Zoning Basics

by Michael Chandler & Gregory Dale

Editor's Note: In the next few issues of the Planning Commissioners Journal we will be running several articles focusing on different aspects of zoning. As most new planning commissioners quickly learn, the local zoning code/ordinance – along with the municipal comprehensive plan – provides the framework for most local land use decisions.

In this issue, Planning Commissioners Journal columnists Mike Chandler and Greg Dale go over the basics of zoning. In our next issue, they will take a look at zoning and neighborhoods. As always, if you have a specific question about how your own community's zoning process operates, please consult with your planning director or legal counsel.

The Origins of Zoning in America

Regulation of buildings in America is as old as the founding of the country. President George Washington on October 17, 1791, for example, issued an order that only brick could be used within portions of what is now Washington, D.C. By 1822 an Act was adopted providing that within the then defined cities of Georgetown and Washington "no frame house intended to be occupied as a blacksmith's shop, factory, or livery stable, shall be erected within fifty feet of any stone or brick house" – not altogether different from the type of regulation found in a modern zoning code![1]

Early codes often, sensibly enough, focused on restricting use of combustible materials. But by the turn of the 19th century, local governments across the United States began to enact ordinances more broadly regulating where certain kinds of businesses could locate and the maximum height of buildings. Examples include an 1885 ordinance regulating the location of laundries in Modesto, California; ordinances regulating building heights in Washington, D.C. in 1899 and Boston in 1904; and a 1909 Los Angeles ordinance governing where industrial plants could be built.

> Zoning represents a democratic method for setting the ground rules for how development can occur within the community.

These early ordinances were enacted, in part, to address the social and economic challenges associated with immigration and the rise of the industrial age across much of America. The ordinances sprang from the police power provision embedded in the Constitution which allows government to exercise reasonable controls in order to protect the public health, safety, convenience, and welfare.

With this foundation in place, New York City adopted the nation's first comprehensive zoning ordinance in 1916. The ordinance classified various types of land uses, delineated zones (through a zoning map) and established height and bulk standards for buildings. Other cities followed New York's lead and subsequently adopted zoning ordinances for the purpose of guiding and managing growth. *The Emergence of Zoning, p. 14*

Zoning Enabled

In 1922, the U.S. Department of Commerce, under the leadership of then Secretary Herbert Hoover, published the Model Standard State Zoning Enabling Act. The Model Act – which was designed for adoption by states across the country – outlined the role and function of zoning, and set out uniform standards that localities could use to guide land development practices.

The national movement to adopt zoning got a big boost four years later (1926) when the United States Supreme Court ruled in *Euclid v. Ambler Realty* that zoning did not violate the due process clause of the federal constitution. The ruling resulted in the widespread adoption of zoning statutes across the nation. By 1940, zoning had become (and continues to be) the most common means of regulating local land use in the United States.

Zoning Defined

Zoning is a legislative process through which the local governing body (under power delegated it by the state zoning enabling law) divides the municipality into districts or zones, and adopts regulations concerning the use of land and the placement, spacing, and size of buildings. The primary goal of zoning is to avoid or minimize disruptive land use patterns involving incompatible land uses.

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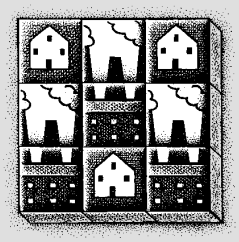
1 Our thanks to Lindsley Williams for informing us about Washington, D.C.'s early building regulations, described in Volume 52 of the Records of the Columbia Historical Society (1989)

The Emergence of Zoning

by Laurence C. Gerckens, AICP

American cities in the year 1900 were a hodgepodge of industrial, warehouse, commercial, and residential uses, frequently closely intermingled without rhyme or reason other than the characteristics generated by chance and individual advantage. It was not uncommon for a party to purchase a residential structure only to find it ringed by odoriferous uses that made occupancy of the structure untenable. Characteristics of entire neighborhoods often changed as uses moved in rapid succession.

The physical separation and isolation of dangerous, odoriferous, or unsightly practices, such as tar boiling, soap making, fat rendering, and dead carcass cremation, was viewed at that time as a reasonable governmental response to the unacceptable impositions of one otherwise legal activity upon another. Both the residences and these businesses had their right to exist, it was held, but not necessarily in close proximity to each other. Thus, the legal separation and isolation of land uses began, creating the foundations for many current zoning practices.



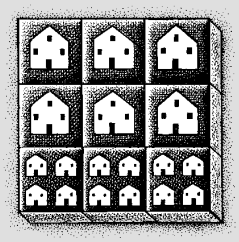
The New York Zoning Code of 1916, America's first "comprehensive" zoning code, relied on a "pyramidal" approach to permitted uses. That is, in the residence zone – considered the "highest" zone classification – nothing but residences were permitted. In the commercial zone, the next lower zone on the pyramid, commercial uses and residences were allowed. At the bottom of the pyramid were the industrial zones, where industrial and commercial and residential uses were all permitted. In effect, industrial zones were really unzoned for all uses.

In the 1920's a number of municipalities expanded on New York's single "residence" district by creating districts limited to development of single-family-detached homes only. The courts upheld these ordinances based on: (1) a public safety rationale (i.e., the risk of fire would be reduced because there would be fewer buildings, located farther apart, housing fewer families per acre); and (2) the premise that single-family-detached residence districts would induce good citizenship through the encouragement of home ownership.

The public safety rationale was constitutionally sound as it was founded on physical conditions capable of being proven to bear a direct relationship to public health and safety – preventing the extreme congestion commonly associated with the practices of apartment and tenement house construction of that era.

However, the second premise, that single-family districts would foster good citizenship by encouraging home ownership, was based on a faulty presumption. It presumed that single family-detached homes would be owner-occupied. But this was not a requirement of single-family-only zoning districts. Moreover, as time would prove, the courts would not look favorably on attempts by municipalities to specify conditions of occupancy (rental, ownership, lease, etc.) in their zoning codes.

Even more significantly, the presumption that single-family-only districts would be solely occupied by home owners has not been borne out. Indeed, in many communities entire neighborhoods of new single-family- detached units have been built and marketed as rental units.



Today, the condominium row house (or townhouse) often represents the principal home ownership option, particularly for young couples and single parents. Ironically, the same arguments made decades ago in favor of public laws promoting single-family-only districts to encourage home ownership could well be marshaled today in favor of promoting townhouse-density attached-unit zoning!

Laurence Gerckens is national historian for the AICP. The above is excerpted from his articles, "American Zoning & the Physical Isolation of Uses" (In PCJ #15), "Single-Family-Only Zones" (in PCJ #23), and "Ten Successes that Shaped the 20th Century American City" (in PCJ #38).

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Since the establishment and modification of zoning ordinances is legislative in nature, zoning represents a democratic method for setting the ground rules for how development can occur within the community. Zoning is constrained, however, by the Constitution's "takings" clause which requires compensation when private property is taken for a public use. *[The impact of the "takings" clause is beyond the scope of this article; for a good overview, see "An Introduction to Takings Law" in PCJ #18 and available for downloading on plannersweb.com].*

Linking Zoning with Planning

Zoning depends on planning and planning depends on zoning. Neither can exist without the other. The comprehensive plan can be thought of as a roadmap which captures in pictures and words what a community wishes for itself. Although the plan will talk about land use, it does not regulate land use. This is the role of the zoning ordinance. In short, the comprehensive plan provides the public policy basis for drawing and applying the zoning districts which in turn control what happens on the land.

The subdivision ordinance is another planning tool that is closely linked with zoning. A subdivision ordinance regulates the division of land into building lots for the purpose of sale, development, or lease. The ordinance specifies procedures that are to be followed when land is divided and built upon. Standards governing the platting of building lots and planned improvements, such as roads and utilities, are common to most subdivision ordinances. When used in conjunction with the zoning ordinance and the comprehensive plan, the subdivision ordinance assures that the land development process is accomplished in an appropriate and consistent manner. *See "An Introduction to Subdivision Regulations," in PCJ #5 and 6.*

The Purposes of Zoning

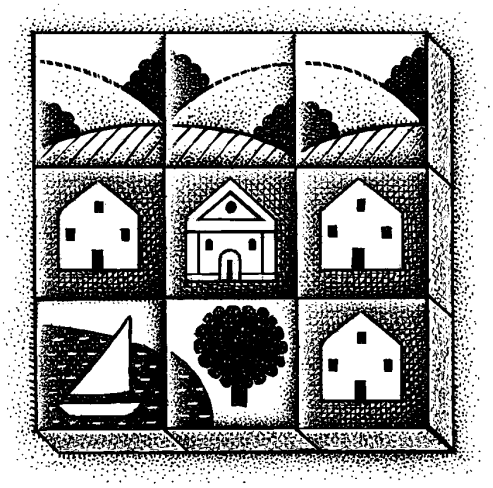
It is important to bear in mind that local zoning authority is derived from

the state. Zoning enabling statutes set out – usually in quite general terms – what local governments can seek to accomplish through zoning. A typical state enabling law might include the following purposes:

1. Provide for adequate light, air, convenience of access, and safety from fire, flood, earthquakes, crime, and other dangers;

2. Reduce or prevent congestion in the public streets;

3. Facilitate the creation of a convenient, attractive, and harmonious community;



4. Facilitate the provision of adequate police and fire protection, transportation, water, sewerage, schools, parks, playgrounds, recreational facilities, and other public requirements;

5. Protect against the overcrowding of land and the undue density of population in relation to existing or available community facilities;

6. Encourage economic development activities that provide desirable employment and enlarge the tax base;

7. Provide for the preservation of agricultural, forested lands, and other lands significant to maintaining the natural environment;

8. Promote the creation and preservation of affordable housing;

9. Protect approach slopes and other safety areas of airports; and

10. Encourage the most appropriate use of land within the locality.

How Zoning Works

A zoning ordinance consists of two parts: a map (or series of maps) and text. The zoning map shows how the community is divided into different use districts or zones. Zoning districts common to most ordinances include residential, commercial, industrial, and agricultural. The zoning map must show precise boundaries for each district. Consequently, most zoning maps rely on street or property lines as district boundaries.

The zoning text serves two important functions. First, it explains the zoning rules that apply in each zoning district. These rules typically establish a list of land uses permitted in each district plus a series of specific standards governing lot size, building height, and required yard and setback provisions. Second, the text sets forth a series of procedures for administering and applying the zoning ordinance. In most cases, the text is divided according to "sections" (or "articles") for ease of reference. Most zoning

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Avoiding Spot Zoning

by Robert C. Widner, Esq.

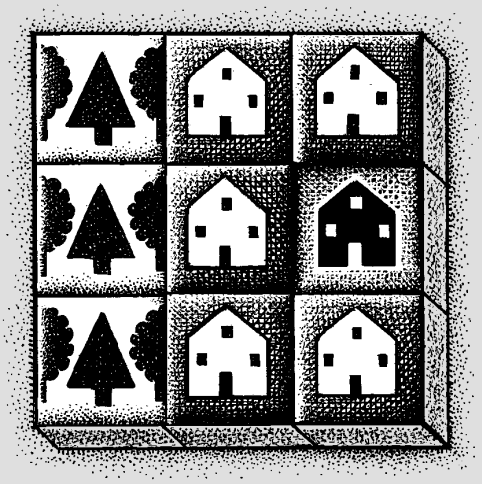
Most planning commissioners have heard the impassioned cry that a particular rezoning decision will constitute an invalid "spot zoning." This allegation typically arises where the community is considering the rezoning of a single lot or small parcel of property held by a single owner and the rezoning will permit land uses not available to the adjacent property.

Because spot zoning often focuses on the single parcel without considering the broader context, that is, the area and land uses surrounding the parcel, it is commonly considered the antithesis of planned zoning. While rezoning decisions that only affect a single parcel or small amount of land are most often the subject of spot zoning claims (as opposed to rezonings of larger areas), a locality can lawfully rezone a single parcel if its action is shown to be consistent with the community's land use policies.

Courts commonly note that the underlying question is whether the zoning decision advances the health, safety, and welfare of the community. A zoning decision that merely provides for individual benefit without a relationship to public benefit cannot be legally supported.

Although courts throughout the nation differ in their specific approaches when reviewing spot zoning claims, the majority consider:

1. the size of the parcel subject to rezoning;



2. zoning both prior to and after the local government's decision;

3. the existing zoning and use of the adjacent properties;

4. the benefits and detriments to the landowner, neighboring property owners, and the community resulting from the rezoning; and

5. the relationship between the zoning change and the local government's stated land use policies and objectives.

This last factor – the relationship of the rezoning decision to the community's land use policies and objectives – is perhaps the most important one. As a result, when a planning commission (or governing body) initially considers a rezoning request it should determine whether the request is consistent with the comprehensive or master plan.

Robert C. Widner is an attorney with the Denver, Colorado, law firm of Gorsuch Kirgis LLP. He also holds a master's degree in urban and regional planning. The above is excerpted from his article, "Understanding Spot Zoning," in PCJ #13.

Zoning's "Achilles Heel"

by Susan G. Connelly, Esq.

Nonconforming uses and structures have been with us ever since zoning first emerged in the 1920's. Since that time, they have represented the "Achilles heel" of planning and zoning. The root of the problem is that nonconformities reduce the effectiveness of what a community is trying to accomplish through its comprehensive plan, as implemented by its local zoning regulations. The continued existence of nonconforming uses, for example, undermines what a community is seeking to achieve when it establishes specific allowable uses for a zoning district.

At the same time, communities – quite understandably – have been reluctant to call for the removal of ongoing businesses and existing structures, reflecting substantial financial investments, just because they fail to comply with current zoning requirements. The "solution" has been to subject nonconforming uses and structures to a diverse assortment of restrictions, all intended to hasten the day when the particular use or structure either "disappears" or comes into compliance with the existing zoning regulations.

The variety of nonconforming situations account for the difficulty in regulating them. Nonconforming uses in residential zoning districts can range from things such as tool sheds in small accessory buildings to bulk storage of gasoline or oil in large buildings suitable only for that specific use. Nonconforming uses can also involve uses in structures designed for conforming uses (such as a manufacturing operation occurring in an office building in a commercial zoning district) or uses in structures which may be adaptable to conforming uses (such as manufacturing in a factory building, in a multi-family residential district, which could be converted to apartments). Obviously, some of these uses are easier to eliminate than others.

As mentioned, zoning ordinances usually seek the eventual elimination of nonconforming uses and structures. This is primarily accomplished by: (1) limiting repair, restoration, additions, enlargements and alterations of the nonconforming structure or of the structure housing the nonconforming use; and (2) restricting or prohibiting the expansion or change of the nonconforming use itself.

Most ordinances specify that once a nonconforming use is discontinued, it may not be resumed. These "abandonment" provisions usually only apply when the discontinuance of the use is "voluntary" – as opposed to when the use is discontinued during bankruptcy or foreclosure procedures. The zoning ordinance will also usually specify a minimum time period before a use is considered to be voluntarily abandoned. In some states, courts will also require proof of an intent to abandon the use.

"Amortization" provisions – through which the local government requires that the nonconforming use or structure be eliminated within a specified number of years – have had mixed results when challenged in court. While the topic of amortizing nonconformities is a complex one, a basic rule of thumb is that amortization provisions are more likely to be upheld when they involve simpler uses or structures whose value can be readily amortized over a few years. Courts will closely examine the extent to which an amortization provision would cause financial hardship or loss to the property owner. Thus, a provision affecting a nonconforming commercial or industrial business facility is much less likely to be upheld than one eliminating a nonconforming advertising sign or fence.

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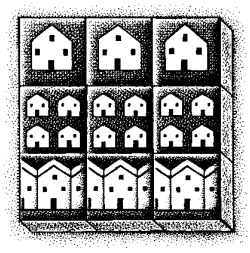
ordinances include the following:

1. *Title, Authority and Purpose.* This section identifies the specific state enabling provision which empowers the locality to adopt zoning. It also spells out, in a "statement of purposes," the community's reasons for adopting the ordinance. The statement of purposes links the rules and regulations listed in the ordinance to the community's values and goals.

2. *General Provisions.* Topics covered in this section usually include definitions of terms used in the ordinance, and a description of the geographic or jurisdictional reach of the zoning ordinance. Definitions are especially important because the general public, as well as the courts, must be able to attach specific meaning to the words and concepts appearing in the ordinance.

With respect to jurisdictional reach, zoning ordinances will typically apply to the territory contained within the political subdivision; meaning the city, county, town, township, or village. In some cases, however, a zoning ordinance may reach beyond a locality's political boundaries. Such "extraterritorial" zoning is permissible if it is authorized by the enabling statute.

3. *Zoning Districts and Regulations.* This section of the ordinance is arguably the most important since it lists and defines each zoning district – as we have noted, the concept of districts stands at the core of zoning. Most zoning ordinances will include – at a minimum – residential, commercial, and industrial districts. Residential districts, in turn, are often broken down further into zones for single-family and multi-family dwellings of varying density.



Similar distinctions, based on intensity of use, are also often found in business and industrial districts (e.g., light industry versus heavy industry).

Other common types of zoning districts are agricultural, conservation, and institutional. Many communities have also crafted a wide variety of "mixed use" districts, allowing blends of uses in some parts of the community.

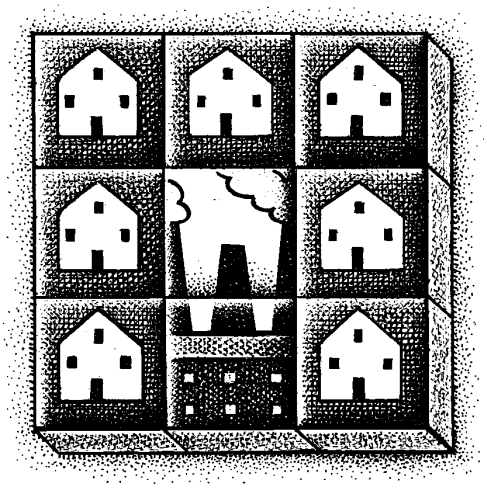
Many zoning ordinances include one or more special purpose zones addressing flood hazard areas, historic properties, and other specialized uses. These special zones are often applied as "overlays" – that is, those geographic areas subject to overlay zones are also within an "underlying" zoning district. For example, a property within a residential zone might also be located within a flood hazard zone. This property would be subject to the regulations of both the underlying zone (in this case, residential) and the overlay zone (flood hazard).

In addition to listing and defining zoning districts, this section of the zoning ordinance sets out rules for the use of land in each district. Most basic is the list of permitted versus special or conditional uses. If a use is deemed permitted (commonly referred to as a "by-right" or "matter-of-right" use), it need only meet the ordinance's dimensional requirements (as described below) and any other "impact standards" (such as parking, landscaping, and signage standards; see point 5 below) to secure a zoning permit.

Other uses may be allowed within a district provided they are granted a special or conditional use permit. The terms special exception, special use, and conditional use permit generally have the same meaning; what term you're familiar with depends on the state you live in. The zoning ordinance will set out the standards which must be met for granting such a permit. *Special Permits.*

Finally, this section of the zoning ordinance includes, for each zoning district, basic development requirements. These primarily involve dimensional standards for setbacks and side yards, minimum lot sizes, and building heights.

4. *Nonconforming Uses, Structures, and Parcels.* When a zoning ordinance is



adopted some existing uses, structures, and parcels may not comply with the regulations of the zoning district in which they are located. These uses, structures, or parcels are then classified as "nonconforming." While they are typically permitted to continue, their future expansion, reconstruction, or conversion is regulated by provisions set out in this section of the zoning ordinance. *Zoning's "Achilles Heel," p. 16.*

5. *Impact Regulations.* Many zoning ordinances include a separate section (or sections) setting out a variety of "impact" regulations or standards. These might include, for example, parking standards, sign regulations, landscape requirements, urban design criteria, historic preservation standards, and various environmental criteria (such as requirements for tree plantings in new developments).

6. *Administration and Enforcement.* This section of the zoning ordinance spells out the duties of those involved in administering the ordinance – the zoning administrator, the governing body, the planning commission, and the board of zoning appeals or board of adjustment. Procedures to be followed when amending the zoning ordinance, as well as standards for assessing penalties and fines for zoning violators, are also included in this section.

Who's Who in Zoning

In order to make sense out of the zoning process, it is important to understand the players and their respective

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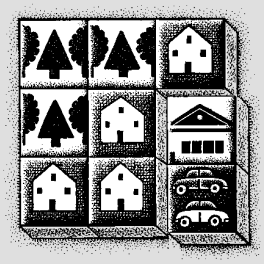
Special Permits

by Neil Lindberg, Esq.

Special permits are approvals given to uses that meet certain standards or conditions which are listed in the local zoning ordinance. The conditions are often designed to ensure that the use will not adversely affect nearby existing uses. Special permits are commonly employed to protect residential neighborhoods against potentially disruptive uses – uses which might generate substantial amounts of noise, odor, or traffic, or which might in some other way be incompatible with the neighborhood. For this reason, uses such as gas stations and convenience stores often require special permits.



Local governments are also increasingly coming to require special permits for major development proposals. This allows the local government, typically through its zoning board, increased flexibility in examining the impacts of large-scale uses, and the ability to impose conditions to lessen adverse impacts. Projects such as shopping centers or office parks are particularly likely to require special permits.

Zoning ordinances must specify the standards by which the special permit application is to be reviewed. Some standards are narrow and fairly objective. For example, the special permit use might be required to maintain a minimum of 35 percent open space.

Standards that are too general are susceptible to challenge in court on the ground that they allow for arbitrary government action, violating individual due process rights. However, courts are becoming more liberal in reviewing special permit standards. There is much variation, nevertheless, and standards upheld in one community might well be struck down in another.

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Watch Out For...

by Greg Dale

1. *When the legislative body is the final decision-maker on everything.* Many elected officials believe that they should have the final say on everything. Their theory is that they were elected and therefore the buck should stop with them. So, for example, many local governing bodies – in addition to acting on zoning ordinance changes – will hear appeals from decisions of the board of zoning appeals; act on conditional use permits and related decisions; and act on site plans.

However, problems can arise. First, when governing bodies act as appeals boards, they often do not perform this function very well. Frequently testimony that was taken by the zoning board of appeals (or planning commission) is reopened, and the matter becomes politicized. Most governing bodies simply are not well suited to act as quasi-judicial decision-makers. Since legislators most often function in an environment where all forms and channels of communication are anticipated, they are also at greater risk of either initiating or being drawn into inappropriate ex-parte communications. Finally, when local governing bodies are involved in administering regulations, they tend to lose sight of the larger policy issues.

2. *When the planning commission acts in a quasi-judicial role.* Planning commissioners should understand the difference between acting in an advisory capacity and in a quasi-judicial capacity. When the planning commission is making a recommendation to the legislative body on a zone change, for example, it is acting in an advisory capacity. However, in many communities the planning commission is also the final decision-maker on certain matters, such as subdivision plat, site plan, and conditional use/special permit approvals.

When acting in this quasi-judicial capacity, fact finding, evidence, and written findings become particularly important. In addition, certain ethical constraints – such as the avoidance of "ex-parte" contacts – come into play.

"Legislative" v. "Quasi-Judicial" Actions, p.19

3. *When planning commissions get caught up in minutiae.* Many planning commissions spend hours going through excruciating details on development proposals, dealing with items over which they have little discretion (at least if they follow the dictates of the zoning code). Particularly in communities with professional staff, there is no need for the planning commission to take on what is essentially a staff responsibility. A planning commission works best when it allows staff to make technical determinations, while focusing its attention on those matters which require discretionary decision making. Of course, this assumes the community has a good zoning code, with well-articulated standards, in place.

4. *When elected officials try to influence the planning commission recommendations.* It is all too common to find elected officials attending planning commission meetings and trying to influence the commission's recommendations. This is perplexing, since one of the principal reasons for planning commission consideration of zoning amendments is to provide the elected officials with their best advice. It is counterproductive for elected officials to try to influence the "independent" advice that the planning commission is supposed to provide them.

5. *When zoning boards grant too many variances.* The consideration of variances is one of the most difficult jobs of a zoning board of appeals. Variances are an important "safety valve" in zoning, but are also often abused. Variances are intended to apply only in unusual circumstances where a literal interpretation of the zoning code creates a hardship, and then only pursuant to standards set out in the code.

The difficulty lies in how "hardship" is interpreted and how facts are considered relative to standards. A zoning board needs to clearly understand what must be proven before a variance can be granted. If the vast majority of variance requests are being granted, it is likely that either the zoning board is not requiring the level of proof required by the zoning regulations, or that the regulations need to be amended.

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roles – and the types of decisions they are responsible for making.

The zoning process is similar to the balance of power that we all learned about in Civics class. In zoning, different bodies have different responsibilities that serve as a system of "checks and balances." For the system to work efficiently each role must be played well by the respective body responsible for that role; conversely, it is important for individual bodies to not exceed their designated role.

There are four main types of decision-making functions in the zoning process: *legislative, advisory, administrative,* and *quasi-judicial.*

1. Legislative

The legislative function involves the adoption or amendment of the zoning regulations themselves. The local governing body is comprised of the elected officials in your jurisdiction. This may consist of a city council, county board or commission, village council, township trustees, and so forth. Note that the zoning map is considered to be part of the zoning regulations, which means that a zoning map amendment or "zone change" is a legislative act. In the vast majority of states only the governing body can approve either text or map amendments.

2. Advisory

Before adopting or amending the zoning text or map, the local zoning process will typically call for the planning commission to provide advice on the wisdom of any such adoption or revision. The commission will examine whether the zoning proposal is consistent with the goals and policies of the locality's adopted comprehensive plan. *Avoiding Spot Zoning, p. 15.* Many planning commissions are also involved in drafting proposed zoning ordinances and amendments.

In any zoning adoption or amendment process the local governing body is likely to hear from a variety of "special interests" ranging from local

homeowners and neighbors to builders and developers. These groups are a natural and important part of the process; however, it is equally important to have the independent voice of a planning commission that is focused on the long range public interest of the community as a whole.

3. Administrative

It is sometimes surprising for new planning commissioners to learn that the majority of decisions made in the zoning process are actually made at the administrative level by staff planners, zoning officers, or other municipal employees.

Non-discretionary standards such as lot size, lot width, setbacks, building height, permitted uses, sign height and size, and parking lot standards, can be administered by staff without the need for review by planning commissions or legislative bodies. These decisions often take the form of zoning certificates and certificates of occupancy, and are frequently made as part of the building permit process.

4. Quasi-judicial

No zoning code is perfect, nor can all potential circumstances be anticipated. For that reason, several "safety valves" are built into the zoning process. First, there are occasions when an interested party may simply disagree with the way in which the administrative staff has interpreted the zoning regulations. Second, there are instances where the strict application of zoning regulations creates an unfair situation to a property owner.

Typically, as part of the zoning process, a board is designated to hear appeals and consider variance requests. This board is usually referred to as either the "board of zoning appeals," "board of adjustment," or some similar title. It generally acts in a "quasi-judicial" capacity because in most states and communities its decision is final (subject only to appeal in the local court system). This means that zoning board decisions must be based on specific factual evidence, and include written findings of fact to support the decision.

Planning commissions in many states sometimes also act in a "quasi-judicial" capacity. *For more on this, see point 2 in the "Watch Out For" sidebar p. 18.*

Summing Up:

Treatises have been written on zoning. In fact, your planning department or municipal attorney's office may well have one or more of them. Given the constraints of time and space, we have necessarily focused on some of the more basic aspects of zoning (and despite state to state differences, zoning is remarkably similar nationwide). By at least having an understanding of the basics of zoning – and of who's who in the zoning universe – you should have a better feel for your job as a planning commissioner or zoning board member. In the next issue of the *Planning Commissioners Journal,* we'll take a closer look at a constellation of issues related to "zoning and neighborhoods." ◆

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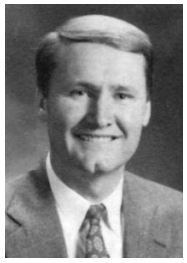

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Editor's Note:

Legislative v. Quasi-Judicial Actions

The distinction between the "legislative" and "quasi-judicial" role of a planning commission is one many new planning commissioners are not familiar with. It can be an important distinction, however, because when a commission is acting in a "quasi-judicial" capacity, it typically must follow a range of procedural and ethical standards designed to ensure that property rights are respected. This is mandated by the Constitution's due process clause.

Attorney Gary Powell provided a concise explanation of the two different roles in Issue #2 of the *PCJ:*

"A planning commissioner takes a 'quasi-judicial' role when engaged in determining the rights, duties, privileges, or benefits that relate to a specific property or property owner. This happens, for example, when a planning commissioner is called on to review a conditional use request for a specific parcel, or a subdivision plat. In contrast, the other role planning commissioners often assume involves dealing with 'legislative' type activities. This role is taken when a planning commissioner is engaged in recommending standards that have a general and uniform operation, and which are ultimately decided by the local legislative body. For example, when the planning commission is working on a proposed zoning ordinance that will go to the legislative body for final approval, the planning commissioner is engaging in what is considered to be legislative-type [or advisory] activity."

A more thorough discussion of procedural safeguards (such as adequate notice, the opportunity to be heard and present evidence, and written decisions supported by reasons and findings of fact) needed when a planning commission is acting in a quasi-judicial capacity can be found in Dwight Merriam and Robert Sitkowski's article, "Procedural Due Process in Practice," in *PCJ #33.* For a review of the various ethical issues facing planning commissions in their decision making, see Greg Dale's collected ethics columns in "Taking A Closer Look: Ethics" available from the *Planning Commissioners Journal.*