

# Understanding Zoning Ordinances

by Carl J. Stephani

Zoning ordinances are powerful laws that intimately affect every property owner. They determine what can be done on property owned by land trusts, as well as on all other private and most public properties. They can affect a land trust's preservation priorities. Zoning can either help or hinder a land trust, but zoning cannot be escaped by ignoring it.

Zoning ordinances are often written in a difficult style that can be daunting to a lay person. One of the sages in the field, Richard Babcock, has written that "zoning ordinances often read like the more abstruse sections of the Internal Revenue Code."<sup>1</sup> Because of this complexity, many citizens either avoid involvement in local zoning matters altogether or become involved only to find themselves hopelessly ensnared in a world of jargon and seemingly incomprehensible procedural and technical minutiae.

Hundreds of books have been written on the subject of zoning. Most of them presume an understanding of the basic elements of zoning that many lay citizens do not have, and that many professional planners develop only after years of zoning-related practice. That was my case, even after three years of graduate study on the subject and receipt of a master's degree in planning.

The basic elements of zoning are not that difficult to understand when conceptualized apart from any particular set of specifics. Learning the basic elements of zoning can help a person understand specific zoning ordinances, much like learning the basics of an internal combustion engine can help one understand the operation of a specific automobile.

Zoning ordinances would hardly be difficult to understand if they were written within the framework of the basic elements, where each element is a chapter. The problem is that many zoning ordinances have been written over a period of years, by changing staffs, under changing political leadership. The products of that change are often ordinances replete with redundancies, contradictions, and ambiguities.

## Legal authority for zoning

To understand zoning it must be recognized that zoning is not a set of rules—like the rules of chess or bridge, for example—that jurisdictions choose to adopt or not to adopt. There is no national or regional standard zoning ordinance that can be pulled off the shelf. Local jurisdictions are allowed to create their own zoning ordinances under authority passed down through the states from the federal government.

The United States Constitution allows states "to enact legislation to protect the public health, safety, and welfare of its citizens."<sup>2</sup> Virtually every state has adopted legislation that passes all, or some, of the authority to adopt zoning ordinances to their cities, counties, towns, and other local general-purpose governments. The authority of states to pass this authority on to their local jurisdictions was challenged and sustained in the United States Supreme Court early in this century.

Because zoning ordinances are locally devised regulations, and not a given set of rules, they differ dramatically across the country. Some ordinances regulate very little other than the location of heavy industrial and commercial uses, while others regulate as much as they can, up to the sheen and color of paint allowed on the exterior of a home. Even though there is tremendous variety in substance, in form they all include at least seven basic elements.<sup>3</sup>

## The seven basic elements

### 1. Land use districts

Modern zoning in the United States began a little after the turn of the century when people in several cities in the Northeast realized that they could enhance the value of their residential property if they could assure that their neighbors would not be able to use their property for doing something like rendering fat. That was the beginning: A local law that would separate different kinds of land uses so that property values could be maintained.

Cities divided themselves into residential, commercial, industrial, and sometimes agricultural areas. Thus, land use districts were established. After zoning was adopted, a new gas station would not be permitted in an area zoned for single-family homes.

**Special (Conditional) Uses**—Once a city was divided up into districts, it was recognized that there were some uses that just didn't fit into any district. Such uses as churches, kennels, drive-in theaters, schools, and cemeteries needed to be examined on an individual basis in relation to their impact on their surroundings and then designed specifically to minimize those impacts. These uses were "special" and required a permit to be built or operated; hence, the "special use permit." Because conditions were placed upon these uses—such as hours of operation or additional landscaping—they are also known sometimes as "conditional uses."

## ***2. Development standards***

Once uses were separated, people began to realize that even if the only thing built in a certain area was housing, some housing can create big problems for some other housing. For instance, if someone had a modest little house and his next-door neighbor built an immense four-story house right on the property line, the fellow in the little house may lose his view, his sunlight, and maybe much of what he enjoyed about his little home. In addition to the separation of uses, then, development standards were incorporated into zoning ordinances. Development standards are the *measurable* rules contained in zoning ordinances that tell people how high, wide, and deep everything can be. They relate to building setbacks, height limitations, percentage of the property that can be covered by buildings, seats in a restaurant, and parking spaces required.

**Variances**—After development standards were introduced into ordinances, it was recognized that there needed to be some means for adjusting the standards to accommodate properties with an unusual shape or topography. For instance, although a zoning ordinance might require a setback of 20 feet from the front property line, it might be appropriate to reduce the setback to 15 feet on a parcel that would otherwise be unbuildable because of a large ravine.

In other words, in some cases it might be reasonable to allow the development standards to be varied in a particular instance; hence, the variance.

## ***3. Nonconformities***

Most zoning ordinances were adopted after communities were already partially developed. When such ordinances were adopted, inevitably certain existing uses were either in the wrong use district or did not meet the development standards of the new ordinance. Provisions had to be made for things that had been built, or done, that did not conform to the new "zoning"—the nonconformities. An example might be an old grocery store in the middle of a residential neighborhood.

**Modifications to nonconformities**—Rules were written to determine how and when to allow modifications to these uses and structures; thus, the permit for a modification to a nonconformity.

## ***4. Permit evaluation criteria***

As described previously, zoning ordinances established use districts and development standards, and allowed the granting of permits for special uses, variances, and modifications to

nonconformities. To be consistent and fair in the granting or denying of such permits, criteria for evaluating applications for these permits were included in zoning ordinances; thus, permit evaluation criteria. These criteria are subjective matters of judgment and are not measurable. They relate to such things as whether granting the permit “will have a significant negative impact on the existing neighborhood,” and so forth. They are the judgmental factors upon which decisions to grant or deny permits are based. They are intended to assure that such decisions are not “arbitrary and capricious,” which would be unconstitutional.

### ***5. Procedures***

As cities expanded early in this century, city councils ran out of time to review all of the zoning permit applications that accompanied the rapid development. Planning commissions, boards of adjustment, and staffs were established to take some of the work load off of the councils, and procedures were established and integrated into zoning ordinances to standardize the processing of zoning ordinance permit applications.

### ***6. Definitions***

Early in the history of zoning it was also recognized that normal dictionary definitions for many words used in zoning ordinances were not adequate for administering those ordinances. Words such as “cottage industry,” “family,” “farm,” and “mobile home” needed to be defined specifically for each community; thus, definitions were added to zoning ordinances. A good zoning ordinance has these definitions in a separate section; many ordinances have dispersed them throughout their texts.

### ***7. Zoning map***

Finally, to make it easier to visualize where different uses were permitted, and where different development standards applied, maps were prepared to show the different zoning districts; thus, the zoning map.

## **Putting the pieces together**

In addition to the seven basic elements, some ordinances contain provisions for overlay zones, planned developments and other specialized permits, and information on administrative procedures.

In order to thoroughly understand an ordinance, a pair of scissors and a roll of tape can be of great help. By cutting out all the different lists of permitted uses, the development standards, the procedures, the definitions, and the permit evaluation criteria, and grouping them together one can see where they conflict, where they are vague, and where they are contradictory. In order to protect land trust properties, those conflicts, contradictions, and omissions should be pointed out to the appropriate jurisdiction for correction.

Carefully scrutinize uses and development standards on land adjacent to trust-held land as well as potential future acquisitions. Propose changes where appropriate to protect your trust’s interests. Review procedures for approving permits to assure that your land trust has adequate notice of project permit application hearings and proposed zoning changes. If such notice cannot be assured, you should at least know where to look for the public notices of such hearings.

The ordinance itself is also subject to change. Procedures for changing the ordinance are contained within it, and proposed changes need to be monitored.

If your community has a general plan, it serves as a guideline for development but in most states does not have the force of law that zoning ordinances do. Land trust members should be aware of the general plan for the future development of their communities, but they should also

recognize the fact that zoning ordinances contain the more specific legal control over the use of the land.

Zoning is one field where knowledge truly is power. It behooves every land trust to understand its community's zoning ordinance so that it can more effectively protect its current and potential properties from incompatible development.

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1. Babcock, R. (1979), *The Practice of Local Government Planning*, ICMA, p. 428. 2. Leary, R. M. (1968), *Principles and Practice of Urban Planning*, ICMA, p. 403. 3. Stephani, C. (1993), *A Practical Introduction to Zoning*, National League of Cities.