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14

Zoning and subdivision regulations ✓

When a local government adopts a comprehensive plan—a general policy document—zoning ordinances and subdivision regulations are the two most commonly used legal devices to carry it out. A zoning ordinance divides a community into districts, or zones, and regulates land use activity in each district, specifying the permitted uses of land and buildings, the intensity or density of such uses, and the bulk (size) of buildings on the land. By contrast, subdivision regulations govern both the division of land into two or more lots, parcels, or sites for building and the location, design, and installation of supporting infrastructure. Together, these regulatory devices ensure that (1) the future land use patterns incorporated into the comprehensive plan are achieved; (2) existing land uses (such as homes) are shielded from incompatible land uses (such as heavy industry); (3) development is adequately served by streets, schools, parks and recreation, and utility systems; and (4) development is directed away from environmentally sensitive areas, such as floodplains and wetlands.

Traditional zoning ordinances separate land uses into four basic categories: residential, commercial, industrial, and agricultural (the latter typically in unincorporated areas). A small community may have only four zones, but a large city or urban county may have many more. Minimum lot sizes are applied to regulate residential *density*—that is, the number of dwelling units per acre or hectare. In commercial and industrial areas, *intensity* is usually controlled by limiting the number of square feet of floor area that can be built for each square foot of land in the building lot (see the discussion of floor area ratios further on). Bulk requirements include building height limitations, lot coverage restrictions (which may also affect intensity of use), and building setback or yard requirements. Other impacts on nearby property as well as the public may be offset by parking and loading requirements; screening; regulations on the number, size, and appearance of signs; and performance standards for airborne emissions, noise, and lighting.

Origins of land use controls in the United States

Zoning has a variety of historical roots. It originated as a means of protecting the health and safety of people in major cities and was later adopted by smaller suburban communities. Early wooden tenement houses in big cities were often built close together, and many cities eventually passed tenement house laws. These laws required that most rooms have direct access to light and air (often through air shafts), and they imposed building separation and setback requirements designed to help contain fire and ensure that light and air filtered among buildings. Other early land use controls included limits on building heights, which ensured that firefighters could reach the upper floors.¹ Some cities enacted controls to exclude such uses as brickyards and billboards from residential districts and horse stables from commercial districts.²

Bolstered by an amendment to its charter, New York City enacted the first true zoning ordinance in 1916, which state's highest court upheld in 1920,³ six years before the U.S. Supreme Court was to decide the constitutionality of the

concept of zoning. New York's ordinance was based on an exhaustive study that documented the conditions justifying zoning: streets were congested by cars, trucks, and horse-drawn vehicles; buildings were clustered too close together and positioned so that sunlight could not reach into them; widespread conflicts were arising between uses, including problems associated with noise, odor, dust, access by delivery vehicles, and the general invasion of nonresidential uses (such as factories and junk shops) into residential areas; open space was being lost, often to yards; and apartments were encroaching in sections of the city dominated by detached, single-family housing. The notion that different land uses are incompatible and ought to be separated from one another was central to the New York ordinance and to others of the same period.

The New York ordinance covered the entire city and controlled land use, building heights, and building setbacks in one set of regulations; as such, it was considered the first comprehensive zoning ordinance. It divided the city into four use zones: residential, commercial, "unrestricted," and "undetermined." It ensured the separation of incompatible activities by limiting industrial uses to the unrestricted district; however, it also allowed residential and commercial uses in unrestricted districts, a practice known as pyramidal or cumulative zoning. The uses in the undetermined district could be of any of the three categories—the ordinance did not impose any regulations or restrictions—and were largely dependent on future port and terminal developments. The ordinance also included five classes of height districts, which generally limited the height of the building at the street line to a varying multiple of the street width; and five classes of area districts, with yards, courts, and other open spaces that were regulated according to building height¹ (see Figures 14-1 and 14-2).

In the districting plan of the New York ordinance, city officials determined the initial zoning boundaries by considering current uses and selecting the dominant one as the appropriate use for each area. This approach simply reinforced existing land use patterns rather than attempting to predict or guide future ones; it also assumed that those patterns would remain relatively static and would not require frequent zoning map amendments.

New York City's experience with its zoning ordinance influenced the Standard State Zoning Enabling Act (SZEA), which was drafted in the 1920s by an advisory committee of the Department of Commerce appointed by then commerce secretary (and later president) Herbert Hoover. The committee included, among others, Edward M. Bassett, an attorney who had played a pivotal role in drafting the New York zoning ordinance. The SZEA, released in various drafts and editions between 1922 and 1926, was intended to delegate the state's police power to municipalities to remove any question over their authority to enact zoning ordinances. The SZEA contained procedures for establishing and amending zoning ordinances, and it authorized a temporary zoning commission in the municipality to recommend to the local legislative body district boundaries along with the proposed written text of the ordinance; the zoning commission was to go out of existence after the initial ordinance was enacted. Appeals in connection with enforcement of the zoning code were to be heard by a board of adjustment created by the SZEA. The board was an independent body given the authority to grant variances—minor departures from the terms of the zoning ordinance—and to allow special exceptions (also known as conditional uses) in a zone when certain criteria were shown to be satisfied.

In 1928 the Commerce Department published as a pamphlet *A Standard City Planning Enabling Act* (SCPEA), which was also drafted by the advisory committee. The act covered six topics:

1. The organization and powers of the municipal planning commission, which was directed to prepare and adopt a master plan

Figure 14-1 New York zoning plan of 1916, showing use zones in Manhattan south of Central Park. Streets in black are zoned for residence and business uses; streets in white are restricted to residential use; streets marked in dots are unrestricted in use.

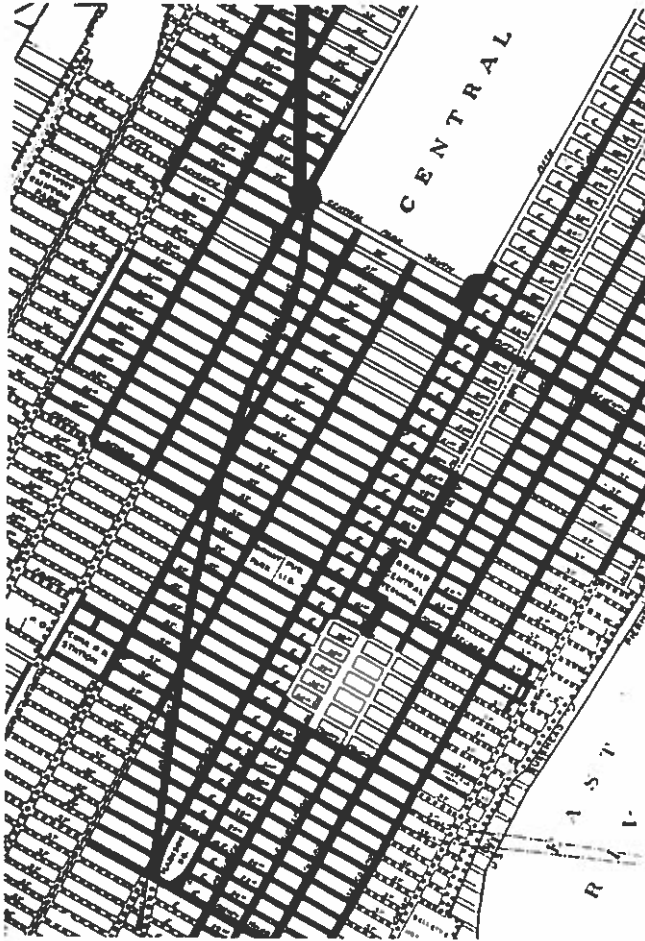
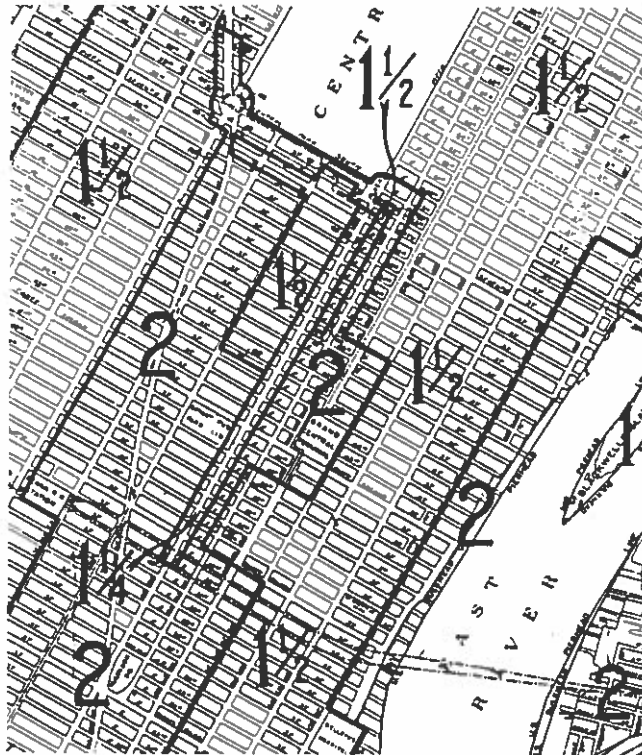


Figure 14-2 Height restrictions in central Manhattan under the New York zoning plan of 1916. The height limitation in each zone is shown as a multiple of the street width.



2. The contents of the master plan for the physical development of the territory (which could include a zoning plan of the type described in the SZEAs)
3. Provision for the adoption of a master street plan by the governing body and for control of private building in mapped but unopened streets
4. Provision for approval of all public improvements by the planning commission
5. Control of the private subdivision of land
6. Provision for the establishment of a regional planning commission and a regional plan.

The SCPEA was intended, in part, to transform the process of land division from one that merely provided a more efficient and uniform method for selling land and recording a plat of land to one in which local governments could control urban development, particularly through requirements for on-site public improvements.

In the 1920s, zoning ordinances and planning and zoning legislation spread rapidly throughout the United States. By 1922, about twenty states had zoning enabling acts.⁵ By 1930, the Commerce Department reported that forty-seven states had legislation authorizing municipalities to adopt zoning. Of those, thirty-five states had adopted legislation based on the SZEAs, and ten states had used the SCPEA. (Some states enacted statutes before the two model acts were promulgated or adopted laws that were somewhat different.)⁶ Today, all fifty states have planning and zoning enabling legislation, most of which descended from or was in some way influenced by the SZEAs or SCPEAs.

Planning and administering land use controls

A number of governmental entities are involved to varying degrees in authorizing, establishing, and administering zoning and subdivision regulations. These entities include the state legislature, the local governing body, the planning commission, the board of zoning appeals or adjustment (BZA), the zoning hearing examiner, and planning staff.

State legislature

In the United States, local governments are "creatures" of the states and consequently have the authority to undertake land use planning and regulation only as permitted or required by their own state.⁷ State enabling legislation authorizes most local governments to engage in planning and undertake zoning and subdivision control. However, municipalities may receive their planning and land use regulatory power through home-rule provisions in state constitutions or legislation or through the adoption of special municipal charters. Consequently, they may adopt land use controls differently than they would through state enabling legislation. In some cases they may have authority to adopt regulations that other types of governmental units, such as counties, may not have.

Local governing body

The term *governing body* refers to the legislative branch of local government. It may be called the city council, board of county commissioners, board of supervisors, board of trustees, town board, or board of freeholders. The governing body has most of the power and responsibility for zoning and subdivision decisions; however, it may delegate certain nonlegislative functions to

Comprehensive plans and land use regulations in Florida Florida's planning statutes have a rigorous description of the relationship between land development regulations—principally zoning and subdivision controls—and a local comprehensive plan:

"It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.

"A . . . land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, and other aspects of development permitted by such . . . regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government."

Source: Florida Statutes, sec. 163.3201 (1996) (relationship of a comprehensive plan to the exercise of land development regulatory authority); sec. 163.3194(3)(a) (1996) (legal status of a comprehensive plan)

administrative boards if it provides adequate standards and criteria. In some communities, the governing body may also approve certain administrative decisions, such as conditional uses, after action by the planning commission or BZA. In other communities, the governing body may serve as a second level of local appeals after the BZA, before a matter goes to court.

Planning commission

Most communities have a planning commission, typically composed of seven to nine members appointed by the chief elected official or governing body. The commission represents a cross section of community interests; interprets community values to professional planners; and serves as a buffer between planners, local political interests, and the governing body.

The commission's role typically involves initiating or reviewing comprehensive revisions to community plans, zoning maps, zoning ordinances, and subdivision regulations. Most local governments require the commission to review amendments to the zoning text and zoning map and make an advisory recommendation prior to action by the governing body. The commission may also act, either in an advisory role or as a final decision maker, on conditional uses, site plan reviews, and planned unit developments.

The SCPEA and state enabling acts give local planning commissions the pivotal role in overseeing the review of subdivisions. In some states, the planning commission shares approval authority with the governing body; in others, the commission has sole responsibility to act for the local government.

Board of zoning appeals or adjustment

Petitions from property owners for site-specific modifications of the zoning regulations are typically referred to the local BZA. This entity, appointed by the governing body, is authorized to grant variances for an individual property. Variances are usually considered when enforcement of the zoning ordinance would cause unnecessary hardship or practical difficulty. The BZA may also

have the power to (1) hear appeals of any decision or interpretation made by the zoning enforcement officer and (2) grant conditional uses or special exceptions that are listed in the zoning ordinance (although this power may be held by the legislative body).

Variations are of two types. The first type, *area (or bulk) variances*, deals with departures from yard and height requirements. For example, it may not be possible to position a building on a pie-shaped lot in such a way as to meet all yard requirements, so a variance might be granted to allow the rear-yard setback requirement to be reduced. Variations from sign and parking standards are also usually in this category. The second type, *use variances*, authorizes uses that are not permitted by the zoning ordinance either expressly or by implication. Because planners view use variances as a means of obtaining zoning amendments without going through the governing body, they generally disapprove of the practice of granting such variances, and some state zoning enabling acts or zoning ordinances prohibit them. Both a public hearing and the notification of nearby property owners are necessary prerequisites to action by the BZA.

The conditions justifying a variance arise from the particular characteristics of the property, not from the personal circumstances of the property owner. The petition for a variance must persuade the BZA that the request satisfies the standards for granting variances and that the variance would be compatible with, or at least not harm, the surrounding area. The BZA may have the authority to impose conditions on the variance to mitigate its impact.

Zoning hearing examiner

To professionalize the appeals process, some communities have replaced BZAs, which are typically made up of laypersons who are volunteers, with zoning hearing examiners. Such officers, who are usually planners or attorneys, conduct hearings just as a BZA would and then prepare written findings and conclusions in determining whether to grant the variance. Like the decisions of a BZA, the decisions of hearing examiners may be appealable to the governing body or the courts.

Planning staff

Planning staff perform four basic functions with respect to land use regulation. First, in cooperation with the legal department, planning staff may draft new zoning or subdivision ordinances or revise existing ones; alternatively, they may oversee consultants who perform these same tasks. Second, planning staff provide information and application forms for various types of development permits. Third, planning staff work with other local government departments (such as the law and building inspection departments) to enforce the zoning and subdivision ordinances by reviewing applications for buildings, structures, and uses and by issuing permits. Planning staff may inspect sites where permits have been granted, issue citations or stop-work orders, and seek court injunctions to stop illegal activities. These functions may be performed in conjunction with other departments. Finally, planning staff provide various forms of support for the governing body, the planning commission, and the BZA; planning staff may, for example, prepare reports on proposed zoning and subdivision actions, undertake special studies on major zoning map or text amendments, and submit status reports on zoning enforcement caseloads.

The zoning ordinance

A zoning ordinance has two parts: a map and a text. The zoning map is an official document that may take the form of a single sheet, a series of indexed

Figure 14-3 The basic components of a zoning ordinance.

Section	Description	Examples
Zoning maps	Maps showing zoning district boundaries	Separate map book or pocket map
Definitions	Definitions of terms used throughout the zoning ordinance	"Dwelling unit," "structure," "lot," "yard"
General provisions	The operational rules and provisions applicable to the entire zoning ordinance	Title, purpose; authority; applicability of zoning ordinance; establishment of zoning districts; rules of interpretation
Zoning district regulations	All zoning district and overlay district regulations	Permitted and conditionally permitted uses in agricultural, residential, commercial, industrial, and floodplain overlay districts; parking
Special development standards	Specific development standards applicable to all uses and districts	Signs, nonconforming uses and structures, home occupations, recycling facilities, bed and breakfast inns
Administration and enforcement	Procedural requirements for all administrative and legislative reviews, appeals, enforcement, and penalties	Site plan review, architectural review, zoning ordinance amendments and rezonings, filings of appeals, enforcement and revocation of permits and penalties

sheets, or an atlas. The zoning districts appear as overlays on a base map that shows streets and property lines. Many zoning maps are now computerized and can be easily updated as boundaries and property lines change.

While the text of a zoning ordinance may vary from community to community, most zoning ordinances include the following articles: definitions, general provisions, zoning district regulations, special development standards, and administration and enforcement.

Requirements for consistency between the local comprehensive plan and the zoning ordinance vary from state to state. Some state courts have found the comprehensive plan or its policies to be embedded within the zoning ordinance itself and do not require a separate plan document to provide the supporting rationale for the zoning ordinance. Other state courts see the existence of a separate plan document as an important—but not controlling—factor in evaluating the constitutionality of a zoning ordinance or its application to a particular property. Still other states have stronger requirements, either in their statutes or as a result of interpretations by their courts as to what it means for a zoning ordinance to be "in accordance with a comprehensive plan,"⁸ the language used in the SZE. In such states, a court may overturn a zoning change if the local government fails to show that the change is consistent with the comprehensive plan.

Definitions

The definitions article lists terms that are used repeatedly throughout the zoning ordinance, such as *dwelling unit*, *family*, *home occupation*, *structure*, and *yard*. Local government officials use the definitions in interpreting the zoning ordinance.

General provisions

The general provisions article describes the purposes of the ordinance (such as implementing the comprehensive plan), lays out the constitutional and statutory authority for the local government's powers, states that the ordinance is applicable to all lands within the local government's jurisdiction, lists the zoning districts, and establishes the official zoning map. The general provisions also include rules for interpreting district boundaries.

Zoning district regulations

The zoning district regulations describe the purposes of each district or zone, the uses permitted as-of-right or conditionally, and the development standards applicable to each district; they also contain references to other applicable provisions of the zoning ordinance, such as the sign code. The zoning district regulations may appear as text, in tabular form, or as a combination of both.

A zoning ordinance will permit different districts for single-, two-, and multifamily residences and for retail, office, or other commercial uses and industries to be located throughout the community. Many zoning ordinances use letters and sequential numbers (e.g., R-1, R-2, R-3, and R-4 for residential uses) to identify zoning districts. The district designations represent a hierarchy of land uses based on a mix of uses, density, and/or intensity; that is, the higher use groupings are less dense (in terms of residences) or less intense (in terms of commercial or industrial uses). A zoning ordinance's commercial zoning categories broaden the allowed mix of uses and therefore increase the potential intensity as they go from neighborhood-oriented districts to highway commercial districts to regional commercial districts, such as regional shopping malls. Industrial zones will often be further divided into a "light" and "heavy" district. Light industrial districts encourage nonpolluting high-tech assembly plants, warehousing, and related office and research facilities in campuslike settings.

As noted previously, early zoning ordinances were pyramidal, or cumulative, which means that they permitted "higher," less intensive uses—such as residences—in the "lower" zones that allowed more intensive uses—such as commercial uses. In contemporary zoning ordinances, which are rarely cumulative, each district is exclusive. An exclusive industrial district, for example, will not allow residential uses: the reasoning is that exclusive zoning will preserve the industrial areas for future development and forestall future conflicts with residential uses, especially when industrial facilities need to expand.⁹

Permitted, or as-of-right, uses are activities that are specifically allowed without discretionary review. A single-family residence is a typical permitted use. If such a use meets the standards included in the zoning ordinance, approval is automatic.

Conditional uses, also called special uses or exceptions, are those that—because of scale, particular locational requirements, or potential safety hazards—are subject to discretionary review and are usually subject to a public hearing. For example, because of the traffic they generate, schools and churches are often conditional uses in residential areas. To obtain approval, such uses may be required to meet additional standards designed to address anticipated impacts and to ensure compatibility with the surrounding area.

The zoning ordinance lists the uses that require conditional use approval and the zoning districts in which such uses will be allowed. Local government facilities, such as fire and police stations, are often approved through a conditional use procedure. A zoning administrator, the BZA, and the planning commission (sometimes with final action by the governing body) have the authority to permit conditional uses. Conditions imposed must be objective,

Land use ^{a,b}	Permit requirement by district						See standards in section
	RR	RE	RS-1	RS-2	RM-1	RM-2	
Agricultural, open space, and resources							
Animal keeping	P	P	P	P	P	P	16.44.040
Crop production, commercial	P	P					
Equestrian facilities, commercial	P	C					
Nature preserves	P	P					
Plant nurseries, commercial	C	C					
Open space	P	P	P	P	P	P	
Education, public assembly, and recreation							
Churches/places of worship	C	C	C	C	C	C	
Cemeteries, mortuaries, crematoriums, mausoleums	C	C					
Golf courses, country clubs	C	C					
Residential recreational facilities, private	P	P	P	P	P	P	
Schools, private	C	C	C	C	C	C	
Schools, specialized education and training	C	C	C	C	C	C	
Communication facilities							
Wireless facilities	C	C	C	C	C	C	16.44.170 B
Satellite dishes/antennae	P	P	P	P	P	P	16.44.170 A

Key to permit requirements		
Zoning map symbol	Zoning district name	General plan land use designation implemented by zoning district
RR	Residential rural, 0.1-0.4 dwelling units/acre	Rural residential
RE	Residential equestrian, 0.4-2.0 dwelling units/acre	Equestrian residential
RS-1	Residential single-family, 2.1-5.0 dwelling units/acre	Single-family 1, residential
RS-2	Residential single-family, 5.1-10.0 dwelling units/acre	Single-family 2, residential
RM-1	Residential multifamily, 10.1-15.0 dwelling units/acre	Multifamily 1, residential
RM-2	Residential multifamily, 15.1-18.0 dwelling units/acre	Multifamily 2, residential
Symbol	Applicable process	See chapter
P	Permitted use zoning clearance required ^c	16.74
C	Conditional use conditional use permit required	16.52
Blank	Use not allowed	

^aSee 16.04.020 regarding uses not listed.

^bSee article VI for definitions of the land uses listed.

^cA development plan permit may also be required; see 16.56.

Figure 14-4 Allowable use and permit requirements for residential zoning districts, Murrieta, California.

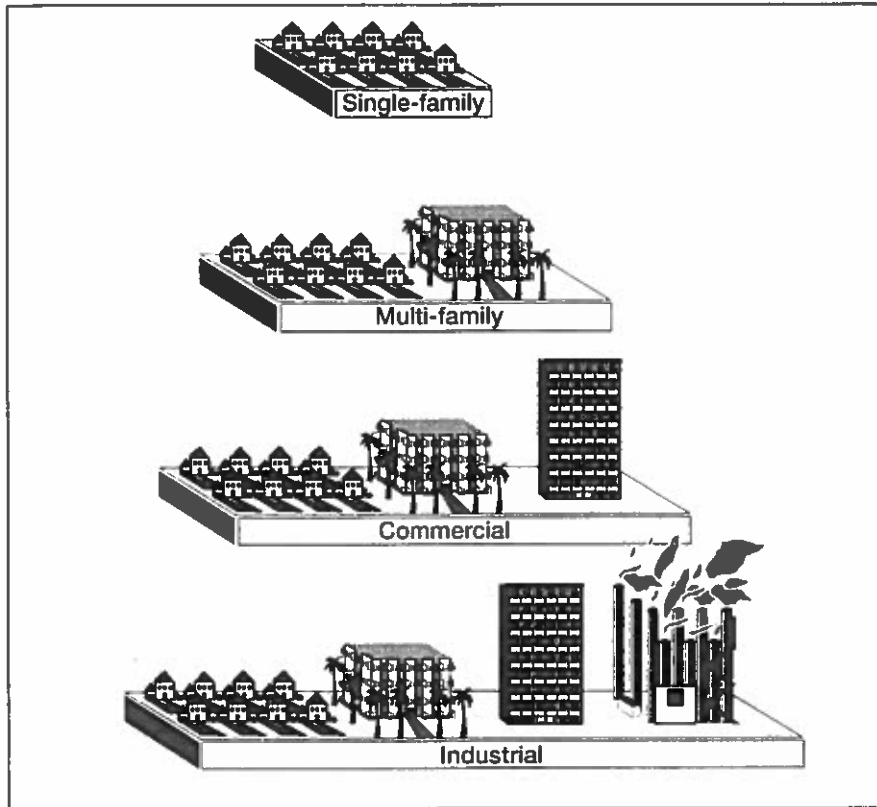
clear, and enforceable, and the decision to approve the use must be supported by written findings based on a thorough analysis.

The district regulations will also include development standards. Sometimes all or part of the development standards, such as those for parking and landscaping, will appear as separate articles. Basic standards include minimum area and width requirements for lots; minimum front-, side-, and rear-yard requirements; maximum height of buildings and structures; minimum parking and loading requirements; and maximum lot coverage for buildings.

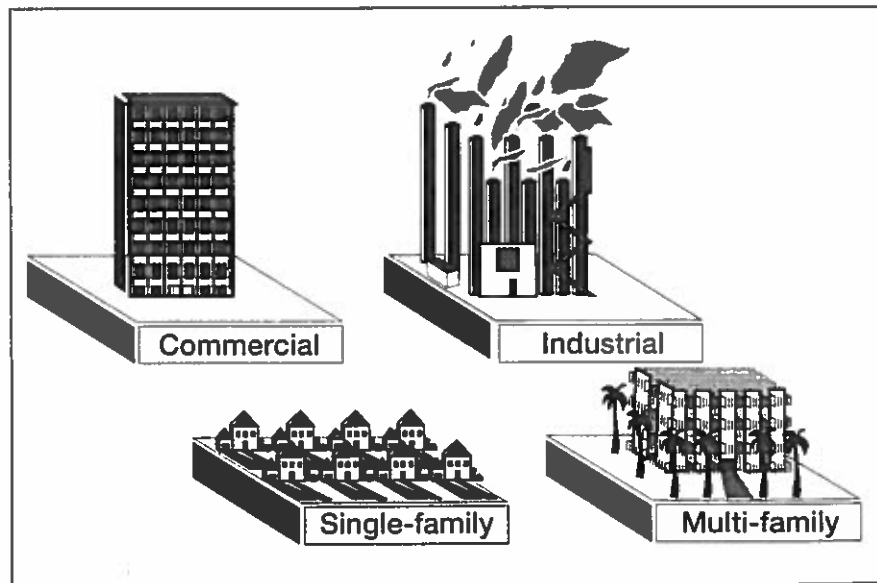
An example of standards for a single-family residence might be a 10,000-square-foot lot, 70 feet wide (measured from the front lot line), with a front yard 30 feet in depth, a rear yard 35 feet in depth, and two 10-foot side yards. The height limitation would be 35 feet. (Zoning ordinances may have different ways of calculating height that vary with the type of roof.) The residence would be permitted to cover no more than one-third of the lot, and one parking space of 180 square feet (9 feet by 20 feet) would be required. The residence would be sited in the building envelope defined by the yard requirements (see Figure 14-7 on page 355).

One type of development standard, usually for nonresidential uses, is the

Figure 14-5
Cumulative versus
exclusive zoning.



Cumulative zoning



Exclusive zoning

floor area ratio (FAR), which is the ratio of permitted floor area of a building in relation to the size of the lot. An FAR of 1.0 means that a one-story building may cover 100 percent of the lot, a two-story building may cover 50 percent of the lot, and so forth (see Figure 14–8, page 356). While the FAR—and therefore the intensity of the land use—remains constant, the standard offers the developer some flexibility in choosing building configurations, although other standards, especially height or setback restrictions, may temper that flexibility. FAR requirements are common in the zoning ordinances of large cities. Some ordinances may offer increases in the FAR, also called zoning bonuses, in exchange for the construction of on-site amenities, such as plazas.

Off-street parking and loading standards are normally calculated in relation to density (e.g., so many parking spaces required per dwelling unit or per maximum number of occupants of the dwelling unit) or on the basis of intensity (e.g., so many parking spaces required per square feet of the habitable area of the nonresidential building). The number of parking spaces might also vary by the type of use, with office uses requiring more parking than, say, warehousing on a per-square-foot basis. Off-street parking and loading standards generally enumerate paving, lighting, and landscaping requirements. Many zoning ordinances require commercial and industrial uses to provide one or more off-street loading and unloading spaces for trucks; such requirements are linked to threshold levels of gross building area.

Landscape standards are intended to enhance the appearance and mitigate the impact of development. These goals are achieved by screening unsightly buildings or activities; improving the compatibility of residential and nearby commercial, institutional, and industrial land uses; and preserving the site's natural features.

Many modern zoning ordinances include performance standards for industrial uses. These standards require the scientific measurement of such effects as noise, odors, glare, vibration, and water and air pollution.¹⁰

Special development standards

Special development standards apply in all districts and include provisions such as setback requirements for corner lots, separation requirements for a main structure and an accessory building, and the prohibition of more than one main building on a lot.

Many zoning ordinances cover signs in a separate section within special development standards. Sign regulations, which control the number, location, type, height, illumination, and maintenance of signs, are intended to ensure adequate identification of businesses and other land uses while maintaining or improving visual quality in a community.

All zoning ordinances define and address the treatment of nonconformities—that is, uses, structures, and lots that were lawfully established but neither meet nor conform to current zoning regulations. For example, a gasoline station may have existed in a residential area before zoning was established. Lot sizes may have been changed, and an existing lot may not satisfy current standards. Some states permit nonconformities, such as oversized signs or incompatible land uses, to be amortized or phased out over time by local governments but within limits imposed by statute.

Administration and enforcement

Administration and enforcement provisions establish a mechanism for approving zoning permits, which are issued before a building or structure is constructed, and certificates of zoning or code compliance, which state that a use or building, once established, has passed inspection and conforms to the zoning

Figure 14-6 Scale is an important element of appropriate development. Fitchburg, Massachusetts (left), displays a jarring contrast in building scale, while Seattle, Washington (right), reflects a uniform density and design that provides an easy transition from commercial to residential.



ordinance. The zoning ordinance designates a local government official—the zoning administrator—to be the enforcement officer, who will issue various permits and take appropriate enforcement actions.

The ordinance sets out procedures for amending the zoning map and text, including requirements for public hearings and for notice to both nearby property owners and the public. Typically, the map is amended by petition of a property owner, by petition of persons with an interest in the property, or by the local government at its own initiative. Rezoning may be comprehensive, affecting the entire community or large parts of it (as in the rezoning of a newly annexed area), or may apply only to a specific parcel or group of parcels. The text of the zoning ordinance may be amended in a similar fashion, either through specific changes in the language or through complete reorganization and revision. Other procedures may cover conditional uses, site plan reviews, and innovative techniques, such as density or intensity bonuses. State statutes or a municipal charter may dictate the manner (including time limits) in which the local government must consider and approve the amendments and other forms of development approvals.

The zoning ordinance establishes the basis for setting fees for zoning, sign, and other permits as well as for applications for map amendments and variances, conditional uses, and other types of discretionary approvals. These fees must be updated periodically to reflect current administrative costs and the costs of on-site inspections.

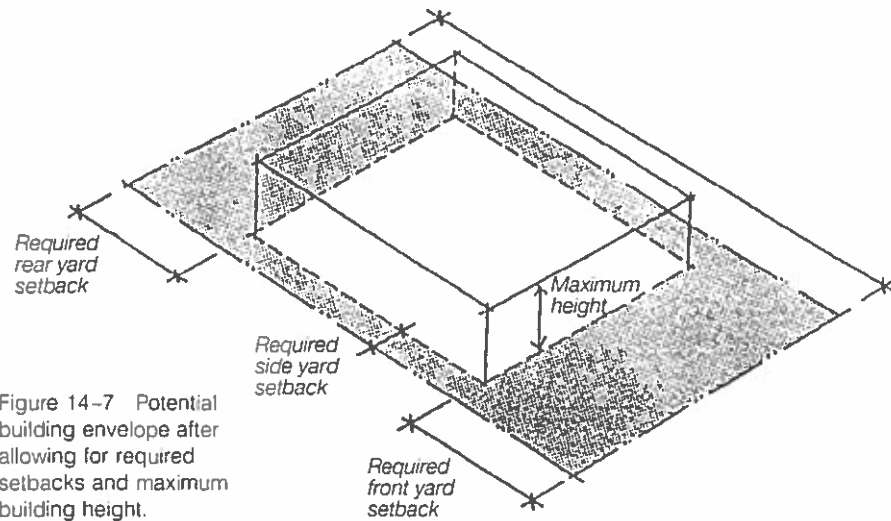


Figure 14-7 Potential building envelope after allowing for required setbacks and maximum building height.

Criticisms of zoning

Zoning can be implemented in ways that leave it open to criticism, much of which is long-standing in the planning literature. In particular, zoning can be exclusionary in its purposes or effects. It can reflect narrow local interests at the expense of broader regional concerns. It can be bureaucratic, without any compensating public purpose. Finally, it may not be based on an independent comprehensive plan, which leaves it open to charges that its application is arbitrary and not grounded in careful analysis.

First, zoning can be exclusionary. Exclusionary zoning inhibits the construction of affordable housing, either by explicitly prohibiting it or by imposing

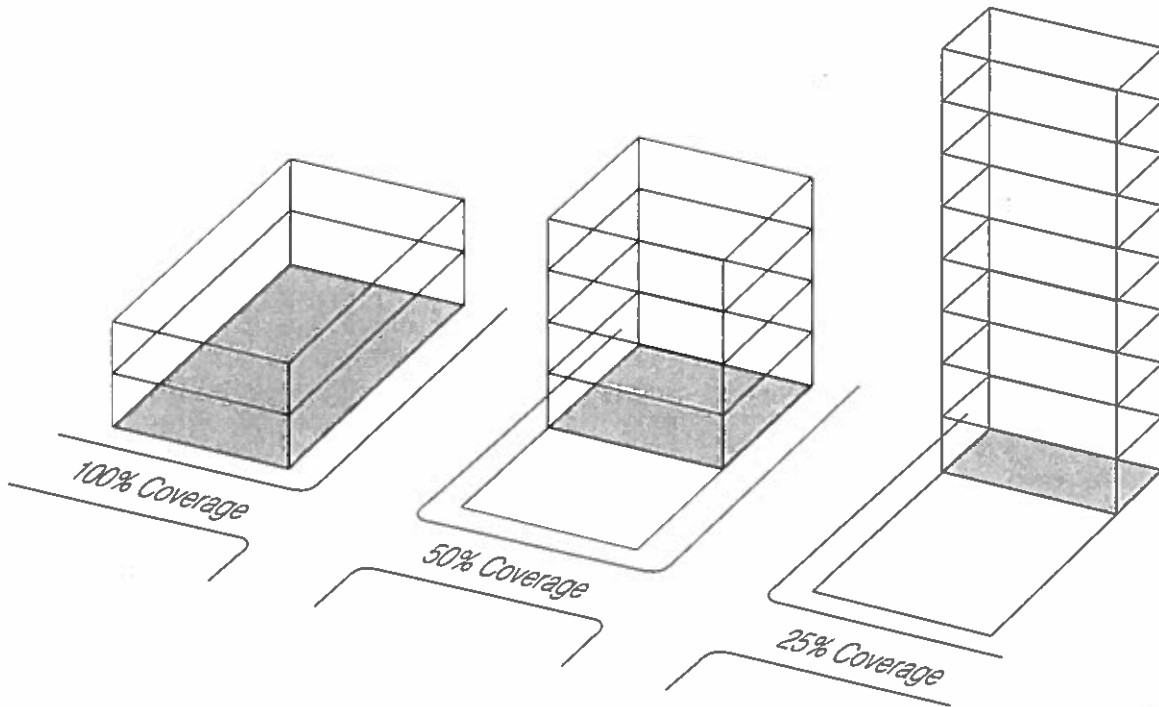


Figure 14-8 Three buildings with the same floor area ratio and equal bulk, one covers 100 percent of the site, one covers 50 percent of the site, and one covers 25 percent of the site.



Figure 14-9 Landscape guidelines can help make places like Gallup, New Mexico, more inviting to pedestrians.

regulatory requirements unjustified by conventional health and safety criteria. Exclusionary zoning may be intentionally designed to keep out low- and moderate-income residents, or it may have more benign purposes—for example, to maintain an area's low-density rural character—but less benign effects. Characteristics of exclusionary zoning include extraordinarily large lot sizes, prohibition of multifamily dwellings and mobile homes, limits on the number of bedrooms in apartments (to restrict family size), minimum floor area requirements that are excessive and unrelated to dwelling unit occupancy, and refusal to zone adequate amounts of land for higher-density single- and multifamily housing.

Second, local governments tend to make parochial zoning decisions at the expense of regional interests. Because local governments depend on the property tax to fund a large portion of basic services, many use "fiscal zoning" to promote commercial and industrial development and expensive residences, often to the exclusion of affordable housing.¹¹ When a local government approves a zoning change to allow development of a regional shopping center but fails to zone adequate land for housing development for the people who work there, it is effectively obtaining the benefits of development while exporting the costs. Moreover, since some local governments may not feel an obligation to ensure that their zoning decisions do not adversely affect neighboring jurisdictions, the cumulative effects of many such projects, such as traffic congestion, air pollution, and the loss of such valuable resources as wetlands, are similarly exported across jurisdictional boundaries.

Third, zoning can be bureaucratic, overly detailed, and resistant to administrative reform. Zoning ordinances may contain lists of permitted uses that are so narrowly drawn that a conditional use permit (and a hearing) are required for most changes of use. Special development procedures and standards for every new type of land use may add layers of review, ambiguity, and expense to the development process. Development approvals may move at a sluggish pace through the local legislative and administrative structure. Local governments may resist changes to zoning ordinances and approval procedures because of bureaucratic inertia ("we've always done it this way, why change now?"). As a consequence, planners are now being challenged to "treat everyone like a customer and provide them with effective planning services."¹² A way to do this is to provide clear, accurate information to development permit applicants and prompt decisions on permits once the application is deemed complete.

Finally, zoning may lack a planning framework. As noted earlier, the relationship required between the local comprehensive plan and the zoning ordinance and zoning decisions varies by state. Where state statutes allow an optional role for the plan or where local governments simply ignore the plan, zoning may occur on a parcel-by-parcel basis and the community may fail to take broader needs into account.

Innovative or specialized zoning techniques

Criticisms of zoning, and particularly of the rigid framework of conventional zoning, have prompted the need for more flexibility in land use regulation. A number of innovative or specialized zoning techniques have evolved that can be applied in various combinations to permit creative approaches to development.

Planned unit developments

Planned unit developments (PUDs), which are also known as planned residential developments or, simply, planned developments, allow more leeway in the

application of the zoning ordinance to a tract of land. PUD regulations may allow mixed uses, flexibility in the placement of buildings, and relaxation of development standards (see Figure 14-10). Under the regulations governing PUDs, the approved PUD plan fixes the nature and location of uses and buildings on the entire site. A PUD can (1) improve site design, (2) preserve amenities such as open space by allowing buildings to be clustered, and (3) lower the costs of constructing streets and extending utilities to the development by reducing frontages. Cluster development is a form of PUD in which buildings, usually residences, are grouped together on part of the site to preserve open space or environmentally sensitive areas, such as wetlands. At a site in Bel Air, Maryland, clustering was used to protect more than 90 percent of the wetland acreage at the site (see Figure 14-11). Because residential lots are set back from the wetlands, impacts on the wetlands are primarily limited to road crossing points. Where no other alternative exists, crossings are placed at the

Village Homes Site Plan

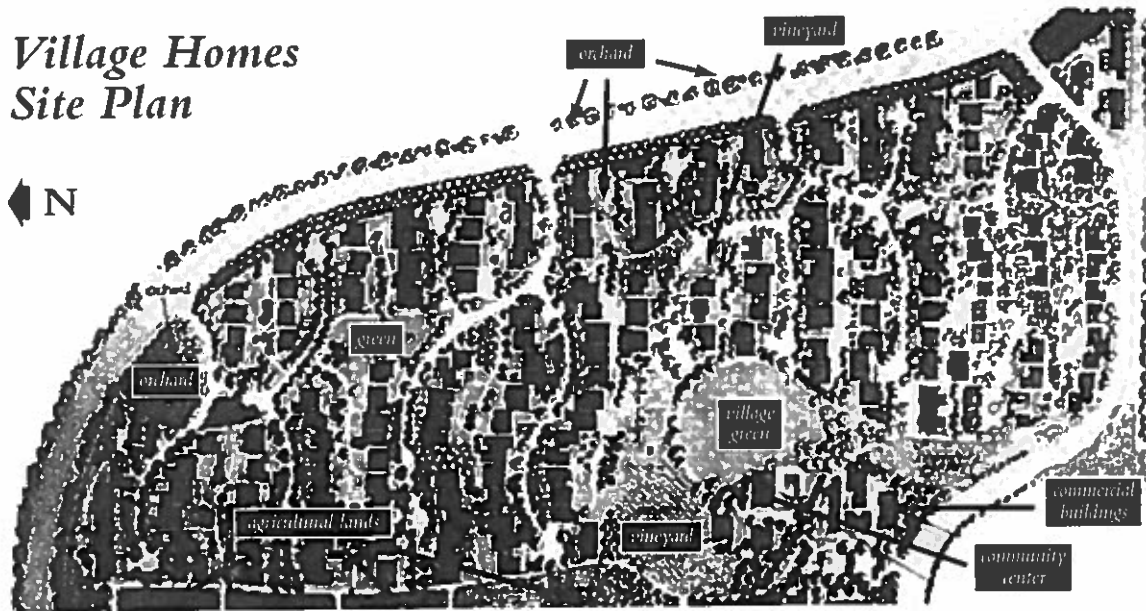


Figure 14-10 Site plan of Village Homes a planned unit development of single-family homes, apartments, open space, a community center, and commercial and office buildings in Davis California



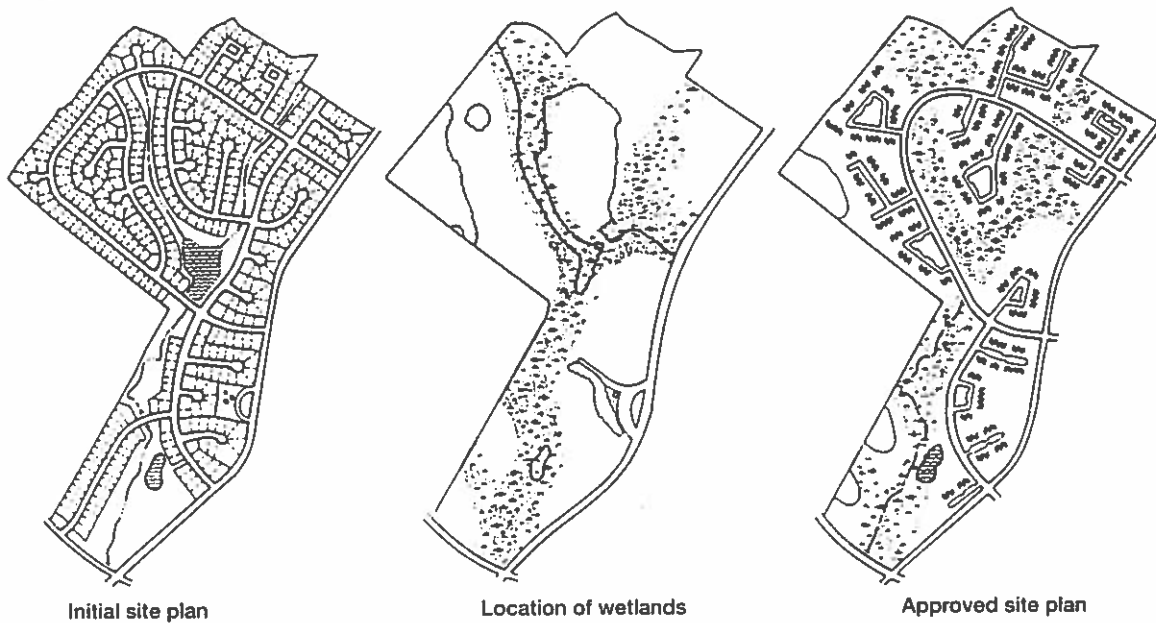


Figure 14-11 Use of clustering to preserve wetlands in Bel Air, Maryland.

point of minimum impact, which is usually at the narrowest point of the wetland area.

Overlay zones

Overlay zones, which are imposed over existing zoning districts, provide an additional layer of development standards to address special land use needs. Historic preservation regulations are usually administered through overlay districts. In such districts, new buildings, additions, and modifications are subject to design standards that ensure compatibility with the appearance of existing buildings.

Hillside development regulations protect areas where there are steep slopes by encouraging development that respects the constraints and natural amenities associated with topographically challenging sites.¹³ Such regulations may include standards that limit allowable densities on the basis of the steepness of the slopes and the suitability of the soil, among other factors.

Flood hazard or floodplain zones, another form of overlay, control development on land that is susceptible to being inundated by water from any source. The floodplain designation is typically divided into two parts: (1) a floodway, which encompasses the channel of a river or other watercourse and adjacent land areas that must be reserved to discharge a 100-year flood (i.e., a flood that has a 1 percent chance of occurring each year), and (2) the floodway fringe, which is land outside the floodway that is subject to inundation by relatively low velocity flows and shallow water depths. Land within floodway zones is subject to special review to ensure that development does not obstruct the channel of the river or watercourse carrying the flood. Floodplain regulations may prohibit all habitable structures in the floodway, requiring that they be constructed instead above the floodplain elevation, or they may require that buildings and structures be flood-proofed. The federal National Flood Insurance Program provides affordable insurance for property owners in flood hazard areas if the local government adopts floodplain regulations that meet federal criteria.¹⁴