2) of the Vancouver Charter. The Vancouver Charter in Section 573(2)(c) requires that the relaxation granted should be in harmony with the purpose and intent of
the official development plan. For example, a relaxation would not be allowed if its result would be the disruption of the essential character of the neighbourhood which it was the object of the by-law to preserve.41

The power to grant appeal from the strict adherence of the zoning by-law should be exercised sparingly by the Zoning Board of Appeal, although extensive discretion is given to it by the enabling legislation. This power must be exercised within its ambit of jurisdiction and, a fortiori, within the spirit and intent of the zoning by-law itself.

IV PRINCIPLES OF JUDICIAL REVIEW AS APPLICABLE TO THE ZONING BOARD OF APPEAL

For all intents and purposes, the Zoning Board of Appeal functions as an independent quasi-judicial body and enjoys quasi-judicial powers42 and is bound by the rules of natural justice concerning procedural requirements that have to be observed by any authority acting in a judicial manner. Two basic principles of natural justice are:

(i) \textit{Audi Alteram Partem} which means that the contesting parties must be given adequate notice and opportunity to be heard; and

(ii) \textit{Nemo Judex in Causa Sua Potest} which means that the adjudicators must be disinterested and unbiased.
The "Audi Alteram Partem" principle is a basic requirement of the process of administrative adjudication. The following quotation illustrates the importance of this principle:

No proposition can be more clearly established than that a man cannot incur the loss of liberty or property for an offence by a judicial proceeding until he has had a fair opportunity of answering the case against him, unless indeed the Legislature has expressly or impliedly given an authority to act without that necessary preliminary.43

The statutory procedure for appealing from the provisions of the zoning by-law, which involves quasi-judicial hearings, takes into consideration the "audi alteram partem" rule:

Natural Justice is said to demand, not only that those whose interests may be directly affected by an act or decision should be given prior notice and an adequate opportunity to be heard, but also that the tribunal should be disinterested and impartial.44

In order than public confidence in the administration of justice be fully maintained, no one with an interest in contract is allowed to adjudicate in the proceedings. In the disqualification of judicial officers for interest and bias, the principle has been applied that "it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."45
The rules of natural justice are not rigid norms of unchanging content. Each of these two main rules may vary in their application according to the context.

Several principles govern exercise of the discretionary powers enjoyed by the Zoning Board of Appeal. These have been summarized as:

The authority in which a discretion is vested can be compelled to exercise this discretion, but not exercise it in a particular manner. In general, a discretion must be exercised only by the authority to which it is committed. The authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must disregard all irrelevant considerations, must not seek to promote purposes alien to the latter or to spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.

These principles may be grouped into two broad categories: failure to exercise a discretion; and abuse or excess of discretionary power.

It is a well known principle of law that when a person is entrusted with a power on clear indication that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has
been expressly empowered to sub-delegate it to another. The principle is popularly expressed in the form of a maxim *delegatus non potest delegare* (sic). On the basis of this maxim, the Zoning Board of Appeal which appoints a secretary who enjoys the discretionary power of sending the necessary notices about the hearings of the Board contra­venes the maxim *delegatus non potest delegare*. The secretary's actions under these circumstances may be held *ultra vires*.

There are also some remedies available for judicial review.

**Judicial Review Remedies:**

... are the means by which the Court exercises a supervisory jurisdiction over inferior and statutory tribunals and keeps them within the limits of the powers conferred on them by statute.°

There are a number of statutory remedies available to an aggrieved party: The prerogative writs; common law remedies; equitable remedy; and the self-help remedy. The most popular are the prerogative writs, namely:

* A Writ of Certiorari,\(^{49}\) which requires that the matter be taken before a higher court where a writ is granted to quash judicial decision because it is *ultra vires*.

* A Writ of Prohibition,\(^{50}\) which prevents an inferior court or tribunal from making an *ultra vires* decision.
A Writ of Mandamus, where the superior court orders an inferior court or tribunal to carry out its statutory duty.

These writs can only be used where judicial or quasi-judicial decisions are involved. An injunction is an order restraining the continuance of an offence which is in violation of a by-law or a tribunal decision. A self-help remedy is one where the aggrieved person simply carries on the alleged offence until an injunction is served.

V IMPLICATIONS OF THE DECISIONS OF ZONING BOARD OF APPEAL ON THE FORMULATION AND IMPLEMENTATION OF PLANNING POLICY

Zoning and other forms of land use control have established their usefulness through public, legal and constitutional recognition. Based on a review of the history of development of zoning as a land use control it is apparent that its effect on planned development is dependent upon effective enforcement. A well considered zoning by-law efficiently enforced is apt to achieve the objectives on which the by-law is based. Delafons writing on "Land Use Controls in the United States" states that:
Where reasonable controls have been adopted and are well administered (emphasis added), they do undoubtedly result not only in a sound standard of development and an absence of conflicting uses, but also in stability of neighbourhood character and maintenance of property values.  

On the other hand, it is widely felt that a poorly administered zoning by-law is worse than having no zoning at all.  

In the administration of a zoning by-law the planning department does not enjoy any discretionary powers beyond those mentioned in the by-law. On the part of this department, therefore, the only possible charge of maladministration could be either tardiness of processing or improper enforcement. The Zoning Board of Appeal enjoys discretionary powers in granting relaxations to round off the sharp corners of zoning requirements in cases of undue or unnecessary hardship arising out of the enforcement of a zoning by-law. These relaxations arise out of the implications not foreseen at the time of formulation of the by-law.

In granting relaxations, however small these may be, the Zoning Board of Appeal plays two important roles in the planning process: the first role is a positive role, wherein the relaxations granted by the Board are both compatible with the objectives of the zoning by-law as well as a source of relief to an aggrieved person; the second role is a negative one, wherein the relaxations granted provide relief although
they may also create new problems of land use. A further review of these two roles will be helpful in analyzing the influence of the decisions of the Zoning Board of Appeal on the formulation and implementation of a municipal planning policy.

It is well recognized that a positive relaxation, must be based on: proved hardship in making a reasonable use of one's property under strict enforcement of the by-law; hardship which is not self-created through carelessness etc.; or hardship which is not based solely on economic grounds. A positive relaxation not only requires proof of unique circumstances but also requires a satisfaction that its award will not effect the general character of the neighbourhood. The Ontario Department of Planning and Development, in laying down 'Principles to assist Committees of Adjustment' embodied all the necessary elements leading towards positive relaxations.

As opposed to positive relaxations, negative relaxations involve favouritism, corruption etc. Even assuming that the Zoning Board of Appeal and its members function honestly, negative relaxations may be granted innocently. This innocent action may be due to a lack of understanding of the objectives of zoning or of the underlying planning policies involved. Another reason could be ambiguity in the
by-law, or a lack of adequate rules of procedure governing
the operation of the Zoning Board of Appeal to assist it in
reaching a just decision. Sporadic and incompatible
relaxations may result out of such decisions.

Most Planners feel that "the Boards overstep their
legal authority and do not fully understand the point of view
of the planner." The occurrence of these negative relaxa-
tions has also made the planners feel that "most Zoning Board
of Appeal members know little or nothing about planning, and
frequently care less." In granting negative relaxations
the Zoning Board of Appeal undermines the effectiveness of
zoning by-law. If the Board grants a relaxation when the
circumstances do not support it, it is in effect rezoning and
usurping the power of legislation. In Walter Blucher's opin-
ion "fifty percent of all of the rulings of Zoning Boards of
Appeals in the United States are probably illegal usurpations
of power." Such actions not only hamper the implementation
of a planning policy but have a deteriorating effect on the
neighbourhood.

John Reps suggests that "certainly the granting of
unjustified permits (relaxations) is one of the causes of
urban blight and decay in existing neighbourhoods." He
also is of the opinion that "granting of only a few unwarranted
permits (relaxations) in undeveloped areas may also prevent
sound growth at the city's fringe." It is apparent that
these negative relaxations not only are dangerous for the present; but that they can also affect the future.

Most of the Zoning Boards of Appeal consider that they are not concerned with planning policy or principles, rather that their primary purpose is to deal with cases arising out of unnecessary or undue hardship and to see that justified relief is provided. With this view the Boards may not care if the relaxation provided is positive or negative. But it should be remembered that these Boards function in a quasi-judicial capacity and as such have to adhere to the norms of justice. In a review of "Zoning Administration in Illinois" it was mentioned that zoning cases do not require a judicial determination of the law but need an analysis of the fact in terms of sound planning policy. The decisions based on the rules of natural justice with due consideration of planning policy adopted by a municipal council are apt to be in the form of positive relaxations.

In order to grant positive relaxations, as against the negative ones, a Zoning Board of Appeal should develop standards which are necessary to protect the integrity of the zoning by-law. They should make sure they do not attempt to improve the effects of a bad law by granting relaxations from it. If a Board considers that its zoning by-law is defective it should recommend its legislative amendment.
By granting positive relaxations the Boards not only dispense justice but also facilitate the process of implementation of a municipal plan or a municipal planning policy. Although the Zoning Board of Appeal does not have any power to legislate and as such to amend the by-law, it can help the municipality to formulate a better implementation policy for implementing its planning policies. It can point out ambiguities in the content of the zoning by-law, and clashes of zoning objectives with popular public demands and the rules of natural justice. It can also advise planning department about the popular demands of the public as related to the uses of land.

VI SUMMARY

The constitutional authorization leading to the creation of a Zoning Board of Appeal is based on the practical impossibility of preparing a zoning by-law which will deal with all property and uses thereof and still avoid undue or unnecessary hardship in individual cases. In the absence of any relief for a justified hardship, a by-law may be declared ultra vires. The Zoning Board of Appeal functions as an independent quasi-judicial body under the rules of natural justice and derives its jurisdiction from provincial enabling legislation. The purpose of a Zoning Board of Appeal is to consider interpretations of the requirements of a zoning
by-law by providing relaxations in cases of hardship which may arise due to ambiguity in the zoning by-law or due to peculiar circumstances of certain property. While a Zoning Board of Appeal should protect the integrity of a zoning by-law by providing justified relief, it should not try to improve the defects of a bad law. By granting relaxation a Zoning Board of Appeal may grant two types of relaxations, positive and negative. Positive relaxations are those which are not only *intra vires* in providing relief to an aggrieved party but also help in the implementation of a municipal plan or planning policy by facilitating the administrative action by providing compatible relief. Negative relaxations on the other hand have just the opposite effect; these may provide relief to some individuals, but at the same time they may be harmful to the community. In a sense, a negative relaxation does more harm than good. Such relaxations do not complement the planning process, rather they create doubts about the value of planning for a community. The Zoning Board of Appeal not only helps in the implementation of planning policies through the granting of positive relaxations but also influences their formulation by making constructive recommendations based on its daily experience in dealing with zoning matters.
FOOTNOTES


4 This is discussed more elaborately in part IV of this chapter.

5 *The City of Toronto v Presswood Brothers* (1943) O.R., p.681, also (1944) O.R., p.145.

6 In this regard see *Vancouver Charter* (Victoria: The Queen's Printer, 1956), Section 573(1) and Section 573(2).

7 *Van Auken v Kimmey* (1930) 252 NYS 329-41 (New York Supreme Court).


Ibid.


Ibid., p. 223.


Ibid.


*Sexton v Bates* 85A(2d), p. 833.


Regina v Kalman Benko, an unreported case of October 12, 1962, Vancouver Magistrate's Court (Magistrate, A. L. Bewley).

Ibid.

27 Ibid., p.128


29 Ibid.

30 Ibid., p.85.

31 Ibid.

32 Ibid., Section 708, p.3239.

33 Ibid., Section 708(2), p.3240.

34 Ibid.


36 Ibid.

37 Angrignon v Bonnier (1935) I. D.L.R., p.417, (Supreme Court of Canada).

38 Ibid., p.216.

39 Young Women's Hebrew Association et. al. v Board of Standards and Appeals of the City of New York (1935) 194 N.E., p.751 (New York Court of Appeals).
40 City of East Chicago v Sinclair Refining Co., 111 N.E.2d 459-64; Brackett v Board of Appeal Building Department, 1942, 311 Mass. 52; 39 N.E.2d 956; St. Onge v City of Concord, 1949, 95 NH 306, 63A.2d, 221, 223.

41 City of Toronto v Williams (1944) O.R., p.145.


44 Ibid., p.137.


46 De Smith, op. cit., p.172.


49 De Smith, op. cit., pp.271-322.

50 Ibid.

51 Ibid., pp.323-66.

52 William T. Lane, Class Lectures on Local and Regional Planning Administration (Vancouver: University of British Columbia, Division of Community & Regional Planning, 1965).

53 Delafons, op. cit., p.82.
54  Ibid.


59  Reps, op. cit., p.282.

60  Ibid.


63  Ibid.

CHAPTER IV

THE ADMINISTRATION OF SELECTED ZONING BOARDS OF APPEAL:
A CASE STUDY IN THE VANCOUVER, B. C., METROPOLITAN AREA

The preceding chapters have presented a general background for the development of the thesis. The early objectives of zoning in North America have been reviewed in order to differentiate them from the contemporary concept, which has caused zoning to become a potential instrument in the implementation of municipal long range plans and planning policies. The creation of a Zoning Board of Appeal, constituting a safety valve in the enforcement of a municipal zoning by-law, and the influence of its decisions on the formulation and implementation of a municipal plan or planning policy have been reviewed. The hypothesis of this thesis that "a positive statement of zoning objectives and planning principles together with a uniform set of procedures to be followed by the Zoning Board of Appeal is necessary for effective implementation of municipal planning policy" is tested in this chapter, through data and information gathered from three selected Zoning Boards of Appeal in the Vancouver Metropolitan Area of British Columbia. A definition of the objectives and methods of the case study are explained. The existing conditions and problems involved in the operation
of three selected Zoning Boards of Appeal are analyzed. Standards of judicial review and consistency in decisions as related to planning and zoning objectives are analyzed through relevant records of the selected Boards, and these data are supplemented by interviews with the members of these Boards and officials of municipal planning departments.

I THE OBJECTIVES AND METHOD OF INVESTIGATION

The objective of this Case Study is to test the aforesaid hypothesis, with the ultimate purpose of establishing its validity. The primary objective is to analyze the dominant features of the Zoning Board of Appeal. The analysis includes evaluation of: the effectiveness of the Zoning Board of Appeal in the dispensation of justice in cases arising out of undue or unnecessary hardship; its effectiveness in the formulation and implementation of a municipal plan or planning policy; the types of decisions made and consistency in these decisions as related both to the principles of natural justice, and the zoning and planning objectives. It has been alleged that in the administration of a zoning by-law "the worst aspect of the appeal machinery is the lack of proper procedure for the conduct of hearings."¹ In order to judge consistency in the operation of a Zoning Board of Appeal, the procedure followed by each Board is examined. It is only by such analysis that one can appreciate the usefulness as well as
the shortcomings of the Zoning Board of Appeal as a tool in
the formulation and implementation of a municipal plan or
planning policy.

The Method of Investigation

For this Case Study the ideal method of investigation
would have been to analyze the aforesaid characteristics of
the Zoning Boards of Appeal for all the municipalities of the
Vancouver Metropolitan Area. But this was not possible due
to the limitations of time available. It was therefore
considered to be appropriate to do a more intensive analysis
of a few representative Boards. For the selection of a
representative sample, it was kept in mind that "careful
definition of the universe and the observations, and the
significant relationship between them, is the cornerstone of
planning for representativeness." The selection of a sample
depends on the theory of probability, as the conception of
probability relates to the amount of knowledge of the state-
ment whose probable truth is under evaluation.

For the purpose of this study the stratified sampling
method, which allows the use of a smaller sample with
precision was adopted. Though a stratified sample is repre-
sentative, it has to be adequate so as to "allow confidence
in the stability of its characteristics." Keeping these
basic essentials in mind, three Zoning Boards of Appeal were
selected from those operating in the Vancouver Metropolitan Area. These Boards represent the Municipal Corporations of the City of Vancouver, the District of Richmond, and the City of North Vancouver. These Boards represent a stratified sample to justify reaching a generally applicable conclusion, but as such do not unduly narrow the scope of the thesis. These Boards represent respectively:

1. A relatively large central city, in a metropolitan area, having a population of about 400,000 and an area of 28,700 acres. The city is incorporated under a special charter that entitles it to enact legislation under power granted to it. This city has an efficient planning department. (Vancouver)

2. A small district municipality within the Vancouver Metropolitan Area, having a population of about 50,000 and an area of 41,529 acres. It has a small but well organized planning department. (Richmond)

3. A suburban city, having a population of about 25,000 and an area of 3131 acres. It has no planning department although it is facing a boom in construction and subdivision development. (North Vancouver)

These three areas are indicated on the location map, Figure I, page 13.

The investigation is divided into three parts: the first part consists of a review of the operation of the selected Zoning Boards of Appeal; the second part is related to interviews held with the members of the selected Zoning
Boards of Appeal; and the third part is comprised of an analysis of interviews held with the municipal officers concerned with the enforcement of the zoning by-law in each municipality.

Analysis of the operation of the selected Boards revealed the constitution, characteristics of cases heard, and the type and extent of relaxations granted by each Board. An attempt was made in the analysis to determine whether the decisions made by these Boards were consistent in respect to supporting principles of natural justice, and with respect to supporting zoning and planning objectives of a municipal plan or planning policy. Individual interviews with the members of the selected Zoning Boards of Appeal were completed with the help of a mailed questionnaire (see Appendix III) which was very carefully prepared. This questionnaire was tested with some experienced respondents and revised before full application. The purpose of this questionnaire was to obtain the members' points of view with respect to the operation of the Boards and also to ascertain their attitude towards municipal planning and zoning objectives generally. The municipal officials responsible for enforcement of the zoning by-law were interviewed personally in order to determine their attitudes to the Zoning Board of Appeal, its operation and function in the implementation and formulation of a municipal
plan or planning policy. In addition a number of hearings of Zoning Boards of Appeal were attended in order to become familiar with their actual operation. Several sites which formed the basis for zoning appeals were inspected to evaluate the extent, and effect of relaxations on the zoning and planning objectives. The minutes of the proceedings and other files of each Board were used to gather information regarding the number and characteristics of appeals to each Board.

II THE OPERATION OF THE ZONING BOARD OF APPEAL

The operation of a Zoning Board of Appeal has been discussed in general in the previous chapter. In this Case Study, an investigation into the constitution and operation of the three selected Boards may be initiated with a description of their enabling legislation and membership. Of the three Boards under study: two Boards are governed by the British Columbia Municipal Act; and the third Board is governed by the Charter of the City of Vancouver. The details of membership and enabling legislation are as follows:
TABLE I

MEMBERSHIP AND ENABLING LEGISLATION OF THE SELECTED ZONING BOARDS OF APPEAL IN THE VANCOUVER METROPOLITAN AREA OF BRITISH COLUMBIA

<table>
<thead>
<tr>
<th>Zoning Board of Appeal</th>
<th>Municipal</th>
<th>Provincial</th>
<th>Chairman</th>
<th>Total</th>
<th>Enabling Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Vancouver</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>'Charter of the City of Vancouver.'</td>
</tr>
<tr>
<td>District of Richmond</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>3</td>
<td>'B.C. Municipal Act.'</td>
</tr>
<tr>
<td>City of North Vancouver</td>
<td>1</td>
<td>-</td>
<td></td>
<td>2</td>
<td>' '</td>
</tr>
</tbody>
</table>

Source: Field Investigation

The Vancouver and Richmond Zoning Boards of Appeal have their membership prescribed by the enabling legislation. The Zoning Board of Appeal of the City of North Vancouver has had two members nominated by the provincial government during the last two years. The first provincial nominee dropped out after attending the very first hearing, the second nominee was appointed after 19 months and has not attended any hearings of the Board. For the last two years the Board's business has been conducted by the other two members, in fact one member and the Chairman (who is a member of the Board.) The reason for such unsuccessful nominations could not be established.
Table number II gives the breakdown by length of membership and profession of each member. The length of membership ranges from one month to sixteen years. The professional breakdown shows that only one member represents orientation to the planning profession, the rest in general are associated with the business community.

**TABLE II**

COMPOSITION OF MEMBERSHIP BY LENGTH OF MEMBERSHIP AND PROFESSION OF THE MEMBERS OF THE SELECTED ZONING BOARDS OF APPEAL IN THE VANCOUVER METROPOLITAN AREA OF BRITISH COLUMBIA

<table>
<thead>
<tr>
<th>Zoning Board</th>
<th>Member</th>
<th>Length of Membership</th>
<th>Profession</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Vancouver</td>
<td>1</td>
<td>'16 years</td>
<td>Retired Executive Director, CPAC.</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>'10 years</td>
<td>Retired Immigration Officer.</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>'10 years</td>
<td>Retired Druggist.</td>
</tr>
<tr>
<td></td>
<td>4</td>
<td>'4 years</td>
<td>Businessman.</td>
</tr>
<tr>
<td></td>
<td>5</td>
<td>'3 months</td>
<td>Retired Bank Manager.</td>
</tr>
<tr>
<td>District of Richmond</td>
<td>1</td>
<td>'8 years</td>
<td>Master Dredger.</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>'9 years</td>
<td>Formerly Public Relations Officer.</td>
</tr>
<tr>
<td>City of North Vancouver</td>
<td>1</td>
<td>'13 years</td>
<td>Real Estate.</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>'6 years</td>
<td>Unknown.</td>
</tr>
</tbody>
</table>

Source: Field Investigation.
Procedure followed by the selected Zoning Boards of Appeal

The enabling legislation makes it mandatory that the zoning by-law adopted by a municipality should set out the procedure to be followed by the Zoning Board of Appeal. In the case of the City of Vancouver, its Zoning Board of Appeal is empowered to determine its own procedure although this will be subject to the provisions of the zoning by-law. The Zoning Boards of Appeal of the District of Richmond and the City of North Vancouver have their procedures defined in their respective zoning by-laws. The Boards of Vancouver and Richmond have formally adopted specific procedures for processing an appeal and utilize application forms which include instructions for filing an appeal. The Board of the City of North Vancouver has not prescribed any form or prerequisites for an appeal; every applicant must ascertain the requirements from the Building Inspector, who acts as Secretary of the Board, before making an application to the Board.

Notice of Hearing. The business of issuing Notice of Hearing in respect of a zoning appeal is the most delicate subject dealt with by a Zoning Board of Appeal. This is particularly so in the light of the fact that one of the basic principles of natural justice is that both the parties to a dispute must receive adequate and effective Notice of Hearing at which their rights are determined.
All three Boards differ as to the period and extent of public notice of the hearing of an appeal. The type of notice also differs in each case. While one Board requires a public notice to be published in a local newspaper, the other two Boards require such notice to be given to adjacent/surrounding property owners. The three Boards also differ in the period of notice required prior to hearing. These differences may be seen clearly from table number III.

TABLE III
CHARACTERISTICS OF NOTICE OF HEARING ISSUED BY THE SELECTED ZONING BOARDS OF APPEAL IN THE VANCOUVER METROPOLITAN AREA OF BRITISH COLUMBIA

<table>
<thead>
<tr>
<th>Zoning Board of Appeal</th>
<th>Period of Notice</th>
<th>Type of Notice</th>
<th>Details of Notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Vancouver</td>
<td>3-10 days</td>
<td>Public</td>
<td>Time, date, place of hearing and the address of property under appeal.</td>
</tr>
<tr>
<td>District of Richmond</td>
<td>7 days</td>
<td>Only to owners of neighboring lots</td>
<td>- do -</td>
</tr>
<tr>
<td>City of North Vancouver</td>
<td>Not indicated.</td>
<td>- do -</td>
<td>Not indicated.</td>
</tr>
</tbody>
</table>

Source: Field Investigation.

The Vancouver Zoning Board of Appeal gives a public notice through two consecutive advertisements in a local newspaper. The notice indicates the time, date and place of
hearing, and the address of the property for which the appeal is to be heard. The Richmond Zoning Board of Appeal requires its Chairman to "cause due publicity to be given of the hearing in the neighbourhood" and also to serve a seven days clear notice to the owners of neighbouring lots. The contents of Richmond's notice of appeal are similar to that of the Vancouver Zoning Board of Appeal. The City of North Vancouver Zoning Board of Appeal not only fails to indicate the period of notice, it also does not indicate the details to be included in such a notice.

The Use of Discretion. The enabling legislation of the three Boards make them responsible for giving notice of hearing of zoning appeals to owners of the properties who may be affected by the appeal. The enabling legislation does not expressly authorize any Zoning Board of Appeal to sub-delegate its delegated powers and the maxim delegatus non potest delegare applies to it. In the light of this fact it is interesting to identify who decides and issues the Notice of Hearing of these Boards.
TABLE IV

ISSUING AUTHORITY FOR THE NOTICE OF HEARING IN THE SELECTED ZONING BOARDS OF APPEAL IN THE VANCOUVER METROPOLITAN AREA OF BRITISH COLUMBIA

<table>
<thead>
<tr>
<th>Zoning Board of Appeal</th>
<th>Issuing Office</th>
<th>Legal Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Vancouver</td>
<td>Secretary of *</td>
<td>Chairman of the Zoning Board of Appeal</td>
</tr>
<tr>
<td></td>
<td>do</td>
<td>do</td>
</tr>
<tr>
<td>District of Richmond</td>
<td>Chairman of *</td>
<td>do</td>
</tr>
<tr>
<td></td>
<td>the Zoning Board of Appeal</td>
<td></td>
</tr>
<tr>
<td>City of North Vancouver</td>
<td>Secretary of *</td>
<td>do</td>
</tr>
<tr>
<td></td>
<td>the Zoning Board of Appeal</td>
<td></td>
</tr>
</tbody>
</table>

Source: Field Investigation.

It is apparent from table number IV, that only one Board, namely, the District of Richmond Zoning Board of Appeal, follows the intention of the enabling legislation. The Zoning Boards of Appeals of Vancouver and the City of North Vancouver contravene the maxim delegatus non potest delegare in authorizing their secretaries, who are municipal employees and not members of the Boards, to use their discretion in deciding and issuing a notice of hearing and as such this action must be regarded as ultra vires.

Types of Cases Heard and Appeals Granted. The ambit of jurisdiction of the Vancouver Zoning Board of Appeal is much larger than the other two Boards. The Vancouver Board
hears and decides; cases of non-conforming uses; erection of signs beyond established building line; conversions; extensions; and appeals from the decisions of the Technical Planning Board. All of these appeals are not based on undue or unnecessary hardship. On the other hand the jurisdiction of the District of Richmond and City of North Vancouver Zoning Boards of Appeal are mainly restricted to cases arising out of undue or unnecessary hardship. Table number V, gives the number of appeals received and decided by the three Boards during the year 1965.

**TABLE V**

**NUMBER OF APPEALS RECEIVED AND TYPES OF DECISIONS MADE BY THE THREE SELECTED ZONING BOARDS OF APPEAL IN THE VANCOUVER METROPOLITAN AREA OF BRITISH COLUMBIA**

<table>
<thead>
<tr>
<th>Types of Decisions</th>
<th>Vancouver</th>
<th>Richmond</th>
<th>North Vancouver</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Total number of Appeals made to the Board.</td>
<td>457</td>
<td>100</td>
<td>31</td>
</tr>
<tr>
<td>2. Number of Appeals granted.</td>
<td>89</td>
<td>19.5</td>
<td>24</td>
</tr>
<tr>
<td>3. Number of Appeals granted with conditions.</td>
<td>227</td>
<td>49.7</td>
<td>2</td>
</tr>
<tr>
<td>4. Number of Appeals refused.</td>
<td>102</td>
<td>22.3</td>
<td>-</td>
</tr>
<tr>
<td>5. Number of Appeals not heard.</td>
<td>2</td>
<td>0.4</td>
<td>1</td>
</tr>
<tr>
<td>6. Number of Appeals withdrawn.</td>
<td>37</td>
<td>8.1</td>
<td>4</td>
</tr>
</tbody>
</table>

Source: Field Investigation.
The cases submitted to the respective Zoning Boards of Appeal involved various types of land uses which are detailed in table number VI, below:

**TABLE VI**

TYPES OF LAND USES INVOLVED IN APPEALS MADE TO THE THREE SELECTED ZONING BOARDS OF APPEAL IN THE VANCOUVER METROPOLITAN AREA OF BRITISH COLUMBIA

<table>
<thead>
<tr>
<th>Types of Land Use Involved</th>
<th>Vancouver</th>
<th>Richmond</th>
<th>North Vancouver</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Multifamily Residential</td>
<td>119</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>26.0</td>
<td>13.0</td>
<td>6.2</td>
</tr>
<tr>
<td>2. Other Residential</td>
<td>228</td>
<td>22</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>49.9</td>
<td>71.0</td>
<td>87.5</td>
</tr>
<tr>
<td>3. Commercial uses in</td>
<td>3</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Residential area.</td>
<td>0.7</td>
<td>3.2</td>
<td>-</td>
</tr>
<tr>
<td>4. Commercial uses.</td>
<td>90</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>19.7</td>
<td>-</td>
<td>6.3</td>
</tr>
<tr>
<td>5. Industrial uses.</td>
<td>15</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>3.3</td>
<td>9.6</td>
<td>6.3</td>
</tr>
<tr>
<td>6. Miscellaneous.</td>
<td>2</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>0.4</td>
<td>3.2</td>
<td>-</td>
</tr>
</tbody>
</table>

Source: Field Investigation.

These appeals were based on various grounds, the predominant ground being undue or unnecessary hardship. Vancouver is an exception to this generalization as the majority of cases it heard were based on other grounds. These were comprised of items within the extended jurisdiction of the Vancouver Zoning Board of Appeal. Table number VII relates the number and percentage of appeals to the different grounds for appeal in the selected communities.
TABLE VII

GROUNDS OF APPEAL MADE TO THE
SELECTED ZONING BOARDS OF APPEAL IN THE
VANCOUVER METROPOLITAN AREA OF BRITISH COLUMBIA

<table>
<thead>
<tr>
<th>Ground of Appeal</th>
<th>Vancouver</th>
<th>Richmond</th>
<th>North Vancouver</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Undue or unnecessary hardship.</td>
<td>109</td>
<td>18</td>
<td>14</td>
<td>23.8</td>
</tr>
<tr>
<td>2. Hardship not covered by the provisions of</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>the Municipal Act or the Vancouver Charter.</td>
<td>38</td>
<td>8</td>
<td>25.8</td>
<td>8.3</td>
</tr>
<tr>
<td>3. Ambiguity of Zoning by-laws.</td>
<td>1</td>
<td>2</td>
<td>1</td>
<td>0.2</td>
</tr>
<tr>
<td>4. Misinterpretation of Zoning By-law.</td>
<td>3</td>
<td>2</td>
<td></td>
<td>0.7</td>
</tr>
<tr>
<td>5. Others.</td>
<td>306</td>
<td>1</td>
<td>3</td>
<td>67.0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>457</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Field Investigation.

It may be appreciated that although the number of cases arising out of ambiguity of the zoning by-law is small, still it is a positive indication of the fact that weakness on the part of the zoning by-law itself does give reason for appeal. Most of the appeals based on misinterpretation of the zoning by-law arose because of mistakes on the part of municipal employees in interpreting the zoning by-laws. The majority of appeals having grounds of undue or unnecessary hardship were related to yard variances. The types of relaxations
sought on these bases are detailed in the Table VIII, below.

**TABLE VIII**

**TYPES OF RELAXATIONS SOUGHT IN APPEALS MADE TO THE THREE SELECTED ZONING BOARDS OF APPEAL IN THE VANCOUVER METROPOLITAN AREA OF BRITISH COLUMBIA**

<table>
<thead>
<tr>
<th>Types of Relaxations Sought</th>
<th>Vancouver</th>
<th>Richmond</th>
<th>North Vancouver</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Yard Variances.</td>
<td>76</td>
<td>16.6</td>
<td>26</td>
<td>83.9</td>
<td>14</td>
<td>87.5</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>2. Alterations of Extensions to non-conforming uses.</td>
<td>30</td>
<td>6.5</td>
<td>1</td>
<td>3.2</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>3. Height Limitations.</td>
<td>15</td>
<td>3.3</td>
<td>2</td>
<td>6.4</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
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<tr>
<td>4. Use Variances.</td>
<td>45</td>
<td>9.8</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td>5. Development beyond established building lines.</td>
<td>32</td>
<td>7.0</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>6. Miscellaneous.</td>
<td>220</td>
<td>48.1</td>
<td>2</td>
<td>6.5</td>
<td>2</td>
<td>12.5</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>457</td>
<td>100</td>
<td>31</td>
<td>100</td>
<td>16</td>
<td>100</td>
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</table>

Source: Field Investigation.

The single largest number of appeals was made for miscellaneous relaxations in the City of Vancouver. This large number is because of extended jurisdiction of the Vancouver Zoning Board of Appeal; as it is not comparable with the other two Boards this figure or type of relaxation is not considered for comparison here. The majority of appeals in all three Boards were for yard variances.
III RESULTS OF AN ATTITUDE SURVEY OF MEMBERS OF THE ZONING BOARDS OF APPEAL AND MUNICIPAL OFFICIALS

The data gathered on the operation of the three selected Zoning Boards of Appeal were supplemented by interviews with the members of the three Boards, and officials of the municipal planning departments. Interviews with the members of these Boards were completed with the help of a mailed questionnaire (see Appendix III). These interviews endeavoured to obtain each member's point of view with respect to the operation of these Boards, and also to ascertain their attitude towards and knowledge of municipal planning and zoning objectives. Personal interviews with those municipal officials responsible for enforcement of the Zoning by-laws were structured to determine their opinions concerning the effectiveness of the operation of these Zoning Boards of Appeal.

Interviews with the Members of the Selected Zoning Boards of Appeal.

Of the ten members in the three selected Zoning Boards of Appeal, seven members responded to the mailed questionnaire. The three remaining members, who all belong to one of the selected Boards, did not respond in spite of several personal requests. Although these members did not cooperate in
completing the questionnaire, nevertheless they expressed their views in personal meetings. These three members indicated that they were not informed of municipal planning and zoning objectives except those expressly stated in the municipal zoning by-law, and that their function was to act only as a jury and to decide each case on its individual merits, irrespective of any planning objectives.

The seven questionnaires completed by members of these three Boards provide valuable and interesting information. The results of these questionnaires are presented in Table number IX, page 114 and observations related to the questionnaire are made in part IV of this Chapter.

Interviews with the Municipal Officials responsible for enforcement of Zoning By-laws.

The City of Vancouver has a Zoning Planning Officer who is in-charge of zoning administration and who attends all the hearings of the Zoning Board of Appeal on behalf of the City. In the District of Richmond, the Municipal Planner and the Building Inspector advises the Zoning Board of Appeal on each zoning appeal. In the City of North Vancouver, the Building Inspector is responsible for the enforcement of zoning as the City does not have a planning department. These officials of the three municipalities were interviewed for three basic reasons: firstly to find some factual information
about instructions and any other material supplied to the respective Zoning Boards of Appeal; secondly to clarify doubts which arose in the course of investigation; and thirdly, to obtain their appraisal of the operation of these Boards. Observations derived from these interviews are presented below.

IV OBSERVATIONS AND CONCLUSIONS

The observations have been grouped into three main categories. The first group is comprised of observations derived from investigation into the operation of the selected Zoning Boards of Appeal. The second group consists of opinions of the members of these Boards as reflected in their answers to the questionnaire. The third group consists of the opinions of the municipal officials, charged with zoning administration, concerning the operation of their respective Zoning Boards of Appeal.

The Operation of the Zoning Boards of Appeal

All three Boards under investigation were observed generally to maintain the following procedure at the hearings:

1. Hearing is called to order by the Chairman.
2. Approval of minutes from the previous hearing.
3. First appeal is called by the Secretary.
4. Hearing of the Appeal

(a) The Secretary reads out the contents of the appeal.

(b) The appellant is given a chance to add any more facts in support of his appeal.

(c) The protestants, if any are present, are called to present their objections.

5. The Board's consideration

(a) The Board requests the Municipality's opinion and any clarifications as to the existing regulations. It may be pointed out that in this respect all these Boards have different procedure. In the case of the City of Vancouver, the Zoning Planning Officer and the Building Inspector attend all hearings and advise the Board when desired. In the case of the District of Richmond, the Municipal Planner and the Building Inspector submit their reports to the Board in writing, in each appeal. In the case of the City of North Vancouver, the Building Inspector, who also acts as Secretary of the Board, advises the Board on behalf of the City.

(b) Motion and voting by members of the Board.

(c) Award of decision.

6. Formal transmittal of the Boards decisions to the appellant, the Building Department, and the Planning Department.

To become familiar with each appeal, the Boards of the City of Vancouver and the District of Richmond inspect the property involved in the appeal, before hearing the appeal. The City of North Vancouver follows a peculiar procedure of inspecting the involved property immediately after hearing the related appeal and thereafter awarding its decisions,
thus in this case the Board's proceedings are interrupted by inspection tours. Another peculiarity observed in respect of the City of North Vancouver is that its Building Inspector acts as the Secretary of its Zoning Board of Appeal and thus plays two incompatible roles; one as a Secretary of a quasi-judicial independent body where he also enjoys the power to use discretion in issuing "Notice of Appeal"; and other as a representative of the City to advise the Board of the City's regulations, as a result of which his opinion may be biased against the appellant.

It was observed that only the District of Richmond follows the intention of the enabling legislation in making the Chairman responsible for issuing "Notice of Appeal". The other two Boards, namely the Zoning Boards of Appeal of the City of Vancouver and the City of North Vancouver contravene the authority in re-delegating the authority to issue of "Notice of Appeal", to their secretaries. In the case of these two Boards such action on the part of their secretaries is _ultra vires_ and so their decisions are inconsistent with the rules of natural justice, the reasons for which have already been explained in Chapter III.

**Consistency of Decisions with Planning and Zoning Objectives:** It may be initially noted that it was not possible to do a detailed study of the consistency in decisions of
the Vancouver Zoning Board of Appeal with respect to planning and zoning objectives. The main reason for this was the insufficient data available for analysis. The only data available were the minutes of the Board's proceedings, which are recorded on the body of the individual "Notice of Appeal" (see Appendix IV). These minutes neither indicate reasons for accepting or dismissing the appeal, nor give the composition of votes which favoured or disfavoured an appeal. The only indication of the Board's decision as recorded on the "Notice of Appeal" is that of the granting, or granting with conditions, or dismissal, of an appeal. Wherever conditions are attached to the granting of an appeal, these are indicated in the decision of the Board.

In the case of the District of Richmond Zoning Board of Appeal, the position is similar to the Vancouver Zoning Board of Appeal, excepting that the minutes of the Board's proceedings had to be collected from individual case files. The City of North Vancouver not only does not have a prescribed "Notice of Appeal" form, its Board's minutes of proceedings do not indicate reasons or grounds of appeal and the resultant decision.

An analysis of all the cases of the District of Richmond Zoning Board of Appeal shows that the Board has followed strictly the advice of the Municipal Planning Department and
the Buildings Inspector, and as such the decisions were consistent with the recommendations of these departments. It may be recollected that this Board secures written comments from these municipal officials, concerning each appeal. A study of these cases provided the investigator with the impression that the Municipal Planning Department and the Building Inspector were dictating decisions to the Board, and thus getting changes made under the Zoning by-law which were beyond their own power. In other words, the Planning Department legitimized its actions under cover of the Zoning Board of Appeal.

From Table No. V at page 94 it is evident that out of the total number of appeals brought before the Boards only a negligible number (0.4 to 6.2%) of appeals were either not heard or were withdrawn from the Boards. Out of the total number of appeals presented to the Boards a majority (69.2 to 83.8%), of them were granted. With the exception of the City of Vancouver Zoning Board of Appeal most (44.4 to 77.4%) of those granted were without any conditions. Again with the exception of the City of Vancouver Zoning Board of Appeal, which rejected about twenty-two per cent of appeals, most (84 to 88%) of the appeals presented to these Boards were successful. The evidence thus tends to show that generally these boards grant the relaxations requested, and
that they do not impose any particular conditions on the relaxations.

Table No. VI page 95 shows that a great majority (49.9 to 87.5%) of the appeals were related to single family residential areas. Table No. VII at page 96 indicates that the majority of appeals (23.8 to 87.5%) were based on undue or unnecessary hardship. One peculiarity to be noticed from Table VII is that quite a significant number of appeals were based on some plea of hardship which was not necessarily because of peculiar situation of the property, these appeals were based on financial or emotional hardship. It is interesting to observe that most (69.2 to 83.8%) of these appeals were granted, but at the same time the basis for rejecting similar appeals under similar circumstances was not made clear, because of the absence of detailed recorded decisions which would normally indicate the basis of rejecting or accepting an appeal. In summary, the decisions appeared to be arbitrary, highly subjective, and inconsistent.

From an analysis of these data it appears that granting of relaxations was almost the only function of these Boards. Only a negligible number of appeals involved interpretation of the zoning by-law. In some instances the relaxations requested were to escape from the use requirements
of a zoning by-law and granting of such appeals actually constituted spot zoning. The majority of appeals were made in an attempt to obtain relaxation of yard area requirements. The appeals indicate that individual appellants see zoning largely as a limitation interfering with private rights to the enjoyment of their yards and the amount or area of site coverage permitted on their property. This could also imply that the individual appellant sees his request as something peculiar to his own property, without any consideration of the possible effect of the relaxation sought upon his neighbours properties or upon the neighbourhood as a whole. The requests for relaxation from yard requirements constituted the majority of appeals (see Table VIII at page 97) and nearly all of these were granted. These Boards were generally inclined to grant yard relaxations and seemed to be of the consensus that such relaxations affect only the appellant's property.

In this analysis, numerous cases indicate the Boards' lack of understanding to the zoning and planning objectives in granting such relaxations. For example, in a certain case the appellant requested permission to convert the existing carport into a bedroom and add a new carport in front which would intrude 6 feet into the required set back of 35 feet. The basis of the appeal was an increase in the size of family and another element submitted in support of the appeal was
that some of the neighbouring houses did not strictly follow the set back requirements. This appeal was granted, but in the absence of any recorded decision the criteria on which the Board granted the relaxation were not identifiable. However, it is clear that the Board, while granting the appeal, did not consider all the factors essential for the proof of hardship. It also did not respect the zoning and planning objectives, since by a personal inspection of the site it was confirmed that the required bedroom addition could have been made easily at the rear, within the same range of costs. If the Board had considered these factors carefully it would probably have rejected the appeal, firstly, because the claim that similar irregularities exist in the neighbourhood does not render this claim eligible for a relaxation, and secondly when a relief is technically possible, within the requirements of a by-law, then there is no basis for the granting of a relaxation.

The most significant factor observed in the operation of these Zoning Boards of Appeal was that although they derive their jurisdiction primarily from cases arising out of undue or unnecessary hardship caused by the strict application of a zoning by-law, yet no attempt was made to establish hardship in any of the cases studied. One defence advanced was that an appeal not obviously falling under undue or unnecessary hardship was not accepted by the Board. But
this does not mean that this arbitrary scrutiny dispenses with the necessity of establishing such hardship in the hearing of the Zoning Board of Appeal. It was observed that none of these Boards had formulated any criteria for evaluating hardship, each individual appeal was given subjective judgment. The subject of evaluation of hardship at the time of acceptance of a "Notice of Appeal" is even more critical, because these notices are accepted by the Secretary, who happens to be a municipal employee in each case and as such acts without any legal authority.

Interviews with the Members of the Zoning Boards of Appeal

An analysis of the mailed questionnaires completed by the seven members of the Zoning Boards of Appeal is presented below. The results of these questionnaires provide interesting and valuable information which is presented in tabular form in Table IX, page 114.

First, two questions were asked to determine whether the respective municipal councils have provided the members with all the necessary basic information regarding the functions of the Zoning Board of Appeal, while one member replied in the negative. Five out of seven members confirmed that they have been provided with adequate instructions regarding the procedure to be followed by the Boards; and the interpretation of the zoning by-law and other statutes. Two
members stated that they have been provided with an explicit statement of the municipalities' zoning objectives while the rest of the five members replied in the negative. Only one out of seven members considers that he has been provided with an explicit statement of municipal planning goals; the other six members indicated their ignorance of the existence of any such goals.

In the third question the members were asked, whether their respective Municipal Councils had provided them with planning and zoning reports in order to keep them in touch with current developments in municipal planning policy. Only three members confirmed provision of these reports connected with zoning changes, while the other four members replied in the negative. When asked about the media used to keep themselves up-to-date with such changes, three members indicated that they depended on newspapers, while two members stated that they used zoning maps and the other two did not respond.

The fourth question attempted to judge the awareness of each member in respect of his knowledge of the relevant municipal development policy. Only two members out of seven confirmed that their municipalities had a long range development policy. When asked if their respective municipalities had informed their respective members of the details of their development policy, all the members replied in the negative.
Only two members weighed the relaxation sought against the long range municipal policy, while the rest of the five members were rather indifferent about their responsibility with municipal planning policy or any knowledge thereof. Only three members felt that the decisions of their Boards were consistent with the municipal planning policy while the others generally insisted that they are only concerned with zoning or immediate issues and not responsible for any planning policy.

The fifth question related to the facilities provided at the time of hearings. All seven members confirmed that zoning maps and by-laws were prominently displayed or readily available at the time of hearings. While four members stated that planning maps were prominently displayed at the time of Zoning Board of Appeal hearings, three members replied in the negative.

The sixth question proposed a definition of "undue or unnecessary hardship". The objective here was to determine whether there was a consensus of opinion, and if there was no consensus then to analyze the suggested changes. All the members agreed with this definition and no changes were suggested.
In the seventh question the members were asked to identify the factors they considered most significant in a zoning appeal by indicating their preferences in a list of factors provided. Six out of seven members identified the "appellants hardship" as the most significant factor, while the second most important factor was considered to be "interpretation of law". The third most important factor was the public interest.

The eighth question contained an extract from the Zoning Ordinance of Cook County, Illinois, (see Appendix III) which contains a set of instructions for the granting of relaxations and a list of authorized relaxations. The members were asked if similar instructions were provided to them. Two members out of the seven said that they were provided with such instructions about five years back and these were obsolete now. When asked if such information would be useful to them, only two members out of seven thought these would be useful while the other four members replied in the negative, and one did not respond.

In question nine, the seven members were asked if provisions of a uniform procedure for zoning administration, supplemented by a positive statement of zoning and planning objectives would enable the Zoning Boards of Appeal to make better and consistent decisions. Four out of the six members
who responded thought it would be useful while the other two gave a negative reply and one member did not respond to this question.

The tenth question was asked to see if these Boards are careful about the consequences of the relaxations granted by them. Two members out of seven said their Board investigates actual influence of its relaxations on municipal planning policies, while the other five replied in negative. Four members out of the seven confirmed that their Boards observe the effect of relaxations granted by them, on the surrounding area, while the other three members replied in the negative.

Question eleven related to communication between the Zoning Boards of Appeal and the respective municipalities. Two members indicated that formal periodic meetings were arranged between their Boards and the municipality's technical personnel, while the other five members stated that there were no formal periodic meetings between the Boards and municipality's technical personnel, but these technical personnel were made available on request. Again two members said that formal periodic meetings were arranged between the Boards and the Municipal solicitor while the other five members replied in negative. None of the seven members made any suggestions as to how communication between the Zoning Boards of Appeal
and their respective municipalities could be improved.

In the last question the respondents were asked if an occasional seminar on the functioning of the Zoning Boards of Appeal, in the province, would help them to understand their functions and limits more fully. Six out of the seven respondents felt that such a seminar would be useful, while one member did not see any advantage in having such a seminar. When asked as to who should sponsor such a seminar, all six members who approved of having such a seminar suggested that the Provincial Government should sponsor it. One member also suggested as an alternative that a university should sponsor such a seminar.
TABLE NO. IX

ANALYSIS OF MAILED QUESTIONNAIRE
COMPLETED BY MEMBERS OF THE SELECTED
ZONING BOARDS OF APPEAL IN THE
VANCOUVER METROPOLITAN AREA

NOTE: 1. Letters of the alphabet are assigned to each respondent and their replies to each question are noted vertically under each letter.

2. N.R. means No Response.

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>I</th>
<th>J</th>
</tr>
</thead>
</table>

1. Has the Municipal Council provided you with adequate instructions regarding:

(a) the function of the Zoning Board of Appeal (ZBA)?

| Yes | Yes | Yes | Yes | Yes | Yes | No | NR | NR | NR |

(b) the procedure to be followed by the ZBA?

| Yes | Yes | Yes | No | Yes | Yes | No | NR | NR | NR |

(c) interpretation of the zoning by-law, statutes etc.

| Yes | Yes | Yes | No | Yes | Yes | No | NR | NR | NR |
2. Has the Municipal Council provided you with:
   (a) an explicit statement of its zoning objectives?

   Yes  No  Yes  No  No  Yes  No  NR  NR  NR

   (b) an explicit statement of its planning goals?

   Yes  No  Yes  No  No  Yes  No  NR  NR  NR

3. Does the Municipal Council provide you with planning and zoning reports in order to keep you in touch with current developments in municipal planning policy changes?

   Yes  Yes  No  No  Yes  No  NR  NR  NR

   If this is not so, how do you keep yourself in touch with these changes?

   News-Zoning  News-Zoning  News-Zoning  News-Zoning
   paper  Map  NR  NR  paper  Map  paper  NR  NR  NR

4. (a) Is there a long range municipal development policy?

   Yes  No  No  No  Yes  No  No  NR  NR  NR

   If there is, has the Council informed you of details of this policy?

   Yes  No  No  No  Yes  No  No  NR  NR  NR
(b) Do you verify that the relaxation sought in the zoning appeal will not conflict with the long range municipal planning policy?

Yes  No  No  No  Yes  No  No  NR  NR  NR

(c) Do you feel that the decisions of the ZBA are consistent with the municipal planning policy?

Yes  Yes  No  No  Yes  No  No  NR  NR  NR

5. (a) Are the zoning maps and by-laws prominently displayed at the time of ZBA hearings?

Yes  Yes  Yes  Yes  Yes  Yes  Yes  NR  NR  NR

(b) Are the municipal planning maps prominently displayed at the time of ZBA hearings?

Yes  Yes  No  Yes  Yes  No  No  NR  NR  NR

6. "Unnecessary hardship" has not been precisely defined but the following is a condensation from important court decisions:

The application of the unnecessary hardship doctrine is not governed solely by the size of the area or particular piece of property upon which the unnecessary hardship is imposed. No single factor determines what constitutes unnecessary hardship, but all relevant factors, when taken together, must indicate that the special conditions are such that the property affected cannot reasonably
be put to a conforming use because of the limitation imposed upon it by reason of the classification in which it is placed in terms of the ordinance (by-law).

(a) Do you agree with this definition?

| Yes | Yes | Yes | Yes | Yes | Yes | Yes | NR | NR | NR |

If not, what changes would you suggest?

| NR | NR | NR | NR | NR | NR | NR | NR | NR | NR |

7. In reaching a decision on a zoning appeal what factors do you consider most significant?

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<tr>
<th>Zoning Standards</th>
<th>A</th>
<th>B</th>
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<th>D</th>
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8. Some ordinances/by-laws provide the ZBA with a set of instructions for variances and a list of authorized variances (example in Appendix). Has your Board been provided with similar instructions?

| Yes | No | No | No | Yes | No | No | NR | NR | NR |

|
If not, do you think provision of such information would be useful to the Board in dealing with relaxations from regulations contained in the zoning by-law?

| Yes | No | NR | Yes | No | NR | NR | NR |

9. Do you think that provision of regulations to ensure uniform procedure for zoning administration, under the Municipal Act/Vancouver Charter, supplemented by a positive statement of zoning objectives and planning principles would enable the ZBA to make better and more consistent decisions?

| Yes | No | NR | No | Yes | Yes | Yes | NR | NR | NR |

10. Does the ZBA investigate the physical conditions achieved as a result of the relaxations granted, to observe:

(a) actual influence on municipal planning policies?

| Yes | No | No | No | Yes | No | No | NR | NR | NR |

(b) effect of relaxation on surrounding area?

| Yes | No | Yes | No | Yes | Yes | Yes | NR | NR | NR |

11. (a) Are formal periodic meetings arranged between the ZBA and the municipality's technical personnel?

| Yes | No | No | No | Yes | No | No | NR | NR | NR |
(b) Are formal periodic meetings arranged between the ZBA and the Municipal Solicitor?

Yes  No  No  No  Yes  No  No  NR  NR  NR

(c) What would you recommend to improve communication between the ZBA and the Technical Personnel and the Council and the Municipality?

NR  NR  NR  NR  NR  NR  NR  NR  NR  NR

12. Do you think an occasional seminar on the functioning of the ZBA, in the Province of British Columbia, would be helpful for the members of the ZBA to understand their functions and limits more fully and to recommend improvements, if any?

Yes  No  Yes  Yes  Yes  Yes  Yes  NR  NR  NR

If yes, who should sponsor it?

All the six members saying yes, were of the opinion that the Provincial Government should sponsor it. However, one member suggested the University could also sponsor such a seminar.
Interviews with the Municipal Officials responsible for Enforcement of Zoning By-laws.

As already mentioned, two out of the three municipalities, whose Zoning Boards of Appeal were studied, have Planning Departments. The third municipality takes care of its planning business mainly through its Building Department, although recently it has advertised for a planner. Officials of these three municipalities have different opinions about the operation of their respective Zoning Boards of Appeal.

In one municipality a planner attends all the hearings of the Zoning Boards of Appeal and even accompanies the members of the Board on site inspections. While this official tries to advise the members of all implications involving every appeal, nevertheless the Board is not required to accept his advice. This official feels that although the Board acts without any prejudice it nevertheless frequently ignores suggestions extended and tends to make decisions which do not necessarily support the intent of the zoning by-law. He also felt that the evaluation of hardship involved in appeals was highly subjective. Since the Board need not necessarily take account of precedents, this subjective judgment tended to be inconsistent in similar cases separated by time dimensions. This official felt that since the Board was primarily created for removal of inequities in
cases where the enforcement of a zoning by-law caused undue or unnecessary hardship, the primary job of the Board should be to evaluate critically the hardship without getting involved with compassionate reasons. It was felt that the Board should not grant relaxations so generously so as to create a general impression in the mind of the public that there is a positive chance of avoiding compliance with the zoning requirements through an appeal to the Zoning Board of Appeal. Another opinion extended was that while granting a relaxation the Board should take cognizance of municipal planning policy and should try to orient its decisions in such a way that these not only provide relief in the case of genuine appeals but also support the municipal planning policy.

In the second municipality, an official of its Planning Department was of the idea that only genuine cases are heard by the Zoning Board of Appeal. As all the zoning appeals are screened in the Planning Department before any action towards hearing is taken thereon, it was assumed that all such cases where the basis of appeal was apparently non-cognizable were not accepted for hearing. It may be observed here that such action on the part of the municipality is ultra vires as it falls within the jurisdiction of its Zoning Board of Appeal. It was stated that the decisions of the Board were consistent with the municipal zoning and
planning objectives. This statement was most probably based on the fact that the Planning and Building Departments of this particular municipality submitted written reports on each appeal and the Board's decisions were exactly based on such reports. In this case these reports may in themselves be questionable, if these in themselves uphold the planning policy or are means to legitimize some irregularities under the cover of the Board's relaxations. These actions, which were analyzed in the study of appeals, clearly show that the Zoning Board of Appeals, functions on advice of the Planning Department. There is a danger that this may be used as a means of sanctioning irregularities.

The third municipality does not have a Planning Department, however it does have a zoning by-law and a planning policy for its future development. The Building Inspector performs a dual function by also acting as Secretary of the Zoning Board of Appeal. This municipality is facing a boom in construction but because of lack of staff is not able to enforce zoning regulations very strictly. As such most of the irregularities are overlooked, and only a small number of cases reached the Zoning Board of Appeal. It was stated that the Board could not play any planning role because of the absence of any enforcement staff and also absence of clear cut planning objectives. It was also mentioned that under
these circumstances the Board's position was so superficial that it could not maintain full membership as the Provincial Government failed in two attempts to make a successful nomination during the last two years.

**Conclusions from Observations.**

All three Boards are broadly similar in their operation, but they differ in respect to procedures for giving a "Notice of Hearing", and inspection of locations for cases which are under appeal. Inspection is not crucial in all cases, but irregularity in issuing "Notice of Hearing" may be ultra vires under the rules of the natural justice.

It is impossible to evaluate the consistency of the decisions of the selected Boards not only in relation to the principles of natural justice but also in relation to municipal planning and zoning objectives. The minutes of the Boards' proceedings do not define the reasons for accepting or rejecting an appeal. Omission of recorded reasons for the decision, not to speak of lack of information considered in the decision, makes it impossible to evaluate the consistency of decisions. It is clear that most of the decisions are inconsistent with respect to the rules of natural justice the observance of which is mandatory for the operation of quasi-judicial bodies such as the Zoning Board of Appeal. Besides irregularities in the issuance of the "Notice of Hearing",
another crucial problem is the fact that the Boards' opinions may be biased by the written opinions of the municipal officials who advise the Board.

The analysis of the decisions indicates that the Boards generally tend to grant relaxations in most of the appeals presented to them. Most of the relaxations however are not qualified by any conditions. This tends to ensure that the appellant is not put to an advantageous position. The most significant flaw in the operation of these Boards is that although their jurisdiction is primarily based on cases arising out of undue or unnecessary hardship, nevertheless in no single appeal were the criteria for determining the extent and validity of this plea evident. Decisions for all the cases exhibited subjective judgment on the part of Zoning Board of Appeal which led to arbitrary and inconsistent decisions. Decisions of numerous cases indicated the Boards' indifference to zoning and planning objectives. This inadequate situation is directly attributable to the indifferent attitudes of the members of these Boards as reflected by the responses contained in the questionnaires completed by members of the Boards.

Analysis of the questionnaire responses reveals a substantial lack of communication between the Boards and their respective municipal planning departments. These Board members
are not supplied with adequate information about municipal planning policy nor do they feel that they should be concerned with planning policies. The members tend to confine themselves strictly to the zoning by-law, without making any attempt to understand the basic objectives underlying the formulation of the by-law. Most of the Board members consider that the provision of a uniform procedure for operation of the Zoning Boards of Appeal, supplemented by a positive statement of zoning and planning objectives, would enable them to make better and more consistent decisions. In addition to this uniform procedure, the majority of the members feel that an occasional seminar on the functioning of the Zoning Boards of Appeal would help them to understand their functions and limits more fully, and would assist them to make better and more consistent zoning decisions.

V SUMMARY

The Selected Zoning Boards of Appeal apparently follow various procedures in their operation and these appear to be inconsistent with the rules of natural justice. The relaxations granted by the Boards tend to be inconsistent with the zoning and planning objectives which are evidently not taken into account by the members. The relaxations so granted in themselves are arbitrary and highly subjective, so no definite criteria are set up to evaluate the extent and validity of
hardship involved in each appeal. The absence of recorded decisions and reasons thereof make the factors of arbitrariness and subjectiveness of these relaxations even more questionable. The study indicates that a substantial lack of communication exists between the Zoning Boards of Appeal and their respective municipalities in regard to their planning objectives and policies. The respondents to the questionnaire consider that an occasional seminar of the functioning of the Zoning Boards of Appeal would help them to understand their functions and limits more fully and would assist them to make better and more consistent decisions.

Chapter V presents recommendations based upon observations made in the Case Study, together with contemporary experiences relating to improvements in the administration of the Zoning Board of Appeal.
FOOTNOTES


4 Ibid., p.221.

5 Ibid., p.225.
CHAPTER V

RECOMMENDATIONS FOR IMPROVEMENT
IN THE OPERATION OF
ZONING BOARD OF APPEAL

Two steps are necessary in making recommendations for improvement in the operation of Zoning Boards of Appeal in the Province of British Columbia. These will be equally applicable in other parts of North America where a Zoning Board of Appeal functions under similar conditions. The first step is to describe the basis for recommendations, that is, the drawbacks experienced in the operation of a Zoning Board of Appeal which are reflected in the Case Study; and the contemporary experience relating to the operation of the Zoning Boards of Appeal in other parts of North America. The second step is to review the alternative solutions which have been adopted or suggested by various authorities. From these alternative solutions, recommendations can then be made and methods for their implementation can be suggested.

I BASIS OF RECOMMENDATIONS

The primary pre-requisite for making any recommendations is to review the existing situation from personal as well as contemporary experience. A review of the observations from the Case Study provides first hand knowledge of the
operation of the Zoning Boards of Appeal in the Vancouver Metropolitan Area of the Province of British Columbia. A review of available literature and case law relating to the operation of the Zoning Board of Appeal in other parts of North America provides contemporary experience as a basis for formulating recommendations.

Review of Observations from Case Study.

Each of the three selected Zoning Boards of Appeal, in the Vancouver Metropolitan Area of British Columbia, operates under a uniform provincial enabling legislation, which lays down broad rules and regulations concerning procedure and ambit of jurisdiction of these Boards. Each of these Boards follows broadly similar procedures in its operation. However none of the selected Boards follow the intent of the enabling legislation or the rules of natural justice, in its operation. This tends to result in decisions which are inconsistent with the objectives of the zoning by-law as well as the rules of natural justice. Reasons for such inconsistencies may be broadly grouped into three elements: Legislation; Operation; and Attitudes.

Legislation. The enabling legislation provides a very broad framework for the operation of the Zoning Board of Appeal. The statutory standards laid down by the enabling legislation for determination of "undue or unnecessary hardship", and for the issuance of the "notice of hearing" are
vague. The British Columbia Municipal Act in its Section 709(1)(c), for example, specifies that:

The Zoning Board of Appeal shall hear and determine an appeal by an applicant... who alleges that enforcement of a zoning by-law with respect to siting, size, or shape of a building or a structure would cause him undue hardship... 1

The Act fails to define undue hardship and gives a broad latitude to each member of a Zoning Board of Appeal to develop its own criteria to determine hardship. The enabling legislation also does not indicate limits to which relaxations can be granted.

The enabling legislation specifies that "Notification of Appeal shall be given by the Board to..." 2 It fails to indicate details to be included in such a notice. Each of the selected Zoning Boards of Appeal follows this broad intent of the enabling legislation and issues a "notice of hearing" indicating time, date, place of hearing and the name and address of the appellant, to each owner of property adjacent to the appellant's property. But this notice fails to indicate the basis or grounds of appeal, and thus does not reveal full facts to the opponents, which is a contravention of the rules of natural justice. The legislation lays down that the "Notification... shall be given by the Board to..." 3 In the absence of any express indication, presumably this duty falls
on the chairman of each Board. Thus the action of issuing "Notice of Hearing" by the secretary of the Zoning Board of Appeal is *ultra vires*, being in contravention of the maxim *delegatus non potest delegare*.

**Operation.** The enabling legislation makes it mandatory for every zoning by-law to include details of the procedure to be followed by its Zoning Board of Appeal. As the enabling legislation provides only a very broad framework, the details are worked out by individual municipalities adopting a zoning by-law.

In general every Zoning Board of Appeal broadly follows similar procedures in its operation. In general, neither the minutes of the proceedings nor the case files indicate: the reasons for accepting or rejecting an appeal; the factors considered in reaching a decision; or the composition of votes which were in favour or against an appeal. The absence of this information makes the evaluation of the Board's operation very difficult. Furthermore, the details required in the "Notice of Appeal" fail to provide essential information needed for a proper relaxation, namely that:

1. There must be a proof of "undue hardship";
2. There must be proof of unique circumstances; and
3. There must be proof that the proposed relaxations would not alter the essential character of the neighbourhood.4
From analysis of the data of the Case Study, it appears that these Boards tend to grant relaxations in most of the appeals submitted to them, although most of the appeals neither meet the above mentioned requirements nor ensure that the appellant is not put in an advantageous position by the grant of relaxation.

The Boards follow different procedures for seeking advice from municipal planning department. The three different procedures followed are:

1. The Planning Zoning Officer and the Building Inspector attend hearings of the Zoning Board of Appeal, and advise the Board when so desired.

2. The Planning Officer and the Building Inspector make written reports in respect of each case to the Board. These reports tend to be recommendations rather than mere comments on the appeal.

3. The Building Inspector acts in dual capacity: as secretary of the Zoning Board of Appeal; and as Building Inspector, when he advises the Board on behalf of the municipality.

In each of the last two cases the opinion of the Board is likely to be biased by the recommendations of the municipal officials. Furthermore, there is complete lack of communication between the Boards and their respective planning departments. The members of these Boards are neither supplied with adequate information about municipal planning policy, nor do they feel that they should be concerned with any planning policy. The members tend to confine themselves strictly to
the administration of zoning by-law, without making any effort to understand the basic objectives underlying the formulation of the zoning by-law. The result is that decisions are made without full understanding of the context, and as such tend to be inconsistent with zoning and planning objectives.

**Attitudes.** The members of these Boards neither appreciate the idea of the prescription of a set of instructions for the grant of relaxations, nor do they like the idea of the provision of a list of authorized relaxations. The consensus of the majority of these members is that such instructions will unduly restrict their jurisdiction. But at the same time it is important to note that these members pursue varied or any related field. Their opinions tend to be inconsistent, arbitrary, and highly subjective; firstly, because every member looks at the contents of an appeal from his own point of view, and secondly, because each case is decided on its own merits without reference to any precedents which could help in maintaining consistency.

The majority of members of the three selected Boards which were investigated, were of the opinion that provisions of regulations to ensure uniform procedure for zoning administration, under the enabling legislation, supplemented by a positive statement of the zoning objectives and planning principles would enable the Zoning Board of Appeal to make better and more consistent decisions.
Contemporary Experience.

The contemporary experience in the operation of the Zoning Board of Appeal in other parts of North America substantiates most of the above observations. This contention is broadly supported by existing case law and literature. For example, Justice Baldwin's alarming comment on the operation of the Zoning Board of Appeal indicates that:

... unless great caution is used and variations are granted only in proper cases the whole fabric of town- and city-wide zoning will be worn through in spots and revealed at the edges. ... 5

This is an indication of the common charge against the Zoning Board of Appeal: the general impression is that these Boards grant relaxations in unjustified cases, and thus defeat the zoning and planning objectives of the community.

Contemporary experience confirms that enabling legislation normally provides some standards which are to guide the Boards, but these standards are usually expressed in general terms. Experience also reveals that through ignorance or lack of understanding of the intent of the enabling legislation and the underlying objectives of the zoning by-law, the Zoning Board of Appeal may become a device of potential danger rather than safety for the public. 6 In this connection, it has been said that "... there is a basic lack of understanding on the part of ... the Zoning Board of Appeal. ...
there is definitely the problem of unclear statutes and unclear ordinances."\(^7\)

It has been held that a zoning by-law should provide standards to guide a Zoning Board of Appeal in granting relaxations and to ensure that the Board does not enjoy unlimited power to exercise discretion.\(^8\) In numerous cases the North American courts have held that the zoning by-law must spell out limits of this discretionary power by the establishment of some standards to guide the Zoning Board of Appeal.\(^9\) The courts feel that the Boards use arbitrary criteria in deciding appeals. It is mentioned in the North-western University Law Review that:

In making its determinations the Board considers similar variations in the area. . . . a tendency to grant a variation if the other variations (non-conforming uses) are next door and to refuse if they are at the other end of the block.\(^10\)

These arbitrary and subjective decisions are considered critical because ". . . one variation becomes the basis for subsequent variation. . . opening the way for complete destruction of the effectiveness of the zoning ordinance."\(^11\)

It has been felt that the Board's failure to spell out reasons for its decisions and criteria used to determine the existence of particular hardship has so far prevented a growth of precedents which may be applicable to subsequent
requests. It has also been felt generally that large percentage of relaxations granted by the Zoning Board of Appeal indicates either that the Board "does not base its findings on a proper set of standards or that the zoning ordinance is faulty." The vagueness of the legislative standards which are to guide the Board have presented a challenge to the courts throughout North America, and a substantial body of case law has resulted. This case law has established certain general standards and principles to be followed by the Zoning Board of Appeal.

Operation. It has been indicated that one of the causes of unjustified grant of relaxations is the "lack of adequate rules of procedure and operating practice for the Board." However it is now generally accepted that if the Zoning Board of Appeal grants a relaxation "it must at the same time make certain written findings." These written decisions should state specific reasons for the grant or refusal of an appeal. To determine undue or unnecessary hardship, the courts have now developed five criteria to guide the Boards:

1. The appellant must show that if he complies with the provisions of the ordinance, he can make no reasonable use of his property.
2. That the hardship results from the application of the zoning by-law to the property of the appellant.

3. That the hardship of which the appellant complains is suffered by his property directly, and not by others.

4. That the hardship is not the result of the appellant's own actions.

5. That the hardship is peculiar to the property of the appellant.17

Attitudes. Calvin S. Hamilton has drawn a broad opinion about the attitudes of the members of the Zoning Board of Appeal, he mentions that:

Most board of appeals members know little or nothing about planning, and frequently care less. They are generally political appointees and serve for political reasons, or they see a good thing is being done on the board. They may want to gain prestige or they may want to gain monetary enhancement, perhaps not directly, but indirectly through friends or subsequent business arrangements.18

II ALTERNATIVE SOLUTIONS

To ameliorate the defective operation of the zoning administration of the Zoning Board of Appeal, several alternative remedies have been suggested and adopted throughout North America. Most of these improvements, either as adopted or suggested, are connected with the legislative aspects of the zoning by-law, the administration of the Zoning Board of Appeal, and the education of the public as well as the mem-
bers of the Zoning Board of Appeal. Some representative examples of these alternative solutions to the problems involved in the effective operation of the Zoning Board of Appeal are discussed here.

For proper operation of the Zoning Board of Appeal, John W. Reps has suggested the following remedies:

1. **Statutes and ordinances should specify clearly the separate powers of the Board.** Simple and unambiguous statements should indicate generally the grounds on which relaxations may be granted.

2. **Rules of procedure should be required.** This requirement will force the Board to consider the procedure for hearing appeals, the nature of evidence required, and the basis for making decisions.

3. **The Board should adopt administrative forms that focus attention on the proper requirements for relaxations.** Forms on which appeals to the Board are made should require the applicant to state why he is suffering the hardship, why he believes the hardship is unique, and why the variance would not alter the character of the neighbourhood.

4. **Maps showing the location of variances and exceptions should be mandatory.** Maps indicating such locations would be a constant reminder of the effect of their actions and might exercise a restraining action.

5. **The lay-Board should be replaced by a Board of experts or by a single Zoning Appeals Administrator.** It is thought that with zoning by-laws increasing in complexity and details and with the growing demands for more positive zoning as an aid to vigorous community planning and urban renewal, zoning appeals should be reviewed by those qualified through professional training and experience.
6. The general standard of unnecessary hardship might be replaced by more specific rules. It is thought that various types of hardship situations might be defined in which the Board can grant relaxations.19

Besides these suggestions Reps is of the opinion that the members of the Zoning Board of Appeal should be educated as to their responsibilities and limitations. It has been popularly suggested that undue or unnecessary hardship pleaded in the zoning appeals should satisfy four conditions:

1. That strict enforcement of the zoning by-law would impose an unreasonable restraint on the use of property.

2. That the hardship is owing to unique circumstances applying to the appellant's property.

3. That the granting of the variation will not disrupt the zoning plan or injure adjacent property.

4. That the hardship is not self-inflicted.20

It has also been suggested that the requirements of notice, public hearing, and findings of fact should be precisely defined. Several means of individual notification of hearing are suggested and used. While some communities have adopted the use of a mailed notice, others use a mailed notice as well as an advertisement in a local newspaper, and yet others use both of these methods and also post a notice of hearing on the property under appeal. The contents of notice of hearing, in each of these cases, include time and place of hearing and the nature of the appeal.21
Contemporary experience shows that most of the Boards are required to record reasons for their decisions. For example in the Province of Ontario, the Committee of Adjustment (another name for the Zoning Board of Appeal) is required to make its decisions in writing and to set out reasons for the decision which has to be signed by the members who concur to the decision. The recording of reasons for decisions is important, not only because it is required by the Act but for other reasons as well. James B. Milner has stated this requirement is sound, for three reasons:

First and most important, it should force the committee to think more clearly about its case than it would if it could give oral reasons at the hearing. Second, it enables the applicant or his opposition to study the reasons carefully in case he desires to appeal to the municipal board. Third, it provides a record for the municipal board to study on the appeal, if it should be so interested.22

On the operational aspect, several alternatives have been suggested and adopted. One alternative is that the Zoning Board of Appeal should continue to function as such by incorporating most of the aforesaid suggested improvements. One of the other alternatives suggested is that the Zoning Board of Appeal be replaced by a Zoning Administrator. Yet another alternative is a combination of the two, where a Zoning Administrator may be appointed to hear and determine all applications for relaxations from the zoning by-law23 and appeals arising out of his decisions may then be taken to the
Zoning Board of Appeal. Here "the Zoning Administrator is essentially a full-time, one man Zoning Board of Appeal" and "the Zoning Board of Appeal is essentially a court of review, which on appeal reviews the Zoning Administrator's decisions." The Zoning Administrator does not have full discretion, and is authorized to grant relaxations only if certain conditions are satisfied by a case. In order to attain uniformity in the grant of relaxations on a metropolitan or regional scale, it has been suggested that the Zoning Board of Appeal should work on a metropolitan or regional basis and not on a municipal basis. It is thought that "such a move would also have desirable effect on securing a more or less uniform treatment of applications for variances and exceptions over the entire metropolitan (or regional) area."

Richard F. Babcock recommends the creation of a statewide zoning commission with two broad areas of authority:

1. The commission should be authorized to establish uniform rules and methods for procedure for all hearings by boards or local legislatures under local ordinances;

2. The commission would hear all appeals from final rulings of local bodies, whether those appeals were made by a board of appeals or a municipal legislature.

Babcock suggests that the first of these powers will ensure that every appeal irrespective of its location will be judged by a similar standard and heard under identical procedures. It is thought that the power of such a commission
to hear appeals from local bodies will provide a general case law.28

However the Committee of Adjustment, which is an equivalent of the Zoning Board of Appeal, in Ontario provides a more sophisticated procedure on the basis of which some improvements can be made in the existing procedure followed by the Zoning Board of Appeal. Some of the significant features of the Committee of Adjustment are:

1. The Committee of Adjustment is required to adopt a procedure which is approved by the Minister of Municipal Affairs. No Committee can hear or determine any matter unless such rules have been adopted and approved by the Minister.

2. The decision of the Committee of Adjustment, whether granting or rejecting an appeal, must be in writing, must set out the reasons for the decision, and must be signed by the members who concur in the decision.

3. The Committee of Adjustment has to send copies of the decisions to the applicant, to the Minister and to other persons as specified in the enabling legislation.

4. The members of the Committee of Adjustment are required to formulate a number of general principles for the various kinds of appeals with which they deal and these are required to be used as a guide when an appeal is under consideration.

5. The Committee of Adjustment members are supplied with detailed instructions regarding the zoning functions and objectives, the functions of the Committee and other related matters.29 The members are also supplied with illustrated hypothetical cases, to enable them to understand the types of relaxations that can be granted and the related situation under which these can be granted. Specimen examples may be seen in diagrams 1 to 8.
III RECOMMENDATIONS

The alternatives provide a basis for making recommendations for legislative, administrative, and related improvements in the operation of the Zoning Board of Appeal. However, these recommendations have to take into account the legislative and political requirements, the administrative and financial aspects, and they must also consider various implications involved in the implementation of these recommendations. It is, therefore, necessary to consider various ramifications of these aspects in order to make recommendations.

Legislative and Political Aspects.

The Zoning Board of Appeal derives jurisdiction from the provincial enabling legislation. Unless expressly stated, this authority cannot be sub-delegated for the maxim *delegatus non potest delegare* applies. Any suggested change in the operation of the Zoning Board of Appeal has to be politically feasible so as to be incorporated into the enabling legislation.

Administrative Aspects.

Results of good legislation are dependent on effective enforcement of the enacted regulations. Thus any improvements in the legislation must consider administrative feasibility for their enforcement. The most important aspect is to determine if an adequate administrative framework can be provided to facilitate the suggested change in the operation of the Zoning Board of Appeal.
Financial Aspects.

Any recommendations for change in the operation of the Zoning Board of Appeal will have to consider financial feasibility of the suggested change, or in other words consider how the suggested change is to be financed. As the Zoning Board of Appeal is normally financed out of the municipal budget, which itself is generally meagre, it is very important to consider the financial feasibility of the suggested changes in the operation of the Board. Obviously improvements within the existing framework of the Zoning Board of Appeal will cost much less than a complete changeover to an operation that would involve the employment of a Zoning Administrator and the necessary incumbent staff.

All these aspects have to be reviewed with respect to the implications involved in the implementation of the recommendations. The recommendations, however well thought-out and well analyzed they may be, will not be of any benefit unless they can be implemented effectively.

Recommendations.

On consideration of the legislative, political, administrative, and financial aspects and implications of implementation thereof, the following recommendations are made:
Legislative. Since the Zoning Board of Appeal primarily deals with cases arising out of the strict enforcement of zoning by-law and interpretation thereof, it is suggested that the zoning by-law should be prepared very carefully so as to avoid ambiguities which may lead to misinterpretations. The Zoning Board of Appeal should not be expected to solve the problems created by a poor zoning by-law. The Ontario Department of Municipal Affairs has in appreciation of this problem laid down that:

... no council or planning board when preparing a zoning by-law should ignore the principles of zoning or make insufficient studies and then expect the matter to be solved by the appointment of a Committee of Adjustment (Zoning Board of Appeal)... Many Committees of Adjustment (Zoning Boards of Appeal) are faced with poor zoning by-laws, which makes their task more difficult. ...

The zoning by-law should contain simple statements that can be read and understood by the average citizen. Furthermore, interpretation of the term "hardship", without any explicit treatment in the enabling legislation, leads to many controversial decisions. Explicit interpretation of this term should be clearly explained in simple rules so that the lay members of the Zoning Board of Appeal may understand it. It is recommended that the following factors be included in the interpretation of "undue or unnecessary hardship":
1. that there are practical difficulties which make the carrying out of the strict letter of the by-law unreasonable or impossible;

2. that the circumstances which create the practical difficulties are peculiar to the property only and not common to the area;

3. that by complying with the by-law, the applicant can make no reasonable use of the property;

4. that the necessity for the variance is not one of convenience or monetary gain, where compliance with the by-law is possible and reasonable;

5. that the necessity for the variance results only from the application of the by-law to the property and not from any other factor;

6. that the applicant has not himself created the circumstances that prevent him from complying with the strict terms of the by-law.

7. that the application has sufficient merits of its own not to create a precedent for similar requests from others.31

These sections on "Notice of Hearing" and "Notice of Appeal" should express all details which are mandatory for the processing of the appeal. All related forms should be standardized to ensure uniformity in action as well as uniformity in records. The required forms may be adopted at the provincial level. The "Forms for Zoning Administration" suggested by the American Society of Planning Officials may be improvised to suit local conditions. The specimen of a "Notice of Hearing" and a "Notice of Appeal" may be seen in Appendix V.
Administrative. The Zoning Board of Appeal should be required to adopt a procedure for its operation and as such procedure should be subject to the approval of the Department of Municipal Affairs. The Department of Municipal Affairs should approve this procedure only when it conforms to the inherent intention of the enabling legislation, rules of natural justice and rules of judicial review. The procedure adopted by a Zoning Board of Appeal should include the following factors in order to ensure salutary results:

1. It should expressly state relationship of the Zoning Board of Appeal with the public as well as the administrative and legislative agencies.

2. It should clearly identify: the duties and responsibilities of the Zoning Board of Appeal as a whole; as well as its individual members.

3. It should ensure Order, Regularity, Continuity, Consistency, Predictability, Control and Accountability in order to elicit the consent, cooperation and support of affected parties.

4. It should ensure fair and equal treatment.

5. It should ensure accurate and complete records of the Board's operation.

6. It should ensure that all the members of the Zoning Board of Appeal bear in mind the intent and purpose of the Zoning by-law and the municipal plan or planning policy, and understand the rules of natural justice and judicial review.

7. It should formulate a number of general principles for the various kinds of applications with which the Zoning Board of Appeal deals and these standards should be kept in mind as a guide when an application is under consideration.
8. It should ensure education of the members as well as the public as to the functions of the Zoning Boards of Appeal. The members of the Board should occasionally meet with municipal planning officials to clarify planning and zoning objectives. The public should be educated as to what the Zoning Board of Appeal can and cannot do.

In the appointment of members to the Zoning Board of Appeal, although no qualifications can be set, it is recommended that the following qualities suggested by Casner and Leach of the Harvard Law School be sought in each member:

1. Fact consciousness. an insistence upon getting the facts, checking their accuracy, and sloughing off the element of conclusion and opinion.

2. A sense of relevance. the capacity to recognize what is relevant to the issue at hand and to cut away irrelevant facts, opinions, and emotions which can cloud the issue.

3. Comprehensiveness. the capacity to see all sides of a problem, all factors that bear upon it, and all possible ways of approaching it.

4. Foresight. the capacity to take the long view, to anticipate remote and collateral consequences, to look several moves ahead in a particular chess game that is being played.

5. Lingual sophistication. an immunity to being fooled by words and catch phrases; a refusal to accept verbal solutions that merely conceal the problem.

6. Precision and persuasiveness of speech. that mastery of language that involves (a) the ability to state exactly what one means, no more, no less, and (b) the ability to reach other men with one's own thought, to create in their minds the picture that is one's own. And
7. prevailing all the rest, and possibly the only one that is really basic, self-discipline in habits and thoroughness, an abhorrence of superficiality and approximation.\textsuperscript{32}

IV IMPLEMENTATION

These recommendations suggest improvements which can be achieved by incorporating clarifications, rules, regulations, and some standards in the existing framework of zoning administration. In the case of British Columbia, these recommendations do not call for any extension of powers delegated under the enabling legislation. Furthermore these recommendations do not include controversial financial and political implications.

The implementation of these recommendations will involve action on the part of the government responsible for enacting the enabling legislation, and the municipal governments. In the case of British Columbia and other provinces of Canada, implementation of these recommendations will involve action on the part of provincial and municipal governments.

The provincial government will have to make the following regulatory changes in the enabling legislation:

1. Provide explicit statement of duties, responsibilities and ambit of jurisdiction of the Zoning Board of Appeal.
2. Provide simple interpretation of terms such as "undue or unnecessary hardship".

3. Provide clear statement of information required to be included in the "Notice of Hearing" and the "Notice of Appeal".

4. Prescribe standard specimen forms and schedules for appeals, notices, and records.

5. Require written decisions which should include the reasons or basis for decision.

6. Adopt a province wide uniform procedure for the operation of the Board.

7. Provide simple instructions to the members of the Zoning Board of Appeal. The instructions should include full details of the member's duties, responsibilities and limitations. Illustrated specimens similar to those provided by the Ontario Department of Municipal Affairs (see Diagrams 1 to 8 at page 152-155) to members of the Zoning Board of Appeal.

8. Make a policy to nominate such members on the Zoning Board of Appeal who satisfy most of the conditions laid down by Casner and Leach (see page 148). Furthermore it should endeavor to see that such members have some interest in community planning as well.

9. There should be an annual review of appeals decided by a Zoning Board of Appeal. In this review technical experts, namely, the municipal planner and the municipal solicitor, should explain to the members any irregularities which they may have come across. This will reduce any tendency on the part of appointees to abuse their position.

Every municipality having a Zoning Board of Appeal will have to take the following action for implementation of the recommendations:
1. It should make sure that the zoning by-law contains simple statements that can be read and understood by the average citizen, and that the zoning by-law does not contain any ambiguities that may lead to misinterpretation.

2. It should make sure that the orders of the Zoning Board of Appeal are strictly enforced and violations are charged.

3. It should adopt standard specimen forms and schedules for appeals, notices, and records.

4. It should adopt a uniform procedure as included in the enabling legislation.

5. It should improve communication between the Zoning Board of Appeal and its (municipality's) departments. It should inform the Board of its zoning and planning objectives.

6. It should educate the public about the functions, duties and limitations of the Zoning Board of Appeal. The public should be informed of all information that is required to be furnished in a "Notice of Appeal".

The provincial government should sponsor an occasional seminar on the functioning of the Zoning Board of Appeal. Such a seminar would be helpful for the members of the Zoning Board of Appeal to understand their functions and responsibilities more fully and to exchange ideas which might be helpful in making their operation more efficient.
DIAGRAM I
MINOR VARIANCE
A BUILDING LOCATED IN ERROR TOO CLOSE TO LOT BOUNDARIES

DIAGRAM II
MINOR VARIANCE
PROPOSED ENLARGEMENT WHICH WILL ENCROACH INTO A REQUIRED YARD

Source: Department of Municipal Affairs, Community Planning Branch, Toronto (Ontario).
DIAGRAM III
MINOR VARIANCE
REDUCTION IN YARD REQUIREMENTS BECAUSE OF SHAPE OF LOT

DIAGRAM IV
MINOR VARIANCE
REDUCTION IN LOT SIZE

Source: Department of Municipal Affairs, Community Planning Branch, Toronto (Ontario).
DIAGRAM V
MINOR VARIANCE
REDUCTION IN YARD REQUIREMENTS DUE TO PECULIAR FEATURE IN LOT

DIAGRAM VI
MINOR VARIANCE
REDUCTION IN PARKING SPACE REQUIREMENTS

Source: Department of Municipal Affairs, Community Planning Branch, Toronto (Ontario)
DIAGRAM VII
EXTENSION OF NON-CONFORMING USE PERMITTED
ON CONDITION THAT PARKING LOT AND LANDSCAPING BE PROVIDED

Source: Department of Municipal Affairs, Community Planning Branch, Toronto (Ontario).

DIAGRAM VIII
EXTENSION OF A COMMERCIAL USE INTO A RESIDENTIAL ZONE ON THE
CONDITION THAT LANDSCAPING BE PROVIDED ADJACENT
TO RESIDENTIAL LAND
V SUMMARY

A review of the observations of the Case Study and contemporary zoning experience, and a review of alternative solutions suggested or adopted for improvement in the operation of the Zoning Board of Appeal form a basis for recommendations made in this study. The specific recommendations are made after taking into account the legislative, political, administrative and financial implications. Implementation of these recommendations will involve action that must be taken both at the provincial and municipal levels.
FOOTNOTES


2. Ibid., Section 709(2).

3. Ibid.


Martin and Smith, *op. cit.*, p. 29.

National Lumber Products Co. v Panzio, 133 N.J.L. 95, 42A. 2d. 753(1945).


24  Ibid.

25  Ibid.


28  Ibid.

29  Department of Municipal Affairs, *Committees of Adjustment - Zoning Functions* (Toronto: Community Planning Branch, Department of Municipal Affairs, March 1965), pp. 1-14.


CHAPTER VI

EPILOGUE

The epilogue is comprised of a summary of the thesis and the study method, an evaluation of the validity of the hypothesis, and suggestions for further research.

I SUMMARY REVIEW OF THE THESIS AND THE STUDY METHOD

The objective of the thesis is to analyze the dominant features of the Zoning Board of Appeal, in order to determine its usefulness as a safety valve in zoning and planning administration, as well as to test its usefulness in the implementation of municipal planning policy. It is hypothesized that a positive statement of zoning objectives and planning principles, together with a uniform set of procedures to be followed by the Zoning Board of Appeal, are necessary for effective implementation of municipal planning policy.

The objective of the Case Study is to test the validity of the hypothesis. The Study analyzes the dominant features of the Zoning Board of Appeal for selected municipalities in the Vancouver Metropolitan Area of British
Columbia. The analysis includes evaluation of the effectiveness of the Zoning Board of Appeal in the dispensation of justice in cases arising out of undue or unnecessary hardship caused by the enforcement of the zoning by-law, its effectiveness in the formulation and implementation of municipal planning policy, and the consistency in its decisions with respect to zoning and planning objectives as well as to the rules of natural justice.

It is assumed that every Zoning Board of Appeal operating under uniform enabling legislation functions under similar circumstances. On this assumption, three Zoning Boards of Appeal in the Vancouver Metropolitan Area are selected for the Case Study. Since the Boards do not make written decisions which would document the reasons or basis for such decisions, it is assumed that the basis of these decisions is reflected in the basic attitudes of the members of the Zoning Board of Appeal.

To form a background for the Case Study, traditional and contemporary concepts of zoning and planning are reviewed. In the Case Study, each Zoning Board of Appeal is reviewed in the context of its: functions; operation; ambit of jurisdiction; and influence of its decisions on municipal planning policy. The investigation consists of three major parts.
The first part reviews the operation of the selected Zoning Boards of Appeal; the second part relates to interviews with the members of the Zoning Boards of Appeal; and the third part reviews the interviews with the relative municipal officers concerned with the enforcement of zoning by-law in each municipality.

The Study explores the reasons for inconsistencies in the decisions of the Zoning Board of Appeal. Basic reasons for these inconsistencies are grouped into three categories: ambiguities in the legislation; irregularities in the operation of the Zoning Board of Appeal; and indifferent attitudes of the members of the Zoning Board of Appeal, to municipal zoning and planning objectives. It is observed that the enabling legislation does not provide interpretation of the most important term "undue or unnecessary hardship" and also does not indicate the requirements or standards to be followed in the issuance of "Notice of Hearing" or the "Notice of Appeal". It is also observed that the selected Zoning Boards of Appeal neither indicate in their decisions the reasons for accepting or rejecting an appeal, nor the factors considered in reaching such decisions.

There appears to be a complete lack of communication between the Zoning Boards of Appeal investigated, and their
respective municipal Planning Departments. The members of the Boards are not supplied with adequate information about municipal planning policy and they do not apparently feel concerned about the lack of such information. The members tend to confine themselves to administration of the zoning by-law only and make their decisions without full understanding of the implications for community planning and as such their decisions tend to be inconsistent with zoning and planning objectives. It is observed that members of the Zoning Boards of Appeal feel that prescription of a set of instructions for the grant of relaxations or provision of a list of authorized relaxations will narrow down their jurisdiction. But at the same time the majority of the members interviewed were of the opinion that provision of regulations to ensure uniform procedure for zoning administration, under the enabling legislation, supplemented by a positive statement of zoning objectives and planning principles would enable the Zoning Board of Appeal to make better and more consistent decisions.

A review of the observations along with a review of contemporary experience, in the operation of the Zoning Board of Appeal in other parts of North America, provides a basis for consideration of alternative solutions which have been adopted or suggested to resolve some of the problems faced in the operation of the Zoning Board of Appeal. These alter-
native solutions are then reviewed in the context of legislative, political, administrative, and financial aspects, and the implications of their implementation are considered. Thereafter, certain feasible legislative and administrative recommendations are made for achieving improvements in the operation of the Zoning Board of Appeal. A method for the implementation of these recommendations, which will involve action at the provincial and municipal government level, is suggested.

II EVALUATION OF THE HYPOTHESIS

The hypothesis of the thesis is that "a positive statement of zoning objectives and planning principles together with a uniform set of procedures to be followed by the Zoning Board of Appeal is necessary for effective implementation of municipal planning policy". Each aspect of this hypothesis is considered below in the context of the thesis.

A Positive Statement of Zoning Objectives and Planning Principles.

The traditional and contemporary concepts of zoning objectives and planning principles have been described. The conclusion drawn from the Case Study, together with observations based on a review of the contemporary experience in other parts of North America provide evidence that members
of the Zoning Board of Appeal are not provided with a positive statement of zoning objectives and planning principles. The result is that the members of the Zoning Board of Appeal rely on the zoning by-law and make decisions without full understanding of the context. Such decisions tend to be inconsistent with municipal zoning and planning objectives.

A Uniform Set of Procedures.

The enabling legislation provides a very broad framework of the procedure to be followed by the Zoning Board of Appeal. It leaves the detailed procedure to be adopted by each municipality in its zoning by-law. Because of ambiguities in the enabling legislation and lack of definition of standards and format, every Zoning Board of Appeal tends to follow inconsistent procedure in its operation. This results in decisions which are not only inconsistent in relation to zoning objectives and planning principles, but also violate the rules of natural justice and judicial review.

Implementation of Municipal Planning Policy.

Important tools for the implementation of a municipal planning policy are: the zoning by-law; the sub-division control by-law; and the development control by-law. Although all of these are important, nevertheless this thesis is confined to a consideration of zoning by-law only. The Zoning Board
of Appeal is a "safety valve" provided to grant relaxations in cases arising out of "undue or unnecessary hardship" caused by the strict enforcement of the zoning by-law. In this position the Zoning Board of Appeal plays a very critical role, for if it grants legitimate relaxations with respects to zoning and planning objectives, it helps in the implementation of municipal planning policy by providing compatible relief. On the other hand, if the relaxations granted by the Zoning Board of Appeal are inconsistent with municipal zoning and planning objectives, then the Zoning Board of Appeal in fact weakens the zoning by-law by providing unjustified relief to its violators which hampers in the implementation of municipal planning policy.

The study analyzes the types of cases heard and types of decisions made and also reviews the attitudes of the members of the Zoning Board of Appeal. It is observed that the members of the Zoning Board of Appeal are not appraised of the potential impact of their decisions, a situation which can work both ways; that is, it may help in the implementation of municipal planning policy or alternatively cause obstructions by granting incompatible relaxations.

Investigation of the hypothesis has provided a needed focus in reviewing the position of the Zoning Board of Appeal in the implementation of municipal planning policy. It is
concluded that the hypothesis appears to be valid. From the practical point of view it is concluded that the effective operation of the Zoning Board of Appeal should be considered as a useful device for the positive implementation of municipal planning policy.

III DIRECTIONS FOR FURTHER RESEARCH

The Study has been completed within the context of a sample which is extremely limited in size. With the absence of written case decisions it was not possible to identify and evaluate the criteria used for the grant of relaxations and the consistency of the decisions. It is suggested that further investigations in respect of the following aspects of the Zoning Board of Appeal would be helpful for making the Zoning Board of Appeal a useful device for realizing the goals of community planning:

1. There should be more studies of attitude and perceptions of the members, of the Zoning Board of Appeal, regarding the zoning by-law and related planning matters. The findings of such studies will be helpful in understanding more clearly why members of the Board react in particular manner for different types of appeals. The questionnaire used in this thesis can be developed to include a set of hypothetical cases in order to ascertain and identify different attitudes of different members.

2. Further studies of the procedure followed and criteria used by the different Zoning Boards of Appeal in reaching decisions should be conducted.
This may be done by reviewing important old cases and interviewing the members involved in making such decisions. The members may be asked their opinion and the basis thereof. This study can identify the nature of decisions made under different procedures following different criteria.

3. Further investigations into the exploration of the extent to which the members of the Zoning Board of Appeal feel a man should be free to use his land as he sees fit. This can indicate some instances in which there are unnecessary restrictions imposed by the zoning by-law.

4. Further research should be conducted in order to find out if some common procedural standards exist in the operation of the Zoning Board of Appeal on a province-wide scale.

IV SUMMARY

It is hypothesized that if the Zoning Board of Appeal follows a uniform procedure and is supplied with a clear statement of zoning objectives and planning principles, then it can support the implementation of municipal planning policy. To test the hypothesis the Study reviews the traditional and contemporary concepts of zoning and planning. With this background, three Zoning Boards of Appeal are selected in the Vancouver Metropolitan Area for the Case Study. The case Study explores the reasons for inconsistencies in the decisions of the selected Zoning Boards of Appeal. Reasons for inconsistencies are grouped into three categories: ambiguities in the enabling legislation; irregularities in the operation of the
Zoning Boards of Appeal; and attitudes of the members of the Zoning Boards of Appeal which reveal their indifference to planning objectives. It is observed that there is a lack of communication between the members of the Boards and their respective planning departments. It is also observed that there is a lack of any instructions for the grant of relaxations. A review of contemporary experience in the operation of the Zoning Board of Appeal substantiates the Case Study observations. Certain feasible legislative and administrative improvements are recommended. A method of implementation of these recommendations at the provincial and municipal levels of government are suggested. It is concluded that the hypothesis appears to be valid, and to provide a reasonable and practical solution for making the Zoning Board of Appeal a useful device for the implementation of municipal planning policy.
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OBJECTIVES OF THE CITY-WIDE USE PLAN:

AN EXTRACT FROM THE MASTER PLAN FOR

SAN FRANCISCO

Source: Delafons, John. Land Use Controls in the United States. Cambridge: Joint Center for Urban Studies
A. Objectives of the City-Wide Use Plan

The City-Wide Land Use Plan of San Francisco is designed as a general guide to the attainment of the following objectives:

1. Improvement of the City as a place for living, by aiding in making it more healthful, safe, pleasant, and satisfying, with housing representing good standards for all families and by providing adequate open spaces and appropriate community facilities.

2. Improvement of the city as a place for commerce and industry by making it more efficient, orderly, and satisfactory for the production, exchange and distribution of goods and services, with adequate space for each type of economic activity and improved facilities for the loading and movement of goods.

3. Organization of two principal functional parts of the city—the working areas and the community areas—so that each may be clearly distinguished.
from but complementary to the other, and so that
the economic, social and cultural development of
the city may be furthered.

4. Protection, preservation, and enhancement of the
economic, social, cultural and esthetic values
that establish the desirable quality and unique
c caracter of the city.

5. Coordination of the varied pattern of land use
with public and semi-public service facilities
required for efficient functioning of the city,
and for the convenience and well-being of its
residents, workers, and visitors.

6. Coordination of the varied pattern of land use
with circulation routes and facilities required
for the efficient movement of people and goods
within the city, and to and from the city.

7. Coordination of the growth and development of
the city with the growth and development of
adjoining cities and counties and of the San
Francisco Bay Region.
APPENDIX II

SUGGESTED PRINCIPLES TO ASSIST COMMITTEES OF ADJUSTMENT IN THE PROVINCE OF ONTARIO

APPENDIX II
SUGGESTED PRINCIPLES TO ASSIST
COMMITTEES OF ADJUSTMENT
IN THE
PROVINCE OF ONTARIO
(Source: Ontario Planning, Vol.3, No.6, July 1956)

Principles to assist Committees of Adjustment

During 1955, 1242 committee of adjustment decisions were submitted to the Community Planning Branch for review, about 400 more than in the previous year. In the course of reviewing these decisions, officials of the Branch have found that confusion or misunderstanding appears to exist concerning the nature of the powers given to committees of adjustment and the proper use of these powers. Also, committees of adjustment appear to be experiencing considerable difficulties in analysing applications.

The following comments are not intended as rigid rules for committee of adjustment action, but it is hoped that they may help to clarify the role of the committee of adjustment in the effective implementation of a sound planning programme.

1. As previously stated, the basic purpose of a committee of adjustment is to make minor adjustments in the strict application of the zoning by-law. This calls for a thorough knowledge of the official plan and zoning by-law, but above all an understanding of the intent and purpose of these documents, as the committee can only grant a variance when the intent and purpose is maintained. The responsibility is placed upon the committee to judge the extent of the variance so that the end result will still be within the intent and purpose of the official plan and zoning by-law.
2. The committee in carrying out its function must accept the official plan and zoning by-law as adopted by Council. It cannot use its powers to zone, or to permit uses that are not permitted, or to correct what it may consider and what may be defective planning or zoning, this being a matter for council as the elected body responsible for regulating land use by zoning by-law.

3. Normally, only an individual property should be considered. Groups of properties are a matter for an amendment to the zoning by-law.

4. The responsibility for showing necessity for the granting of a variance is upon the applicant, and in explaining that compliance with the by-law is unreasonable or impossible the applicant should provide reasons to the satisfaction of the committee.

5. The committee in analysing a case should satisfy itself:

(a) that there are practical difficulties which make the carrying out of the strict letter of the by-law unreasonable or impossible,

(b) that the circumstances which create the practical difficulties are peculiar to the property only and not common to the area,

(c) that by complying with the by-law, the applicant can make no reasonable use of the property,

(d) that the necessity for the variance is not one of convenience or monetary gain, where compliance with the by-law is possible and reasonable,

(e) that the necessity for the variance results only from the application of the by-law to the property and not from any other factor,

(f) that the applicant has not himself created the circumstances that prevent him from complying with the strict terms of the by-law,

(g) that the application has sufficient merits of its own not to create a precedent for similar requests from others.
6. In considering cases of non-conforming uses under section 18(2) (a) of The Planning Act, 1955, the committee of adjustment:—

(a) should bear in mind the intent of the by-law for the area,

(b) should ascertain that it is a lawful non-conforming use and that such use has continued until the date of application,

(c) should not grant an extension or enlargement of a building used for a non-conforming use except to prevent unreasonable hardship and where the depreciating affect on the area is no greater than the original building,

(d) should not grant a change of a non-conforming use, unless the new use is either similar to the old one or will be more compatible with the permitted uses for the area,

(e) should not permit the rejuvenation of a non-conforming use by the demolition of an old building and replacement by a new one for either the existing use or a new non-conforming use.

(f) should bear in mind that any extension or enlargement of a building used for a non-conforming use may extend the life of that use, whereas it is the hope that non-conforming uses will disappear to make way for conforming uses.

7. Under Section 18(2)(b) of The Planning Act, 1955, the committee of adjustment should not grant any extension of land, building or structure into an adjoining zone except to enable the owner of that land, building or structure to utilize his property reasonably, and then only provided that the extension is in keeping with the intent and purpose of the official plan and zoning by-law and that the area into which the extension is to be made actually abuts the property that is to be extended. In effect, the purpose of the committee of adjustment in this instance is to permit minor adjustments in the zone boundaries where the existing zone boundary prevents the reasonable and logical development of the land, building or structure that is required to be extended.
8. A committee of adjustment should not use its powers to legalize contraventions of the by-law resulting from gross carelessness or indifference on the part of the applicant or from poor municipal administration.

9. A committee of adjustment may impose conditions when deemed advisable, and it is recommended that this power be used. In many cases the actual variance requested can be altered for more conformity, as better solutions than those requested are possible in many instances, and in cases of non-conforming uses conditions imposed may help to lessen the depreciating affects on the area. The committee of adjustment should bear in mind that it is not necessary to grant the application as requested, for in some cases the applicant's request is greater than is actually needed.

10. It is considered that the words "use" and "purpose" in section 18 of The Planning Act, 1955, are intended to mean the actual use or purpose in its precise terms, rather than referring to the general term commonly given to a group of similar uses. For instance, a grocery store is the use and not the general term "commercial", and again a steel foundry is the use and not the general terms "factory" or "industrial".

11. In section 18 of The Planning Act, 1955, the word "land" is used together with the words "building" and "structure", and as such the reference to "land" is considered to apply only to land on which there are no buildings or structures, and similarly the use of land is regarded as meaning a use where no buildings or structures are required, (for instance a used-car lot), and not for the purpose of erecting a building thereon. The above meaning would appear to apply particularly in cases of non-conforming uses, in that the rights of a non-conforming use do not appear to be passed on to the land should the building be removed.

12. The committee of adjustment cannot properly consider the application on the basis of the information submitted in the written application alone, and therefore it is necessary for the applicant or his representative to attend the hearing to provide further information through answers to possible questions either from the committee of adjustment or from any other interested party. When the applicant or his representative fails to attend the hearing, the committee of adjustment should either refuse the application or give no decision.
until the applicant or his representative does attend a hearing and provide such additional information as may be required.

13. An application for a variance is for a privilege, not a matter of right. If there is any question that the granting of a privilege might prejudice the benefits of the by-law to others, the privilege should not be granted.

To many, the powers of a committee of adjustment may appear to be wide, and as a result different interpretations of the authority granted to this body may be given. However in this regard it is emphasized that a committee of adjustment, although not elected by the people, is given discretionary powers. It would seem imperative that these powers be used and interpreted with considerable caution if the committee of adjustment is to serve its proper purpose in promoting the interests of the community as a whole and if it is to gain the confidence of all concerned. An abuse of these powers may seriously reduce the effectiveness of the zoning by-law and cause conflict between the committee of adjustment and the municipal council through the former trying to usurp some of the powers of the latter.

A final word of warning: no council or planning board when preparing a zoning by-law should ignore the principles of good zoning or make insufficient studies and then expect the matter to be solved by the appointment of a committee of adjustment. This is not the function of a committee of adjustment. Many committees of adjustment are faced with poor zoning by-laws, which makes their task more difficult, and councils should not shirk their duty in this regard. As the title of this article suggests, a committee of adjustment is an indispensable tool performing an essential task in the implementation of planning through a zoning by-law. It is an agency intended to help zoning work more effectively, and to provide justice in removing some of the small inequities and frustrations that can arise in the zoning process, thus making this important implementing part of the planning process more acceptable.
APPENDIX III

SPECIMEN OF:

1. COVERING LETTER AND SURVEY QUESTIONNAIRE USED IN THE CASE STUDY.

2. THE PRESCRIBED STANDARDS FOR THE GRANT OF VARIATIONS BY THE ZONING BOARD OF APPEALS IN COOK COUNTY, ILLINOIS.

3. SPECIMEN OF VARIATIONS AUTHORIZED IN THE ORDINANCE REGULATIONS OF COOK COUNTY, ILLINOIS.
Dear Mr.,

In partial fulfilment of the requirements for the Degree of Master of Science (Community & Regional Planning), I am writing a thesis titled "Zoning Boards of Appeal: A Study of their Role in the Implementation of Municipal Planning Policies." The hypothesis to be tested in this study is that "a positive statement of zoning objectives and planning principles together with a uniform set of procedures to be followed by the Zoning Board of Appeal is necessary for effective implementation of municipal planning policy".

Three Zoning Boards of Appeal, in the Vancouver Metropolitan Area, have been selected for this case study and you are one of the members of these selected Boards.

Due to the very limited time available, it may not be possible to have a personal interview, so a questionnaire has been prepared to obtain information which is expected to be of value for this study. It would be appreciated if you would complete the attached questionnaire. The results of the completed questionnaires will be analysed without identifying the individual respondents.

Your assistance in providing information for this academic thesis project will be much appreciated. A self-addressed stamped envelope is enclosed for your convenience.

Thanking you, I am

Your very truly,

J.S. DHILLON,
B.Sc., LL.B
Graduate Student,
Community & Regional Planning.
MASTER'S THESIS PROJECT

ZONING BOARDS OF APPEAL: A STUDY OF THEIR ROLE

IN THE IMPLEMENTATION OF MUNICIPAL PLANNING POLICIES

QUESTIONNAIRE

1. Has the Municipal Council provided you with adequate instructions regarding:
   (a) the function of the Zoning Board of Appeal (ZBA)? Yes_No_
   (b) the procedure to be followed by the ZBA? Yes_No_
   (c) interpretation of the Zoning by-law, statutes etc.? Yes_No_

   Comment: ____________________________________________________________

2. Has the Municipal Council provided you with:
   (a) an explicit statement of its zoning objectives? Yes_No_
   (b) an explicit statement of its planning goals? Yes_No_

   Comment: ____________________________________________________________

3. Does the Municipal Council provide you with planning and zoning reports in order to keep you in-touch with current developments in municipal policy changes? Yes_No_
   If this is not so, how do you keep yourself in touch with these changes?

   Comment: ____________________________________________________________

4. (a) Is there a long range municipal development policy? Yes_No_
   If there is, has the Council informed you of details of this policy? Yes_No_

   (b) Do you verify that the relaxations sought in the appeal will not conflict with the long range municipal planning policy? Yes_No_
Question 4 (Cont'd)

(c) Do you feel that the decisions of the ZBA are consistent with the municipal planning policy? Yes_No_

Comment:__________________________________________________________________________________________
__________________________________________________________________________________________

5. (a) Are the zoning maps and by-laws prominently displayed at the time of ZBA hearings? Yes_No_
    (b) Are the municipal planning maps prominently displayed at the time of ZBA hearings? Yes_No_

Comment:__________________________________________________________________________________________
__________________________________________________________________________________________

6. "Unnecessary hardship" has not been precisely defined but the following is a condensation from important court decisions:

The application of the unnecessary hardship doctrine is not governed solely by the size of the area or particular piece of property upon which the unnecessary hardship is imposed. No single factor determines what constitutes unnecessary hardship, but all relevant factors, when taken together, must indicate that the special conditions are such that the property affected cannot reasonably be put to a conforming use because of the limitation imposed upon it by reason of the classification in which it is placed in terms of the ordinance (by-law)1.

(a) Do you agree with this definition? Yes_No_
    If not, what changes would you suggest?

Comment:__________________________________________________________________________________________
__________________________________________________________________________________________

7. In reaching a decision on a zoning appeal what factors do you consider most significant?
   (a) Zoning Standards_Planning Objectives as reflected in Long Range Planning Policies_ Interpretation of Law_
   (b) Public Interest_Appellant's Hardship_Others_

Comment:__________________________________________________________________________________________
__________________________________________________________________________________________

1City of East Chicago v Sinclair Refining Co., 111 NE.2d 459; Brackett v Board of Appeal Building Department, 1942, 311 Mass. 52, 39 NE.2d 956; St. Onge v City of Concord, 1949, 95 NH 306, 63 A.2d 221, 223.
8. Some ordinances/by-laws provide the ZBA with a set of instructions for variations and a list of authorized variations (example in Appendix). Has your Board been provided with similar instructions? Yes_No. If not, do you think provision of such information would be useful to the Board in dealing with variations/relaxations from regulations contained in the zoning by-law? Yes_No
Comment:

9. Do you think that provision of regulations to ensure uniform procedure for zoning administration, under the Municipal Act/Vancouver Charter, supplemented by a positive statement of zoning objectives and planning principles would enable the ZBA to make better and consistent decisions? Yes_No
Comment:

10. Does the ZBA investigate the physical conditions achieved as a result of the relaxations granted, to observe:
   (a) actual influence on municipal planning policies?Yes_No
   (b) effect of relaxation on surrounding area? Yes_No
Comment:

11. (a) Are formal periodic meetings arranged between the ZBA and the municipality's technical personnel? Yes_No
Comment:

   (b) Are formal periodic meetings arranged between the ZBA and the Municipal Solicitor? Yes_No
Comment:

   (c) What would you recommend to improve communication between the ZBA and the Technical Personnel and the Counsel and the Municipality? Comment:
12. Do you think an occasional seminar on the functioning of the ZBA, in the Province of British Columbia, would be helpful for the members of the ZBA to understand their functions and limits more fully and to recommend improvements, if any? Yes  No

Comment:________________________________________________________

________________________________________________________

13. ADDITIONAL COMMENTS:
c. Standards for Variations

The Zoning Board of Appeals shall not vary the regulations of this ordinance, as authorized in subsection a. hereof, unless it shall make findings based upon the evidence presented to it in each specific case that:

1. because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;

2. the conditions upon which the petition for a variation is based are unique to the property for which the variance is sought and are not applicable, generally, to other property within the same zoning classification;

3. the purpose of the variation is not based exclusively upon a desire to make more money out of the property;

4. the alleged difficulty or hardship is caused by the ordinance and has not been created by any person presently having an interest in the property;

5. the granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located; and

6. the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

The Zoning Board of Appeals may impose such conditions and restrictions upon the premises benefited by a variation as may be necessary to comply with the standards established in this subsection c. to reduce or minimize the effect of such variation upon other property in the neighborhood, and to better carry out the general intent of this ordinance.

Source: Proposed Comprehensive Amendment to the Cook County Zoning Ordinance, Cook County, Illinois (Cook County, Illinois: Office of the Zoning Committee, 1959.), p.30A.
APPENDIX. III

VARIATIONS AUTHORIZED

IN THE ORDINANCE REGULATIONS

OF COOK COUNTY, ILLINOIS

d. Authorized Variations

Variations from the regulations on this comprehensive amendment shall be granted by the Zoning Board of Appeals only in accordance with the standards established in subsection c. hereof, and may be granted only in the following instances and in no others:

(1) To permit any yard or setback less than the yard or setback required by the applicable regulations

(2) To permit the use of a lot or lots for a use otherwise prohibited solely because of the insufficient area or width of the lot or lots but in no event shall the respective area and width of the lot or lots be less than ninety per cent (90%) of the required area and width

(3) To permit the same off-street parking facility to qualify as required facilities for two (2) or more uses, provided the substantial use of such facility by each user does not take place at approximately the same hours of the same days of the week

(4) To reduce the applicable off-street parking or loading facilities required by not more than one parking space or loading space or twenty per cent (20%) of the applicable regulations, whichever number is greater

(5) To increase by not more than twenty-five per cent (25%) the maximum distance that required parking spaces are permitted to be located from the use served

(6) To increase by not more than twenty per cent (20%) the gross area of any sign

(7) To increase by not more than ten per cent (10%) the maximum gross floor area of any use so limited by the applicable regulations

The concurring vote of four (4) members of the Zoning Board of Appeals shall be necessary to grant a variation. No order of the Zoning Board of Appeals granting a variation shall be valid for a period longer than six (6) months from the date of such order unless a building permit is obtained within such period and the erection or alterations of a building is started or the use is commenced within such period.

Source: Proposed Comprehensive Amendment to the Cook County Zoning Ordinance, Cook County, Illinois (Cook County: Illinois: Office of the Zoning Committee, 1959.), p. 30A.
APPENDIX IV

SPECIMEN OF "NOTICE OF APPEAL"

Source: The Zoning Board of Appeal, Vancouver, B.C.
To the Secretary,
Zoning Board of Appeal,
City Hall, Vancouver, B.C.

NOTICE OF APPEAL

DISTRICT ZONE:

SITE SIZE:

1. Pursuant to: *Section 573 (1) (a), *Section 573 (1) (b), *Section 573 (1) (c),
   *Section 573 (1) (d), *Section 573 (1) (e) of The Vancouver Charter (See Overleaf)
   *Delete which is not applicable.

I/We hereby enter an Appeal relative to the following Section(s) of the Zoning and Development
By-law of the City of Vancouver:

(State Section(s), Sub-section(s) and Clause(s) of the Zoning and Development By-law which is/are the subject of this Appeal.)

2. Statement of the points upon which this appeal is based:

3. Attached hereto and made part of this Appeal are the following documents and Sketch Plans:

4. This appeal relates to:
   (a) Application for Development Permit No. Dated. 196...
   (b) Location.
       Lot Sub-division Block D.L.
   (c) Type of Development

5. I/We hereby declare that all the above statements and the statements as contained in all of the
exhibits transmitted herewith are to the best of my/our belief true and correct in all respects.

Signature of Applicant(s) Date Appeal Filed 196...

6. This Appeal was given a hearing by the Zoning Board of Appeal on 196...

   **ALLOWED**  **ALLOWED** subject to the following conditions:
   **DISALLOWED**

   When an appeal is granted, a Development Permit MUST BE OBTAINED by the appellant. If the appeal is granted
   subject to conditions, they must be complied with before the Development Permit will be issued. The decision of the
   Board to grant an appeal becomes void unless the Development Permit has been obtained within 196 days from the date hereof.

   Signed: Secretary, Zoning Board of Appeal
ZONING AND DEVELOPMENT BY-LAW
BOARD OF APPEAL PROCEDURE

RIGHT OF APPEAL:

SECTION 573, SUBSECTION 1, CLAUSES (a), (b), (c), (d) AND (e)
OF THE VANCOUVER CHARTER

573. (1) The Board shall hear and determine appeals:
(a) By any person aggrieved by a decision on a question of zoning by any official charged with the enforcement of a zoning by-law;
(b) By any person who alleges that the enforcement of a zoning by-law with regard to siting, size, shape or design of a building would cause him undue or unnecessary hardship arising out of peculiarities in the site or special circumstances connected with the development. In any such case the Board may, to the extent necessary to give effect to its determination, exempt the applicant from the applicable provisions of the zoning by-law;
(c) By any person who alleges that due to special circumstances or conditions the provisions of subsection (3) of section 568 will result in undue or unnecessary hardship to him; (see below)
(d) With respect to matters arising under subsections (4) and (5) of section 568; (see below)
(e) By any person aggrieved by a decision by any Board or Tribunal to whom Council has delegated power to relax the provisions of a zoning by-law.

SECTION 568, SUBSECTIONS (3), (4) AND (5)
OF THE VANCOUVER CHARTER

568. (3) A lawful use of premises existing at the time of coming into force of a zoning by-law, although such use is not in accordance with the provisions of the by-law, may be continued; but, if such non-conforming use is discontinued for a period of ninety days, any future use of those premises shall be in conformity with the provisions of the by-law. The Zoning Board of Appeal shall have power to allow relaxation of this provision.
(4) No additions or structural alterations shall be made to a non-conforming building without
(a) the approval of the Zoning Board of Appeal, if the non-conformity is in respect of use.
(5) Where a non-conforming building is damaged or destroyed by fire to the extent of sixty percent (60%) or more of its value above its foundations as determined by the City Building Inspector whose decision shall be subject to review by the Zoning Board of Appeal, it shall not be repaired or reconstructed without the approval of
(a) the Zoning Board of Appeal if the non-conformity is in respect of use.

FILING OF APPEAL PROCEDURE

The Notice of Appeal Form must be completed by the appellant and filed with the Secretary, eight clear days prior to the meeting of the Board.
The appellant must state clearly on the application form the clause or clauses of the Vancouver Charter under which the appeal is submitted.
The appellant must also state clearly and precisely the Section(s), Subsection(s) or Clause(s) of the Zoning and Development By-law which he wants relaxed, and further state the amount and/or type or relaxation.
Sketch plans showing the relaxation requested must accompany appeals.
APPENDIX V

1. SPECIMEN OF "NOTICE OF HEARING"
   AS RECOMMENDED BY THE AMERICAN
   SOCIETY OF PLANNING OFFICIALS.

2. SPECIMEN OF "NOTICE OF APPEAL"
   AS RECOMMENDED BY THE AMERICAN
   SOCIETY OF PLANNING OFFICIALS.

Source: ASPO Planning Advisory
        Service Information Report
        No. 33, Chicago: American
        Society of Planning
        Officials, 1951.
NOTICE TO INTERESTED PROPERTY OWNERS

BOARD OF ADJUSTMENT
UTAH COUNTY, UTAH

Source: ASPO Planning Advisory Service

Dear Property Owner:

An application for a variance to the Utah County Zoning Ordinance has been filed with the Board of Adjustment by __________________________. The property is situated in the __________________________ Zone District and is located at __________________________.

The request, if approved, would authorize __________________________.

The Building Inspector was required, under the provisions of the Zoning Ordinance, to deny the permit because __________________________.

However, the Board of Adjustment, under certain conditions and safeguards, may have the authority to grant the request.

A public hearing will be held by the Board of Adjustment on __________, 19____, at ______ P.M. in the County Commissioners Chambers in the City & County Building, at which time you may submit your views on the matter in person, by writing, or by representative.

If you know of any interested property owner who, for any reason, has not received a copy of this letter, it would be greatly appreciated if you would inform them of the time and place of the hearing.

Sincerely yours,

UTAH COUNTY BOARD OF ADJUSTMENT

Date: __________________________

Provo, Utah
SPECIMEN OF NOTICE OF APPEAL

I (we), ___________________________ of ______________________________,

respectfully request that a determination be made by the board of adjustment on the following appeal, which was denied by the building inspector on ___________ 19___ for the reason that it was a matter which, in the opinion of said inspector, should properly come before the board of adjustment.

An interpretation [ ] exception [ ] variance [ ] is requested to Section __________ of the Zoning Ordinance for the reason that:

[ ] It is an appeal for an interpretation of the ordinance or map.
[ ] It is an exception to the ordinance on which the board of adjustment is required to pass.
[ ] It is a request for a variance relating to the [ ] use [ ] area [ ] frontage [ ] yard or ____________________ provisions of the ordinance.

Remarks:
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

The premises affected are situated at ______________________________ in zone district ____________________ . Legal description of property involved in this appeal:
__________________________________________________________________________
__________________________________________________________________________
__________________________________________________________________________

Has any previous application or appeal been made in connection with these premises? ____________________ .

What is the applicant's interest in the premises affected? ____________________ .

What is the approximate cost of the work involved? $ ________________ .

Explanation of purpose to which property will be put: ____________________ .
Plot plan attached [ ] yes [ ] no.

Ground plan and elevations attached [ ] yes [ ] no. If no, explain: ________________________________

Following are the names and addresses of owners of property within a distance of 300 feet from the exterior limits of the property involved in this appeal as shown by the latest assessment roll of Utah County:

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<tr>
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I further state that if this request is granted, I will proceed with the actual construction in accordance with the plans herewith submitted within six months from date of filing this appeal, and that I am able from a financial, legal, and physical basis to do so.

______________________________
Signature of Applicant

Dated at __________________, Utah, the _____ day of __________________, 19__.

________________________________________
For Use of Board of Adjustment Only

Date hearing advertised __________; Date of hearing __________; Fee Pd. Receipt # __________

Decision of the Board of Adjustment: ________________________________

Reasons:
1. ________________________________
2. ________________________________
3. ________________________________