

The Fundamentals of Zoning

The following pages include a summary of some of the most pertinent topics of interest to groups and individuals involved in the processes associated with municipal zoning and rezoning. It is designed to give an overview of the subject of zoning in general. It is not meant to be a guide to the specifics of the Columbus Zoning Code.

There is currently an effort underway to develop a new Zoning Code for the city of Columbus. Upon completion of that effort, a companion course will be developed to relay to interested parties the specifics of that document.

Zoning Self-Quiz

As an opener to discussions about the role and function of zoning, please complete the following self-quiz. As you answer the questions by circling the letter of what you believe to be the best response, think about how you might explain in your own words why the answer was chosen.

Also, if there are any questions that arise while taking the quiz, listen for the answers as we proceed with the training session. If your questions go unanswered, be sure to pose them to the class leader. Chances are someone else in the session would appreciate hearing the answer as well.

1. *Why do communities implement zoning codes?*
 - a. To exert power and authority over property owners.
 - b. To “take” or “condemn” personal property without paying reasonable, just compensation.
 - c. To ensure a reasonable pattern of land uses so that adjacent uses can coexist in harmony.
 - d. To promote the public interest and to protect property values.
 - e. c and d.

2. *Under what power(s) does a community implement a zoning code?*
 - a. The police power.
 - b. The planning and zoning power granted to all large cities by the U.S. Constitution.
 - c. The zoning and regulatory power of the state.
 - d. The powers of use and lot coverage.
 - e. None of the above.

3. *What guidance does a community have when it wants to develop or revise its zoning code?*
 - a. State laws pertaining to planning and zoning.
 - b. The Declaration of Independence.
 - c. The community's comprehensive, general or master plan.
 - d. Other adopted planning documents for the community.
 - e. a, c, and d.

4. *Why is it important to make good zoning decisions?*
 - a. Zoning decisions can have impacts for decades into the future.
 - b. Good decisions can promote sound development patterns.
 - c. Good decisions can improve the quality of life and enhance the economic well-being of the community.
 - d. Bad decisions can prompt disagreements between neighbors, discourage businesses from taking a chance on the community, and generally make it a less desirable place to be.
 - e. All of the above.

5. *How, if at all, does the role of the zoning map differ from the role of the zoning code text?*
 - a. There is no difference. They both perform the same role and function.
 - b. The text shows how the community is divided into districts while the map explains the rules that apply to parcels within each district.
 - c. The map shows how the community is divided into districts while the text explains the rules that apply to parcels within each district.
 - d. The map is officially adopted as law while the text is not formally adopted by the legislative body.
 - e. While both are adopted as law, the map can be modified while the text can never be modified.

6. *What is the difference between zoning and subdivision regulations?*
 - a. Subdivision regulations apply only to residential development while zoning applies to all other uses of land.
 - b. By state code, only parcels of five acres or more are subject to zoning while parcels of any size may be subdivided.
 - c. Subdivision must occur before zoning may occur.
 - d. Zoning is an act of cities while subdivision regulations are administered by counties.
 - e. The zoning ordinance controls the use of land and placement of buildings on a parcel of land which was created through the subdivision process.

7. *What are zoning height and bulk regulations?*
- a. Regulations which address the height and size of buildings, the distance of buildings from the edge of the site, and the amount of the lot covered by buildings.
 - b. Regulations which require land uses to be designed appropriate for the height and weight of the average user of the site.
 - c. Regulations concerning the size of buildings in the downtown area only.
 - d. State requirements limiting the number of words and volumes which may included in the text of the zoning code.
 - e. None of the above.
8. *Why do zoning codes include restrictions on the heights of buildings?*
- a. To ensure that sunlight is not blocked any more than necessary.
 - b. To minimize wind tunnel effects.
 - c. Because the ladders on fire trucks can only reach so far.
 - d. a and c.
 - e. a, b, and c.
9. *What is a zoning variance?*
- a. A zoning provision which, to be reasonable, allows for building setbacks to vary within a given range. For example, buildings may be placed a distance varying from fifteen to twenty feet from the front property line.
 - b. A rezoning which does not require changing the zoning map.
 - c. A minor exception to the zoning rules granted due to there being a personal or financial hardship on the part of the property owner at the time of the variance.
 - d. The square of the standard deviation of the area, shown in square feet, of the various parcels within a particular zoning district.
 - e. A minor exception to the zoning rules granted due to there being a hardship unique to a particular property. Variances are meant to allow the community to reasonably apply zoning rules when, due to unusual circumstances, a parcel or building almost, but not quite, meets the requirements.

10. *What is a special or conditional use?*

- a. A use which is permitted in all zones, without regulation, because the community wants to promote this special type of land use under all conditions.
- b. A land use so special that, by law, it may only be granted upon the condition that it is approved by a unanimous vote of the legislative body.
- c. A use which might or might not fit within a zone depending on its characteristics and on the characteristics of the particular location in which it is proposed. It is not permitted "by right," but will probably be allowed if the authorities determine that the appearance and activity of the use are compatible with the surrounding area.
- d. A use such as a single-family home in a residential zone, a factory within a manufacturing zone, a retail store within a commercial zone, or any other use that is considered special or desired within the conditions of a particular zone.
- e. None of the above.

11. *What is a rezoning?*

- a. A change in the zoning text which may be accomplished without a vote of the legislative body.
- b. A change in the zoning map which may be accomplished without a vote of the legislative body.
- c. The simple renaming of a zone without changing the applicable zoning rules or the parcels on the map to which the rules apply. For example, changing only the name of a zone from "C: commercial" to "R: retail."
- d. The application of two or more overlay zones to the same property.
- e. None of the above.

12. *What are nonconforming lots and nonconforming land uses?*

- a. Newly formed lots or land uses which are not legal under old zoning rules.
- b. Lots or land uses which exist at the time of zoning code enactment or revision but which do not conform to that newly enacted or revised zoning code.
- c. Highly objectionable land uses and the lots on which they are found which do not conform to community standards or morals.
- d. Nonconforming land uses: uses which are legal within their zoning district but which do not conform to the minimum lot sizes required within that district. Nonconforming lots: lots which are of legal size for their districts but for which there are no land uses designated as appropriate for that particular lot size.
- e. Any lot or land use which does not conform to zoning rules and regulations.

Please do not read forward until after completing the self-quiz.

Zoning: Definition and Legal Overview

Definition

"Zoning -- as conceived in the United States in the second decade of this century -- is the division of a municipality (or county) into districts for the purpose of regulating the use of private land. These zones are shown on a map. Within each of these districts the text of the zoning ordinance specifies the permitted uses, the bulk of buildings, the required yards, the necessary off-street parking, and other prerequisites to obtaining permission to develop."¹

"Zoning had been preceded in the United States by scattered efforts on the part of communities to regulate the use of private land. Ordinances to control height in designated areas had been upheld; however, ordinances to regulate uses in specified blocks of a municipality had been less successful when challenged in the courts. Zoning, however, represented the first effort on the part of the public to regulate, in a comprehensive fashion, all private land. This idea, it is believed, came from the observations made in the early years of this century by a group of New Yorkers of the system employed in some German cities. In any event, New York adopted a zoning ordinance in 1916, and in the next decade comprehensive zoning swept across most of the larger cities and many of the suburbs of this country, aided by the promulgation in 1922 of the Standard State Zoning Enabling Act -- a model -- by the U.S. Department of Commerce."²

Albert Solnit, in *The Job of the Planning Commissioner*, cites zoning's six basic purposes³. They are:

- "To maintain property values (and the local tax base) on the theory central to planning that values are preserved and enhanced by orderly as opposed to haphazard growth."
- "To stabilize and maintain the character of neighborhoods (and business districts)."
- "To provide for uniform regulations throughout each district."
- "To move traffic rapidly and safely. Street widths are keyed to zoning, and off-street parking requirements are justified on the basis of maintaining street capacity and public safety."

¹Frank S. So et al., *The Practice of Local Government Planning*, (Washington, D.C.: International City Management Association, 1979), p. 416.

²Ibid.

³Albert Solnit, *The Job of the Planning Commissioner*, (Chicago: American Planning Association, 1987), pp. 109-110.

- “To regulate competition.” Probably the most controversial of the six, the argument in favor of this zoning purpose is to prevent the overbuilding of uses beyond those needed to serve the community.
 - “To control nuisances and maintain architectural standards. Courts have upheld jurisdictions that deny permits for structures so at variance with existing structures as to cause a depreciation of property values.”
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The Legal Basis

“Zoning is an expression of the police power -- the power to regulate activity by private persons for the health, safety, morals, and general welfare of the public; and that power, under our federal system, rests with the state legislatures. Municipalities enjoy no such authority except as it may be delegated to them by the states, either through express provisions in the state constitutions or through the adoption of legislation that ‘enables’ municipalities to regulate the use of private land through zoning. In the 1920s many states adopted such legislation. That did not settle the legal status of zoning; rather, it opened the door to a host of difficult issues that could, under our system, be determined only by the courts.”⁴

The following is a summary of **Ohio Revised Code** provisions related to municipal zoning:⁵

Section 713.06 Division of municipal corporation into zones.

- allows for the adoption of a plan to divide the community into zones or districts
- to promote public health, safety, convenience, comfort, prosperity or general welfare
- allows for regulation of height, bulk, and uses of buildings and other structures

Section 713.07 Restriction in location of buildings and structures.

- allows for the regulation of buildings and other structures used for trade, industry, residence, and other specified uses
- allows for the imposition of regulations designating uses and structures that may be erected, altered, or used

Section 713.08 Restrictions on height of buildings and structures.

⁴Frank S. So et al., *The Practice of Local Government Planning*, (Washington, D.C.: International City Management Association, 1979), p. 416.

⁵Ohio, *Ohio Revised Code, Annotated* (Anderson Publishing Company, 1994 Replacement), Title VII.

- permits the limiting of the heights of buildings and other structures
- stipulates that, when conflicts occur, the more restrictive height limit shall prevail

Section 713.09 Restrictions on bulk and location of buildings and structures, percentage of lot occupancy, and set back building lines.

- allows for the division of the community into districts for the purposes of regulating percentage of lot occupancy, set back building lines, and areas of yards, courts, and other open spaces
- stipulates that, when conflicts occur, the more restrictive bulk and location limitations shall prevail

Section 713.10 Basis of districting or zoning; classification of buildings and structures.

- states that “the districting or zoning of any municipal corporation or part thereof may be based upon any combination of two or more of the purposes described in sections 713.07 to 713.09, inclusive, of the Revised Code”
- allows for the classification of buildings and structures on the basis of activity conducted therein; the number of persons, families or other group units to reside or use them; the public, quasi-public, or private nature of uses therein; or any other basis relevant to the promotion of the public safety, health, morals, convenience, prosperity, or welfare
- allows for the amendment or change of regulations after the review of a public board and “a reasonable time, not less than thirty days, for consideration and report”

Section 713.11 Administrative board; powers and duties.

- permits the creation of an administrative board to administer sections 713.06 to 713.12, inclusive
- allows for the delegation to such board “the power to hear and determine appeals from refusal of building permits by building commissioners or other officers, to permit exceptions to and variations from the district regulations in the classes or situations specified in the regulations, and to administer the regulations as specified therein”
- allows for the delegation of administrative powers and functions to a planning commission or board

Section 713.12 Notice and hearing on municipal zoning regulations.

- requires a public hearing by the legislative body, with at least thirty days published notice, before any zoning ordinance, measure, regulation or amendment is passed
- requires copies of texts, maps and plans associated with zoning actions to be available for public examination during the thirty day period
- when zoning action applies to ten or fewer parcels of land, requires notification by first class mail, at least twenty days before the public hearing, of all property owners “within and contiguous to and directly across the street from such parcel or parcels”
- states, however, that “failure of delivery of such notice shall not invalidate any such ordinance, measure, or regulation”
- requires that “no such ordinance, measure, or regulation which is in accordance with the

recommendations, plan, or report submitted by the commission, board, or officer shall be deemed to pass or take effect without the concurrence of at least a majority of the members elected to the legislative authority”

Section 713.121 Limitation on procedural challenges.

- limits challenges to the validity of zoning actions based on procedural error to within two years of “the adoption of the ordinance, regulation, or amendment”

Section 713.13 Violation of zoning ordinance may be enjoined.

- provides for a suit for injunction brought by the municipal corporation or an adjacent property owner to prevent or terminate existing zoning violations or those imminently threatened

Section 713.14 Effect of zoning on laws and charters; continuance in newly created municipality.

- states that sections 713.06 to 713.12, inclusive, “do not repeal, reduce, or modify any power granted by law or charter to any municipal corporation or the legislative authority thereof, or impair or restrict the power of any municipal corporation under Article XVIII [Municipal Corporations] of the Ohio Constitution”
- upon the creation of a new municipal corporation , allows for the adoption and continuation of existing zoning provisions by enactment of an emergency ordinance
- states that sections 713.06 to 713.12, inclusive, “do not authorize a municipal corporation to reserve the use of any private property for public use for the purpose of extending or widening streets”

Section 713.15 Retroactive zoning ordinances prohibited; nonconforming uses.

- allows for continuation of legal uses existing at the time of enactment of a zoning ordinance or amendment thereto, even though such use may not conform to the provisions of the ordinance or amendment
- provides that if such a use is voluntarily discontinued for two years or more (or for a period between six months and two years as stipulated by a municipal corporation by passage of an ordinance) , “any future use of such land shall be in conformity with sections 713.01 to 713.15 of the Revised Code”
- requires zoning ordinance provisions “for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon such reasonable terms as are set forth in the zoning ordinance”

Ohio law requires neither that a comprehensive plan be developed nor, explicitly, that zoning be in conformance with a comprehensive plan⁶ and “Ohio courts have generally held that the zoning

⁶Mark S. Dennison, “Zoning and the Comprehensive Plan,” *Zoning News* (August 1996):

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districting scheme and zoning regulations need not be based on a separate comprehensive plan.”⁷
This topic is discussed in more detail later in this course outline.

A Brief History

⁷Stuart Meck and Kenneth Pearlman, *Ohio Planning and Land Use Law* (Cleveland: Banks-Baldwin Law Publishing Company, 1995), p. 87.

“Professor Norman Williams, Jr., author of . . . *American Land Planning Law*, describes the development of land use law in the U.S. as falling into four periods, with an emerging fifth period.”⁸
They are:

- Prezoning: roughly 1900 to 1920 -- “During that time, courts generally recognized the traditional power to deal with nuisances and to exclude certain objectionable occupations, such as slaughterhouses and storage of gunpowder, from entire towns or from residential areas. Most attempts to exceed this level of control were held invalid, particularly those attempts to restrict commercial activity in residential areas.”⁹
- Acceptance of the zoning principle: beginning in 1926 with the *Euclid v. Ambler* Supreme Court Case -- “ During this period, according to Williams, two principles were clearly established: ‘privately owned land could be made subject to broad restrictions in its use, without compensation, and the uses of land could be arranged in districts.’”¹⁰ *Euclid v. Ambler* is discussed in more detail below.
- Faith in local autonomy: the 1950s and 1960s for the most part -- “ During this period, the courts showed great deference to decisions made by local agencies.”¹¹ The courts, with regard to local zoning decisions, held “a genuine presumption of validity which controlled unless a strong case was made to the contrary, the rule that zoning was valid when the case was fairly debatable, etc.”¹²
- Sophisticated judicial review: beginning in the 1970s -- Involves “cases . . . concerned with

⁸Ibid., p. 22.

⁹Ibid.

¹⁰Ibid., pp. 22-23.

¹¹Ibid., p. 23.

¹²Ibid.

the misuse of the police power through large lot requirements imposed on extensive areas of a community's vacant land . . . and other exclusionary zoning techniques; a clearer definition of neighbors' rights; a tightening up of permissive variance decisions by local boards; a stronger, more rigorous inquiry into the planning backdrop and justification for zoning decisions; and a recognition of the ecological importance of some lands such as wetlands . . .
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¹³Ibid.

- The emerging fifth period: beginning in 1980s -- This period “began with the U.S. Supreme Court’s decisions in the 1980s to ‘turn toward the developer’s viewpoint, primarily by pointing towards the availability of a remedy in damages, at the developer’s option, if a court holds invalid the application of land use restrictions to a given tract of land.’”¹⁴

Early in this century “the threshold [zoning] question was whether such control of the use of private land, even when authorized by the state legislature, was valid as a constitutional matter. The Fourteenth Amendment to the Constitution provides that no person shall be deprived of his property without due process of law State laws regulating various aspects of commerce were struck down because the judges believed the laws ‘went too far’ -- that is, the laws deprived the complainant of his or her property without due process. So, it was charged, did zoning regulations: no state could authorize a scheme of municipal regulations that prohibited uses of land that had never been regarded as nuisances. Zoning, in short, was said to violate the due process clause.

In the 1920s lawsuits in a number of states attacked zoning on this basis, and, for the most part, they were unsuccessful. State courts, interpreting -- as they do -- the federal Constitution, generally upheld zoning. But the crucial test remained: what would the U.S. Supreme Court say about zoning and the Fourteenth Amendment? The issue was settled in *Village of Euclid v. Ambler Realty Co.* A majority of the Court reversed a federal trial court and held that zoning -- in principle -- was a valid exercise of delegated police power.”¹⁵

The police power is not simply the power of a community to swear in officers of the law. “Police power is the broadest authority granted to government in this country, and it affects our lives in a great variety of ways. It is the power of government to restrict and regulate all private action for the common good. It is the basic authority for all codes and ordinances enacted by local government. Without . . . [the] police power, there could be no traffic control, animal regulations, health codes, parking restrictions, building standards, etc., enacted into laws by government.”¹⁶

¹⁴Ibid., p. 24.

¹⁵Frank S. So, et al., *The Practice of Local Government Planning*, (Washington, D.C.: International City Management Association, 1979), pp. 416-417.

¹⁶Herbert M. Smith, *The Citizen’s Guide to Zoning*, (Chicago: Planners Press, American Planning Association, 1983), p. 28.

Village of Euclid v. Ambler Realty Co., heard before the U.S. Supreme Court in 1926, was the case which decidedly established the constitutionality of zoning. The Court, after first upholding that a lower court's judgement that land use zoning was unconstitutional and later hearing an *amicus curiae* brief from Alfred Bettman (representing the Ohio State Conference on City Planning), "by a 5-4 vote, reversed its earlier unannounced decision and voted in favor of the Village of Euclid" and the concept of land use zoning.¹⁷

In this decision, "the Court went out of its way to cut off an envisioned future flood of zoning cases by stating quite explicitly that it would find constitutional any ordinance that meets the requirements of due process, that does not take *all* value in use without just compensation, that is not *totally* arbitrary, that is not discriminatory, and of which the Court cannot say that it has absolutely no possible substantive relationship to the protection and/or promotion of the public health, safety, morals and/or welfare."¹⁸

Over the more than seventy years since *Euclid v. Ambler*, a number of cases before the U.S. Supreme Court and lower courts have addressed zoning and development regulation in general as well as the application of these codes to specific circumstances. For more information on many of these cases and an overview of the fascinating history of planning and zoning in the United States, see "Outline of American City Planning History: Major Philosophies and Movements, Court Cases, and a Time Line" available from the training session leader.

Zoning in Accordance with the Comprehensive Plan

"The requirement that zoning be done 'in accordance with a comprehensive plan' remains one of the most fundamental yet least easily understood or defined concepts in zoning. This requirement originated from language in the U.S. Department of Commerce's Standard Zoning Enabling Act (SZA) of 1922. Although the SZA did not define *comprehensive plan*, it is generally understood that the requirement was imposed to prevent piecemeal and haphazard zoning.

Whether it is a separate written document or inherent in the zoning ordinance, a comprehensive plan (called a master plan in some states) should be designed to reflect current and future regulation of land uses. It should ensure that local governments act rationally, not arbitrarily, in exercising their delegated zoning authority."¹⁹

¹⁷Laurence C. Gerckens, *Shaping the American City -- A course manual*, (Autumn 1978), p. D-24.

¹⁸*Ibid.*, p. D-25.

¹⁹Mark S. Dennison, "Zoning and the Comprehensive Plan," *Zoning News* (August 1996):

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The Zoning Text

Introduction

“The zoning text serves two purposes. First, it explains the zoning rules that apply to each of the districts. These rules . . . typically establish a list of land uses that are permitted in each of the districts plus a series of specific standards for the permitted land uses that govern lot size, height of building, required yards and setbacks from property lines, and so forth. . . . Second, the text sets forth the procedures for administering the zoning ordinance and establishes the roles and responsibilities of the principal actors -- zoning applicants, zoning administrators, planning commissions, zoning boards, and elected officials. The zoning text specifies the basic steps to be followed.”²² In addition, texts usually include statements of purpose for each section which serve to clarify for the user of the code exactly what the section seeks to accomplish. A good understanding of this purpose statement is often invaluable in understanding the intent of specific provisions of the code.

Land Uses

For the various districts which may be shown on the zoning map, the zoning text typically will include both permitted and special, or conditional, uses. **Permitted uses** are those allowed within the district without any additional approval. Examples include single-family homes in low density residential districts, most stores and shops in commercial districts, and most manufacturing uses in industrial districts. In general, a use may be located without difficulty or delay on a parcel within a district in which it is listed as a permitted use.

Special (or conditional) uses, however, require some “special” evaluation to see that they meet certain “conditions” before they are allowed within a given district. These are uses which may or may not be appropriate within the district depending on their appearance and the specifics of their operation. For example, a convalescent home may be appropriate within a single-family home

²²William Toner et al., *Planning Made Easy: A Manual for Planning Commissioners, Members of Zoning Boards of Appeal, and Trainers*, (Chicago: Planners Press, American Planning Association, 1994), p. 60.

district if its physical design, size and scale, and levels of noise and traffic will not be a disruptive influence to the neighborhoods within that district.

A use such as convalescent home is generally listed as a special (or conditional) use within residential districts. Before such a use is granted a zoning permit, it is typically the subject of a public hearing before a planning commission or a board of zoning appeals to review the specifics of the proposal and to determine whether it should be granted zoning clearance. "If our convalescent home described above looks like a residential use and if it behaves as [a] residential use does, then grant the special use. If not, don't. This holds true for all special uses. Consider what they are and where they will be. If they are close in appearance and activity to surrounding uses, treat them as you would a normal permitted use. If the appearance and activity are sufficiently different, either modify the proposal or reject the proposal."²³

"While appearance is fairly easy to determine, the type and level of activity is more difficult."²⁴ A checklist is recommended when evaluating the propriety of special (or conditional) uses.²⁵ It may be helpful to consider:

- Traffic: Consider type of traffic (auto, bus, truck, tractor, motorbike) plus an estimate of the average daily traffic for [a] similar use. (Ask your planner for data from the Institute of Traffic Engineers [ITE]).
- Streets: Identify principal adjacent streets and ensure adequate access to and from the site.
- Lighting: Type, intensity, direction, timing.
- Noise: Levels by day and night.
- Signs: Types and size and location.
- Maintenance: Times of day or night as well as vehicles involved and worker activity.
- Reinforcement: Land uses attract related land uses -- gas stations attract car washes, which, in turn, attract auto supply, which, in turn attract . . . [other uses]. Is this a pattern that you want to introduce?
- Vibration: Big machines or controlled explosions shake things -- a quarry may be 2,000 feet from a home, but the home may rock with the explosions.
- Parking: While the zoning ordinance generally has a special section dealing with parking, look for the typical characteristics of the neighborhood. At night, for example, cars may shine lights through front rooms of homes -- no problem, unless, of course, there are dozens of them. Not typical for a subdivision.
- Safety: Ask the police. What about kids, seniors, and the disabled? Does the special use invite public safety problems?

²³Ibid., p. 67.

²⁴Ibid.

²⁵Ibid., p. 68.

- Appearance: Does the special use fit the neighborhood? Look at the building, grounds, parking, lighting, and so on.
- Volume: Check out solid waste, number of customers/visitors, autos/trucks.
- Pollution: All sorts[:] air, land, or water, surface water, or subsurface water.”²⁶

In your evaluation of the items listed above, look to professional planners, the applicants, and the neighborhood residents for questions and answers. It is important to carefully consider the impact of a special (or conditional) use prior to granting zoning clearance.

Zoning is often applied to undeveloped areas that are expected to undergo development pressures in the future. However, the zoning and rezoning of land may also take place within areas in which development has already taken place to one degree or another. This action can create what are known as **nonconforming lots** and **nonconforming land uses**. These are lots and uses which were legal when established, but, due to the zoning or the rezoning of the area, do not now conform to the zoning rules in place for the district in which they are located.

Examples of nonconforming uses are small commercial establishments, located between two single-family homes, which were in operation prior to the establishment of a zoning ordinance specifying the neighborhood as a low density residential zone. A nonconforming lot may be a buildable parcel of land, established before the area was rezoned, which does not comply with the lot size requirements specified within the new zoning district.

²⁶Ibid.

There are four basic principles suggested for the treatment of nonconforming lots and uses:²⁷

- Don't allow them to expand. Prevent or limit an expansion of the intensity of the nonconforming use (more employees, more clients, etc.) or an enlargement of the structure dedicated to the nonconforming use.
- Help them contract. Encourage reductions in the intensity of the use or replacement with uses which are less nonconforming.
- Avoid deterioration by encouraging maintenance and repair. Don't prevent improvements to the appearance of the nonconforming use.
- Prevent "stops and starts." Require new conforming uses if the nonconforming operation ceases operation for a specified period of time or if the structure is significantly damaged.

"There are other types of nonconformance -- signs and accessory uses are common ones. Because these are typically inexpensive to correct, most zoning ordinances require that they be eliminated or phased out over some period of time."²⁸ This process is commonly referred to as "amortization," allowing the property owner an appropriate period of time to recoup the investment made in the sign or accessory use and then requiring its removal.

²⁷Ibid., pp. 74-75.

²⁸Ibid., p. 76.

Accessory uses are those uses allowed within a zoning district only when they accompany a permitted use. “Probably the most significant purpose of the term accessory use is to make clear the fact that it would not be permitted in the district without the principal use to which it is an appendage.”²⁹ “A house in a single family residential district is a principal use; a garage on the same lot would be an accessory use. An industrial plant in a manufacturing district is a principal use; the dwelling of its caretaker or security guard would be an accessory use.”³⁰

“Accessory uses are ordinarily permitted in residential zoning districts, provided they are incidental, secondary, or subordinate to the primary permitted use of the property. It is well recognized that a professional office or other home occupational use can constitute an accessory use in a residential dwelling. In fact, most zoning ordinances specifically permit such accessory uses in residential districts provided that the profession or customary home occupation is conducted in the house occupied by the worker and other applicable criteria are met.

Home occupation provisions of residential zoning ordinances generally seek to accommodate professional business uses that are reasonably compatible with the residential districts in which they are located. Thus, home occupations are generally limited to those uses that may be conducted within a residential dwelling without substantially changing the appearance or condition of the residence or accessory structures. If the business use of residential property dominates, it will not be permitted as a valid accessory use.”³¹

Height and Bulk Regulations

²⁹Frank S. So et al., *The Practice of Local Government Planning*, (Washington, D.C.: International City Management Association, 1979), p. 427.

³⁰Ibid.

³¹Mark S. Dennison, “Home Occupations as Accessory Uses,” *Zoning News* (January 1996): 1-3.

“While the nature of zoning has evolved over time, one prominent fixture of zoning that has undergone little change is the regulation of height and bulk. Height simply deals with the heights of structures that are permitted on a parcel. Bulk is a clumsy term that deals with the relationship between buildings on a parcel and the size of the parcel itself.”³²

Building **heights** are regulated for several reasons³³:

- shadows -- Taller buildings cast larger shadows on other buildings and open spaces. One purpose of zoning is to maintain the character of residential and other districts (including the provision of adequate light and air). Also, solar access has become an issue in recent years.
 - fire control -- Fire equipment, including ladders and hoses, can only reach so far.
 - wind tunnel effects -- Taller buildings create stronger, more unpredictable wind currents and can negatively effect the “microclimate” of a neighborhood.
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There are common zoning standards that fall under the general heading of **bulk** regulations. “These standards have . . . to do with the size of the main structure compared to the lot on which it rests. The oldest regulations deal with the question of **setbacks and yards** [bolding added].” A setback is simply the distance between the wall of a building and the corresponding property line. Setbacks therefore may exist in the front, rear and sides of buildings. The open area within these setbacks are referred to as the front, rear and side yards, respectively. In general, setbacks and yards have traditionally been greater in rural and suburban zoning districts than in urban zoning districts.

Setbacks ensure several favorable qualities:

- Sunlight -- Houses that are side-by-side with little setback effectively cut off solar radiation, leaving one or more walls in permanent shadow.
- Access -- It helps to be able to walk around a house or business with ease. Setbacks can provide easy and convenient access.
- Maintenance -- If you can’t get to it, you can’t fix it. Setbacks provide the space.
- Open Space -- Setbacks and the yards they provide generate a sense of open space.
- Privacy -- Setbacks between adjoining buildings provide a sense of privacy. You also avoid the window-to-window effect: looking out your window right into the window of another

³²William Toner et al., *Planning Made Easy: A Manual for Planning Commissioners, Members of Zoning Boards of Appeals, and Trainers*, (Chicago: Planners Press, American Planning Association, 1994), p. 60.

³³Ibid., p. 77.

building.

- Line of Sight -- Setbacks provide a clear line of sight not only to streets but to back yards.”³⁴
- Buffers -- Setbacks are increased to minimize land-use conflicts in at least four areas:
 - “When commercial or industrial uses abut a residential district, . . .
 - when residential districts abut agricultural districts, . . .
 - when any lot abuts a street that is planned for enlargement, . . . [and]

³⁴Ibid., p. 79

- when any lot abuts another that is scheduled for public use”³⁵

“Setbacks are established for good cause. Yet if every single land use conforms exactly to the minimum setback requirement, things get boring very quickly. As an example, if every house in a large subdivision is exactly 25 feet from the street, the subdivision takes on the regular pattern of a checkerboard. Many communities are varying setback requirements such that the *average* setback remains as established, say, for the block, but that individual buildings along the street may vary by five feet or so feet. . . . Such variation creates a more interesting landscape and establishes unique neighborhood features.”³⁶

A relatively new approach to measuring the bulk of development (or the amount of building in relationship to the building site) is the **floor area ratio** (or **FAR**). The FAR is simply the total amount of floor area on all floors of the building divided by the total site area, expressed in square feet.

For example:

- A 40,000 sq. ft., one story building on a 40,000 sq. ft. lot would have a floor area ratio of 1.0 because $40,000 \div 40,000 = 1.0$
- A two story building (with 40,000 sq. ft. on each floor) on a 40,000 sq. ft. lot would have a floor area ratio of 2.0 because $80,000 \div 40,000 = 2.0$
- A five story building (with 20,000 sq. ft. on each floor) on a 50,000 sq. ft. lot would have a floor area ratio of 2.0 because $100,000 \div 50,000 = 2.0$
- A 50,000 sq. ft., one story building on a 100,000 sq. ft. lot would have a floor area ratio of 0.5 because $50,000 \div 100,000 = 0.5$

Compute the following floor area ratios:

³⁵Ibid.

³⁶Ibid.

- A twenty story building covering an entire one acre lot. (All floors of equal size.) FAR = _____
- A ten story building (with 10,000 sq. ft. on each floor) on an 80,000 sq. ft. lot. FAR = _____
- A three story building (with 30,000 sq. ft. on the first floor, 20,000 sq. ft. on the second floor, and 10,000 sq. ft. on the third floor) on a 30,000 sq. ft. lot. FAR = _____

“What FAR provides is an index of the intensity of the proposed development. Thus any one FAR may be compared to any other FAR. Further, communities set FAR standards within zoning districts so that land uses within the district must fall below FAR standards so that development intensity is consistent throughout the district.”³⁷ The FAR is a flexible measure of density within a district. Like setbacks, FARs are generally lowest in rural and suburban areas where open space is plentiful, higher in older urban areas, and highest in lofty downtown areas. For example, the FAR of the Sears Tower in Chicago is 30.58 (3,943,125 sq. ft. of floor space on a 128,934 sq. ft. lot).³⁸

FAR limits are often coupled with more traditional regulations such as required yards or parking areas so that, if the maximum FAR in a district is 1.0, a property owner may be unable to build a one story structure covering an entire lot.

“In using FAR, the definition of both floor area and lot size is important. Floor area often includes all living and/or working spaces plus space devoted to accessory uses, enclosed porches, attics (provided sufficient head room is available), and floor space used for mechanical or electrical equipment.”³⁹

³⁷Ibid., p. 80.

³⁸Ibid.

³⁹Ibid., p. 81

Another common term used in discussion of structures is “**footprint.**” Just as it sounds, the footprint describes the size and shape of the land the building covers, regardless of its height. So a ten story building with 50,000 sq. ft. on each floor might have the same “footprint” as a one story, 50,000 sq. ft. structure. Seen from an airplane directly overhead, they could both have the same two-dimensional size and shape, or “footprint” on the ground.

Parking Regulations

“Nothing is more difficult than the effort to prescribe the correct amount of off-street parking to be required for various uses in different districts. Yet this is one of the most important aspects of land use regulations in most communities. A development with too little parking creates congestion and parking problems on surrounding streets”⁴⁰ Excessive parking facilities, on the other hand, waste land⁴¹ and contribute needlessly to urban sprawl.

“Unfortunately, there are no standard rules [for determining parking requirements]. An examination of zoning ordinance provisions reveals that the requirements for specific uses vary tremendously from one city to another. New ordinances generally require greater provision for off-street parking than older ones, a condition which is not surprising in view of the ineffectiveness of many early provisions. The parking needs of many land uses will vary depending upon the part of the country, the size and density of the community and whether or not other means of transportation are available to patrons of these uses. . . .

Probably the most successful way of determining the off-street parking needs in a given community is to ignore the requirements of other ordinances and make a study of existing land uses to determine the adequacy of the parking provided. This, of course, is very time consuming.”⁴² It is also a very costly proposition.

Parking space requirements may be based on the floor space of the building (in sq. ft.), or the number

⁴⁰Clan Crawford, Jr., *Handbook of Zoning and Land Use Ordinances -- With Forms* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1974), p. 58.

⁴¹Ibid.

⁴²Ibid., pp. 58-59.

of employees, seats, tables, bowling lanes, rooms or dwelling units, etc. The best approach is to select the approach that is least likely to vary over time. For instance, over time, the number of employees is more likely to vary than the floor space of the building.

Land uses do not receive a constant flow of automobile traffic. For instance, the parking lot for a large retail store is quite full on a Saturday afternoon but much less crowded on weekday mornings. At some point a decision needs to be made as to whether the parking requirements will be based on the highest traffic period, lowest traffic period, or some reasonable point in between. How would our city look if the parking required for all commercial uses was based on the demand on the afternoon of the day after Thanksgiving, the biggest shopping day of the year?

Administrative Procedures

“Historically, the responsibility for considering requests for changes in the applicable zoning rules was divided among three agencies: the municipal legislature, the plan commission, and the board of appeals (in some jurisdictions known as the board of adjustment). . . .

The local general legislature . . . is the agency responsible for the enactment of an amendment to the text or the map of the zoning ordinance. . . .

The usual role of the plan commission, under the zoning ordinance, is to hold a public hearing mandated by the state enabling act on the requested amendment, the planned unit development, or the conditional use and to make a recommendation to the local legislature, which may or may not follow the plan commission’s recommendation. . . .

The board of appeals, usually consisting of either five or seven persons appointed by the mayor or city council, customarily has two functions: to grant variances from the otherwise applicable rules in cases of hardship, and to hear appeals from interpretations of the ordinance in cases where, for example, the official responsible for issuing permits has denied a permit because, in his or her opinion, the proposed development is in violation of a zoning regulation.”⁴³

⁴³Frank S. So et al., *The Practice of Local Government Planning*, (Washington, D.C.: International City Management Association, 1979), p. 432.

Amendments to Zoning

“There are two basic types of zoning amendments: rezoning, which changes the zoning maps [*sic*] designation for certain property; and zoning text amendments that change the permitted uses or regulations for particular zones or the city as a whole. Zoning amendments are generally initiated by either a property owner or the city government.”⁴⁴ Zoning map changes are discussed later in this outline.

It is important to make regular revisions to provisions of the zoning code text which have been found to be unworkable or unreasonable. Staff, review boards, development interests, and neighborhood representatives are good resources to help locate this language. It is also helpful to undertake a complete review of the zoning code every few years to ensure that it remains consistent with community plans and, thus, continues to meet the community’s needs.

Variances

“A variance (in some states called a ‘variation’) is a minor exception to the zoning rules that, if granted by proper authority, allows an applicant to do what could not otherwise be legally done. The key phrase is *minor exception*.”⁴⁵ Variances “do not have to be granted automatically each time one is requested and . . . the process should be used sparingly. The applicant must clearly show that, due to unique circumstances, literal enforcement of the terms of the [zoning] ordinance would deny him or her the opportunity to use the land in the same way others in that zoning district can use their land. This could be because of some unusual topographic features -- an irregular-shaped parcel or an undersized lot lying between already developed property -- or any number of unique situations not

⁴⁴League of California Cities, “Planning Commission Handbook.” p. II-C, 15.

⁴⁵William Toner et al., *Planning Made Easy: A Manual for Planning Commissioners, Members of Zoning Boards of Appeal, and Trainers*, (Chicago: Planners Press, American Planning Association, 1994), p. 71.

fitting into the zoning model through no fault of the applicant. The purpose of the zoning variance is to provide fair treatment and equal opportunities to all and to see that individuals are not penalized because of circumstances beyond their control.”⁴⁶

⁴⁶Herbert H. Smith, *The Citizen's Guide to Zoning*, (Chicago: Planners Press, American Planning Association, 1983), pp. 113-114.

“Variances . . . are designed to deal with the myriad cases in which some proposal nearly . . . meets the zoning rules, but not quite. Obviously, it would be unreasonable, in most cases, to reject a zoning application featuring, say, a lot size of 8,499 sq. ft. In a zone requiring a minimum lot size of 8,500 sq. ft. The variance process allows you to grant minor relief from strict zoning standards under specific conditions.”⁴⁷

There are several considerations that should come into play when decisions about a variance are made.⁴⁸

“Unique: The hardship caused by zoning standards is unique to the property and is not shared by neighbors and other similar properties.

Effect: The effect of the zoning standards is to deny a property owner reasonable use of the property.

Self-imposed: The applicant did not bring the burden upon himself or herself through some action, but instead had the burden imposed upon them

In addition to these common considerations, local officials should also consider whether the applicant has shown that:

1. The variance would comply with the statement of public purpose or intent for the zoning ordinance generally and the zoning district under consideration specifically.
2. The variance would not harm nearby properties.
3. The variance would not harm people associated with nearby properties.
4. The variance will not change the character of the nearby area.
5. The variance is the minimum necessary to permit reasonable use of the property.”⁴⁹

“During the [variance] hearing process[,] . . . the burden is on the applicant to show why the application meets the standards for variances. The burden is not on the local government, and if the applicant cannot demonstrate that the standards are met, the variance should be denied.

[R]egardless of the opinions of the people present at the variance public hearing, the attention of

⁴⁷William Toner et al., *Planning Made Easy: A Manual for Planning Commissioners, Members of Zoning Boards of Appeal, and Trainers*, (Chicago: Planners Press, American Planning Association, 1994), p. 71.

⁴⁸*Ibid.*, pp. 71-72.

⁴⁹*Ibid.*

The Zoning Map

“The second essential element of zoning is the zoning map. This may have a number of different titles in various places. It may be called the building zone map, the zoning district map, or just zoning map. Regardless of its title, it is the map or maps of the entire community, or the area for which the zoning ordinance is adopted, showing the boundaries of the area, the streets, and the boundaries of the various zones or zoning districts. Depending on the complexity of the community, the map may include other things such as individual tracts or parcels of land, natural stream courses or other natural features, and certain other identifying elements. It should not, however, be so detailed that it is hard to interpret.

The scale of the map will vary depending upon the area to be covered. If the community is small and compact, the zoning map can usually be printed on one sheet. If the area under consideration is extremely large, it may be necessary to provide a number of sheets in order to cover the entire territory.”⁵²

Some communities use black and white maps with various types of shading to show the different districts. An advantage to this method is that maps are more easily reproduced and modified. A disadvantage is that it may be challenging to read and interpret them. Whenever a colored map is used, the traditional planning colors for the various types of land uses and zoning districts should be used. They are:

- yellows and browns for residential districts
- reds for commercial districts
- purples for manufacturing and industrial districts
- oranges for office districts
- light blues for institutional uses
- darker blues for waterways
- grays for transportation and parking
- greens for agriculture, open space, and greenways

⁵²Herbert H. Smith, *The Citizen's Guide to Zoning*, (Chicago: Planners Press, American Planning Association, 1983), p. 80.

Rezoning

“When a zoning map is changed, we call it a rezoning or a map amendment. . . . [C]hanging a zoning map is loaded with consequences[,] . . . changes to the zoning map are not easy, and careful consideration must be given before reaching a decision. As with most zoning decisions, key information is discovered only when one knows how to ask the right questions.”⁵³

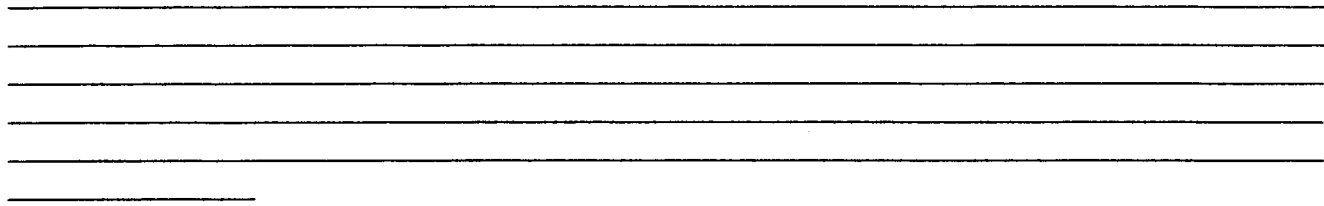
Some suggestions are:⁵⁴

1. Is the proposed rezoning consistent with the comprehensive plan and its land-use plan map? If not, consider amending the comprehensive plan and land-use map before making any changes in the zoning map. If the zoning is consistent, proceed.
2. Any rezoning will involve other zoning districts. Identify all abutting zoning districts and ask yourself if the proposed rezoned area is generally compatible with surrounding districts. A useful technique here is to compare lists of the permitted and special uses in each district.
3. Often an applicant will seek a specific map amendment for the purpose of operating one specific type of business. Be careful. When you approve a rezoning you are approving *any* of the permitted uses for that district, and you are opening the door for any of the special uses for that district. It is poor practice to approve a rezoning for the purpose of allowing a particular permitted use unless one is fully prepared to accept any of the permitted or special uses for that newly rezoned area.
4. While land use generally changes slowly over time, land uses do change, and rezoning is a fact of planning life. There are new technologies, shifting lifestyles, and long-term economic forces that lead to changes of the zoning map. . . . These changes are planning matters first, zoning second. In considering a rezoning, ask yourself whether this application represents a substantive shift in land-use planning. If there have been several such applications, it is likely that the matter needs to be considered first in the context of the comprehensive plan.”⁵⁵

⁵³William Toner et al., *Planning Made Easy: A Manual for Planning Commissioners, Members of Zoning Boards of Appeal, and Trainers*, (Chicago: Planners Press, American Planning Association, 1983), p. 70.

⁵⁴Ibid.

⁵⁵Ibid.



Zoning Techniques

Planned Unit Development

A planned unit development, or PUD, is a “[z]oning classification permitting flexibility of site design by combining building types and uses in ways that would be prohibited by the detailed per determinations of traditional zoning standards.”⁵⁹ “There are probably as many ways to define the PUD as there are drafters of PUD sections of a zoning ordinance. It may be spoken of as a way to adjust development to the particular conditions of the land or a method to ensure that there will be better design and more open space. In terms of the zoning ordinance, PUD provisions in the text provide an opportunity to develop land in a manner that does not fit into all use, bulk, and open space requirements of any of the standard zoning districts. A residential PUD -- and most PUDs have involved predominantly residential development -- may mix single family detached houses with town houses and possibly a high rise apartment building. Such a mix might not meet the customary standards of height, yards, or dwelling type in any district.

In most but not all cases, the PUD represents an alternative available -- if granted -- at the option of the developer: he or she can build in conformity with the existing regulations, can ask for an amendment to obtain a rezoning to achieve greater density, or can apply for a PUD. Generally, the provisions for a PUD will have to hold some attractions for the developer; otherwise the developer may find unpalatable the long and tortuous process of securing permission for a PUD. Such incentives might include the opportunity to obtain a few more dwelling units than would be allowable in the underlying zoning, or an opportunity to include some small retail uses in the residential development, or no more than a chance to design a development without being constrained by the rigid yard requirements prevalent in most residential zones.

It is the nature of most PUDs to result in more common open space than would be found in standard residential developments”⁶⁰ This is because the clustering of housing units common in PUDs allows for larger areas of open space not associated with any particular dwelling or building.⁶¹

⁵⁹J. Robert Dumouchel, *Dictionary of Development Terminology*, (New York: McGraw-Hill Book Company, 1975), p. 177.

⁶⁰Frank So et al., *The Practice of Local Government Planning*, (Washington, D.C.: International City Management Association, 1979), p. 435.

⁶¹*Ibid.*

Performance Zoning

“‘Performance zoning’ has been developed to address areas of regulation where conventional zoning has failed. Unlike the traditional approach, it does not organize uses into a hierarchy which is then used to protect ‘higher’ uses from ‘lower’ ones. Rather, it imposes minimum levels of ‘performance’ by setting standards which must be met by each land use. The performance approach to the imposition of zoning regulations was first taken in the early 1950's to regulate noise, smoke, dust, and other nuisances associated with industry.”⁶²

“If, for example, the XYZ Paint Corporation were willing to make the investment in afterburners and other equipment designed to cut down on noxious odors and particulate matter[,] it could build in a less restrictive industrial area; its more offending competitor would be relegated to the heavy industrial zone. ‘It’s not what you do, it’s the way that you do it’ ”⁶³ has become the catchphrase of industrial performance zoning.

While performance zoning and its performance standards are typically used to address the possible negative effects of industrial development, they may be applied to commercial development and other land uses as well.

Transfer of Development Rights

“In the early 1960s[,] a New York developer, David Lloyd, suggested that if a community did not want development in a particular area, the community should permit the landowner to sell his or her development rights to someone who owned land in an area where the community wanted to encourage development. Lloyd’s idea was largely ignored, and it was not until a decade later that a law professor, John Costonis, struggling to find a system to preserve landmarks in Chicago where there were no public funds to buy them, picked up Lloyd’s idea and rationalized it. Through

⁶²Lane Kendig et al., *Performance Zoning*, (Chicago: Planners Press, American Planning Association, 1980), p. 3.

⁶³Frank S. So et al., *The Practice of Local Government Planning*, (Washington, D.C.: International City Management Association, 1979), p. 425.

Costonis's articles and books, the concept of transfer of development rights (TDR) became a cause of debate among planners and others involved in land use regulation.

Basically, TDR offers a person whose right to develop is restricted an opportunity to sell those rights to the owners of land in an area where the local government is prepared to allow development. . . . At the very least, TDR must be accompanied by severe down-zoning -- cutting back of allowable densities or floor area ratios from those that have prevailed in most jurisdictions for so many years."⁶⁴ Transfer of Development Rights has been used primarily in larger cities with greater population densities.

Special Districts

A special district is ". . . an amendment to the text of a zoning ordinance creating a new zoning district with regulations that are tailor-made to some particular set of circumstances in a particular area. . . . 'Special district zoning . . . represents a significant departure from [the] traditional . . . zoning concept. . . . The districts created are not traditional zoning districts, narrowly limited to particular uses, but broad based plans intended to preserve and enhance troubled areas of the City which, because of their singular characteristics, are important to its wealth and vitality.'"⁶⁵

In many cities, special districts have been used near large institutional uses such as hospitals or universities.⁶⁶ "In these special zones[,] provision was made for the needs of the institutional use, and an attempt was made to anticipate its impact on the neighborhood."⁶⁷ The goal was to try to avoid disagreements between the institution and its neighbors ". . . occasioned by repeated requests for changes in the traditional zoning regulations. . . .

New York City has raised the special district to an art. New York has special districts for almost any purpose: for example, the Clinton area, which protects a moderate income neighborhood from the threat of commercial encroachment; or the Little Italy district, which, by special use and bulk controls, hopes to preserve an ethnic area; or the Greenwich Street district, which sought to induce

⁶⁴Ibid., p. 437.

⁶⁵Richard F. Babcock and Wendy U. Larsen, *Special Districts*, (Cambridge, Massachusetts: Lincoln Institute of Land Policy, 1990), pp. 3-4.

⁶⁶Frank S. So et al., *The Practice of Local Government Planning*, (Washington, D.C.: International City Management Association, 1979), p. 437.

⁶⁷Ibid.

developers to provide off-site public facilities or amenities.”⁶⁸

Zoning Overlays

Zoning overlays, or overlay zones, are similar to special districts but differ in that rather than providing all the zoning regulation for a particular area, they work in tandem with (or “overlay”) other zoning classifications to provide additional controls. The zoning code for the city of Portland, Oregon utilizes a number of overlay zones which are illustrative of the types of purposes these zones can achieve. Four of Portland’s eleven overlay zones are:

Aircraft Landing Zone: “[P]rovides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the heights of structures and vegetation.”

Buffer Zone: “[R]equires additional buffering between nonresidential and residential zones. It is used when the base zone standards do not provide adequate separation between residential and nonresidential uses. The separation is achieved by restricting access, increasing setbacks, requiring additional landscaping, restricting signs, and in some cases by requiring additional information and proof of mitigation for uses that may cause off-site impacts and nuisances.”

Design Zone: “[P]romotes the conservation, enhancement, and continued vitality of areas of the City with special historical, architectural, or cultural value. It is achieved through the creation of design districts, the development of design guidelines for each district, and by requiring design review.”

Environmental Zones: “Protect the City’s inventoried significant natural resources and their functional values, as identified in the Comprehensive Plan; [i]mplement the Comprehensive Plan environmental policies and objectives; and [e]ncourage coordination between City, county, regional, state and federal agencies concerned with natural resources.”

⁶⁸Ibid., pp. 437-438.

Portland's other overlay zones are the Future Urban Zone, Greenways Zone, Light Rail Transit Station Zone, Interim Forest Review Zone, Interim Resource Protection Zone, Portland International Airport Noise Impact Zone, and Scenic Resource Zone.⁶⁹

Inclusionary Zoning

⁶⁹City of Portland, *Portland Zoning Code* (1993), pp. 400-1 to 480-4.

“Many scholars and critics have noted the negative effects of zoning on the economic feasibility of low and moderate income housing. In response to this problem[,] a number of local governments include language in zoning ordinances that requires a private developer to provide a certain number or ratio of low and moderate income housing units within a proposed development.”⁷⁰

“Boulder, Colorado . . . is an example of a community that has made a serious effort to avoid becoming ‘a one class town’ by using this technique. Some local jurisdictions, instead of having mandatory requirements, have gone the incentive or bonus route to show that they favor inclusionary zoning. For example, a developer will be offered additional density or number of units or the possible reduction of subdivision requirements as an inducement to provide an economic mix. Courts in general have been favorable to the idea embodied in inclusionary zoning but have not looked kindly on the use of the incentive approach.”⁷¹

Neotraditionalism

Most new development in the U.S. since World War II has occurred in the traditional “suburban” pattern which includes curvilinear streets and cul-de-sacs, isolated land uses, and large yards and setbacks. This “suburban sprawl” development pattern has been strongly supported by the traditional zoning codes and subdivision regulations in place in cities throughout the country. But “[m]any people dream of buying a home on an old-fashioned tree-lined street with a few shops on the corner - a place where buying a quart of milk, picking up the kids, or eating out doesn’t require a stressful drive down the local six-lane arterial. But it’s hard to find places like that these days. For a half-century, developers have maintained that tract houses with big front lawns in auto-oriented subdivisions are what Americans want. Moreover, local officials have often made it illegal to build new neighborhoods in the old style

⁷⁰Frank S. So et al., *The Practice of Local Government Planning*, (Washington, D.C.: International City Management Association, 1979), p. 439.

⁷¹Herbert H. Smith, *The Citizen’s Guide to Zoning*, (Chicago: Planners Press, American Planning Association, 1983), pp. 197-198.

As a result, in many cities 1920s-style homes -- in traditional neighborhoods -- have become highly desirable, despite their small closets and baths. . . .⁷² In fact, people are willing to pay a premium to live in many neighborhoods built between 1890 and 1920.⁷³

“Over the past decade, the persistent appeal of old neighborhoods has persuaded a small but influential group of designers and developers to advocate building old-style communities for a new era. These ‘neotraditional’ places would look and work like the back streets of a comfortable pre-World War II city, with a rich mix of housing types, cultural centers, and shopping districts within walking distance, and a vibrant public personality.”⁷⁴

“The challenge is to devise an alternative to sprawl . . . [s]o a growing corps of visionaries, of which the best-known are Miami-based architects Andres Duany and his wife and partner, Elizabeth Plater-Zyberk, are looking for an even older model -- the ‘village,’ defined as a cluster of houses around a central place that is the focus of civic life. Under the banner of ‘new urbanism,’ they have promulgated some surprisingly simple and obvious rules for building better suburbs”⁷⁵

The critics of traditional suburban sprawl development offer an alternative which includes the following characteristics:

- **Houses** occupy small lots clustered around pretty public spaces, such as parks or playgrounds.
- **Garages** retreat to the rear of the lot or alley.
- **Street grids** replace isolated cul-de-sacs and the broader roads that connect them.
- **Shopping** takes place on intimate Main Streets, with stores lined along the sidewalk and parking to the rear.
- **Walking** is encouraged by sidewalks, street trees, front porches, narrow roads that slow down cars, and -- most important -- commercial and recreational areas located a short walk

⁷²“Neighborhoods Reborn,” *Consumer Reports*, May 1996, p. 24.

⁷³Ibid.

⁷⁴Ibid.

⁷⁵Jerry Adler, “Bye-Bye Suburban Dream,” *Newsweek*, 15 May 1995, p. 43.

from most houses.

- **Public transportation** is made possible by clustering neighborhoods and offices along lines that can readily be served by buses, trolleys, or light-rail lines.
- **Housing types** are varied in size and price, to facilitate the kind of mix of people found in a city. The mix also means that grown children won't have to move so far away to start a home, and older people won't have to leave the neighborhood when they retire to a smaller home."⁷⁶

⁷⁶"Neighborhoods Reborn," *Consumer Reports*, May 1996, pp. 24-25.



In Addition . . .

Relationship between Zoning and Subdivision Regulations

“For growing communities, subdivision regulation is an important way of guiding the effects and the appearance of new development. The purpose of these regulations is quite simple; the impact can be substantial. Subdivision regulations provide standards and a set of procedures for dividing land into separate parcels. By regulating the subdivision of land, regulations provide a method for assuring minimum public safety and amenity standards.”⁷⁸ “The regulation of subdivisions, as with all of planning, is based on the police power to protect the public health, safety, and welfare.”⁷⁹

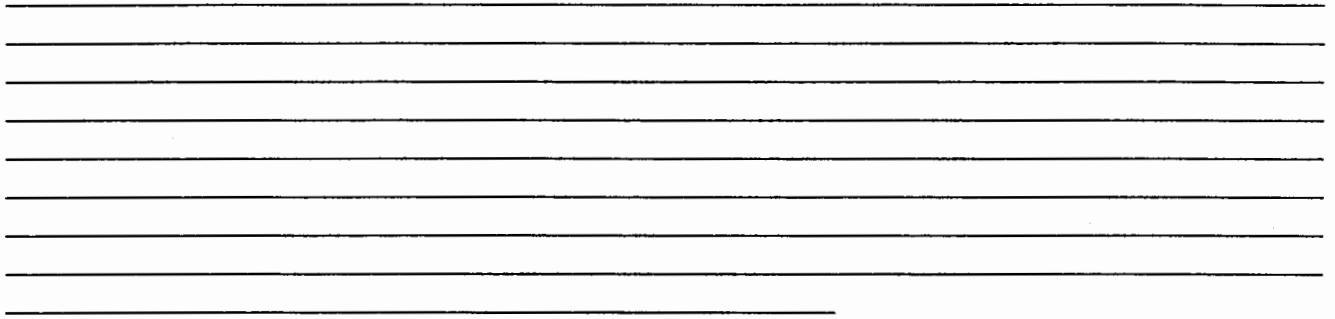
“In general, land subdivision regulations contain rules and standards that are applied to the conversion of farm or vacant land into lots and parcels for urban development. The rules and standards relate to the size and shape of lots and blocks and the width and length of streets. In addition, regulations contain construction standards for streets, curbs and gutters, sewers, water mains, and sidewalks.”⁸⁰

Because zoning regulates the use of land created by subdivision regulations, it is important that the two codes be consistent with each other. For example, a community’s zoning code should not require setbacks for residential development which are difficult or impossible to accomplish on the parcels established by the community’s subdivision regulations.

⁷⁸William Toner et al., *Planning Made Easy: A Manual for Planning Commissioners, Members of Zoning Boards of Appeals, and Trainers*, (Chicago: Planners Press, American Planning Association, 1994), p. 91.

⁷⁹*Ibid.*, p. 93.

⁸⁰Frank S. So et al., *The Practice of Local Government Planning*, (Washington, D.C.: International City Management Association, 1979), p. 395.



Explanation of Answers to Zoning Self-Quiz

1. Why do communities implement zoning codes?

Communities use zoning in order to ensure a reasonable pattern of land uses within their territories so that uses located next to each other can coexist in harmony.

Without zoning, someone could buy the lot next to your house and build a 24-hour fast food restaurant with two drive-through windows. Can you imagine the noise and the bright lights?

Zoning attempts to minimize conflicts resulting from non-compatible land uses, thus protecting each person's enjoyment of and investment in his or her property.

2. Under what power does a community implement a zoning code

A community zones land under what is know as the "police power." This is the legal ability of a community to protect the public health, safety and general welfare ("the public interest") through reasonable rules and regulations.

3. What guidance does a community have when it wants to develop or revise its zoning code?

Because all powers that a city or village has must be permitted through state "enabling legislation," a community should review any state laws pertaining to planning and zoning.

Also, communities which have a comprehensive plan or plans for smaller areas should make sure their zoning rules serve to implement the recommendations of these documents.

4. Why is it important to make good zoning decisions?

Decisions made now about the zoning map or zoning rules can have impacts for decades into the future. Good decisions which promote sound development patterns can improve the quality of life and enhance the economic well-being of the community for years to come. Bad decisions can prompt unpleasant disagreements between neighbors, discourage businesses from taking a chance on the community, and generally make it a less desirable place to be.

5. How does the role of the zoning map differ from the role of the zoning code text?

The zoning map shows how the community is divided up into districts, with each parcel of land falling within one or more districts. Districts are typically residential, commercial, industrial, institutional, etc.

The text explains the rules that apply to parcels within each district including permitted uses and rules about the spacing and heights of buildings and other structures. It also establishes procedures and assigns responsibilities to offices and individuals involved in the zoning process.

6. What is the difference between zoning and subdivision regulations?

The zoning ordinance controls the use of and placement of buildings on a parcel of land which was created through the subdivision process.

7. What are zoning height and bulk regulations?

Height and bulk regulations address the height and size of buildings, the distance of buildings from the edge of the site, and the amount of the lot covered by buildings.

Lot coverage is often expressed as a floor area ratio (or FAR). FAR is calculated by dividing the floor area of the building by the total area of the lot when both are expressed in square feet.

For example, a one-story, 5,000 square foot building on a 10,000 square foot lot would have a floor area ratio of 0.5.

A building with two stories, each of 5,000 square feet, on the same lot would have a FAR of 1.0.

A one-story building of 10,000 square feet on the same lot would also have a FAR of 1.0.

8. Why do zoning codes include restrictions on the heights of buildings?

Typically, height restrictions are included to make sure that sunlight is not blocked any more than necessary, to minimize the wind tunnel effect you experience when you are on a downtown sidewalk, and because the ladders on fire trucks can only reach so far.

9. What is a zoning variance?

A variance is a minor exception to the zoning rules that allows someone to do something on a property that he or she would not ordinarily be allowed to do. Variances are meant to allow the community to reasonably apply zoning rules when, due to unusual circumstances, a parcel or building almost, but not quite, meets the requirements.

In all cases, a hardship should exist which is unique to the property, but not to the owner, which prevents the zoning standards from being applied as usual. A typical example is a strangely shaped lot which would allow a building to be placed twenty-three feet back from the street, but not the twenty-five feet required in that particular district by the zoning code.

10. What is a special or conditional use?

A special or conditional use is one which might or might not "fit" within a zone depending on the characteristics of the particular location in which it is proposed. It is not permitted "by right," but will probably be allowed if the authorities determine that the appearance and activity at the use are compatible with the surrounding area.

11. What is a rezoning?

A rezoning is decision by a community's legislative body to change a parcel or parcels of land from one zoning category to another, and to make the appropriate modifications to the zoning map. When rezonings are proposed it is important to check to see whether the change would be compatible with community plans and policies. It is also important to think about whether all permitted or conditional uses within the new zoning classification would be appropriate on that site and within that neighborhood.

12. What are nonconforming lots and nonconforming land uses?

When zoning codes are enacted or revised, there are often building lots and land uses which exist at the time but do not conform to the new or revised code requirements. In general, these "nonconformities" are permitted to continue but not to expand.

A CHRONOLOGY OF COLUMBUS PLANNING HISTORY

- 1904: First City Plan Commission established (comprised of consultants from other cities).
- 1908: First known plan for the city, The Plan of the City of Columbus, adopted
- o an outgrowth of an effort of the Columbus Board of Trade
 - o recommended a system of parks along the Olentangy River, a government center and mall, an arterial highway system, an outerbelt system, and removal of unsightly conditions.
- 1921: First permanent City Planning Commission organized.
- 1923: First zoning code and maps adopted by City Council.
- 1924-1944: Planning Commission meetings focused largely on amendments to the zoning maps.
- 1950:
- o planning director appointed
 - o revision of the zoning ordinance
 - o Goodale area selected as first area for study by the newly-designated Planning Commission
- 1953: Arrangements were made for the preparation of a preliminary master plan of the Columbus urban area and the first Capital Improvements Program (CIP) initiated.
- 1950s:
- o rapid population and land area increase
 - o completion of many public projects including: expressway system, new facilities at Port Columbus, Hoover Dam Reservoir, school expansion, urban renewal program, hospital expansion, and aggressive annexation program
 - o Columbus, in cooperation with the Franklin County Regional Planning Commission and Franklin County sponsored preparation of master plan reports by Harland Bartholomew and Associates of St. Louis (with the exception of the Thoroughfare Plan, these plans were largely not implemented)

A CHRONOLOGY OF COLUMBUS PLANNING HISTORY, p. 2

- 1963: A comprehensive planning effort was begun for the cities and villages of the Columbus metropolitan area entitled A Comprehensive Regional Plan for Land Use, Transportation, and Facilities for the Columbus and Franklin County Region (also known as the "Blue Plan")
- o was a transportation plan with a land use element
 - o was designed to attract federal funds needed for transportation projects rather than as a comprehensive plan with serious implementation intent.
- 1964: City Planning Commission enlarged from five to seven members (six citizen members and Public Service Director, ex officio) to encourage broader representation.
- 1965: With an annual budget of \$230,244, the Planning Commission staff listed its activities as
- o comprehensive planning
 - o long range (looking ten to twenty years ahead)
 - o comprehensive (physical, social and economic)
 - o general (without site-specific recommendations)
 - o understandable (by officials and the general public)
 - o flexible (allowing for review and amendment)
 - o project planning
 - o current planning
- 1966: Department of Development created as part of city government reorganization
- o comprised of three divisions: Planning, Zoning and Urban Renewal
 - o staff involved with new subdivision regulations, Models Cities Program, urban renewal, and a new zoning code.
- 1969:
- o completion of the "Blue Plan"
 - o initiation of The Columbus Plan: 1970-1990 (an effort undertaken by the City of Columbus but never completed)
 - o reorganization of the Department of Development into five functional areas
- 1970s: Much federally-funding planning took place due to ample federal support for planning.

A CHRONOLOGY OF COLUMBUS PLANNING HISTORY, p. 3

- 1971:
- o 57% of the department's budget was grant income
 - o eleven area plans completed by the Planning Division
 - o other division duties included
 - o preparation of development plans for urban renewal projects
 - o preparation of the Capital Improvements Program
 - o initiation of new legislation pertaining to development
- 1972:
- o area planning completed with publication of 17 area plans
 - o three new sections added to the Planning Division: Project Planning, Community Planning, and Research
 - o action planning emphasis begun (emphasis on applying planning concepts to actual situations)
 - o Vincent Ponte hired to assist with development coordination activities in the downtown
- 1976:
- Planning Division began a new emphasis on developing information profiles for 27 community planning areas (intended analysis and action phases never completed).
- 1977:
- o first annual Growth Statement prepared
 - o Planning Division comprised of Zoning Services, City-Wide Services, Community Planning Services, and Economic Development Services
- 1983:
- Reorganization resulted in creation of a small Strategic Planning Section within the Office of Management and Budget (in order to link planning with fiscal concerns, not do traditional planning) and the transfer of other staff of the former Planning Division to other divisions, some within the newly-created Jobs Development Department.
- 1986:
- In recognition of the need for formalized, rational planning, another reorganization led, again, to the creation of the Planning Division comprised of four principal areas: Area Planning, Comprehensive Planning, Urban Design/Historic Preservation, and Research. A major emphasis was the preparation and adoption of area plans and a comprehensive plan for the city. Several area plans were adopted in subsequent years and work began in earnest on Columbus' first citywide plan since 1908.

A CHRONOLOGY OF COLUMBUS PLANNING HISTORY, p. 4

- 1993: Both the Columbus Comprehensive Plan and a program for its implementation were adopted by Columbus City Council.
- 1994: The Planning Division was reorganized into eight sections in order to better address Columbus' varied planning needs : Long Range Planning, Community Training, Code Development, Downtown Planning, Neighborhood Planning, Historic Preservation, Urban Design, and Research.