

Chapter 3:

Zoning Ordinances

3.1 Zoning Defined

A zone is an area or district in a city or town under special restrictions as to the types of buildings that may be erected. Zoning is the act of dividing a city or town into zones to determine land use restrictions.

3.2 Objectives and Purpose of Zoning

The objectives of zoning are to provide economical, efficient land use and a well-blended community of buildings where the structures complement rather than hinder each other. No one would want to build a house next to a petroleum refinery. By the same token, no homeowner would want a petroleum company building a refinery next door. Zoning ordinances keep these kinds of situations from happening. Therefore, the purpose of zoning is to protect the general welfare of the public.

3.3 Benefits of Zoning

Regulating land use within districts can benefit the public in many ways. Table 3-1 lists some examples:

TABLE 3-1 Benefits of Zoning

Regulation	Benefit
Controlling the height, area and bulk of buildings...	...provides standards for healthful housing by ensuring: <ul style="list-style-type: none"> - ventilation. - privacy. - recreation areas for children.
Regulating off-street parking and loading...	...reduces street congestion.
Placing conflicting uses in separate districts...	...controls noise, vibration, glare, pollution and odor.
Restricting building and preserving existing trees...	...prevents flooding and erosion.

Zoning is important from another standpoint, too. Property taxes make up a large portion of municipal revenues. Effective zoning can help maintain property values, thus providing the money to finance present and future community services. Zoning is the legal instrument most municipalities use to implement their comprehensive plans. Zoning also encourages community growth.

3.4 Limitations of Zoning

Zoning ordinances do not have control over certain matters. In some or all municipalities, for instance, zoning ordinances have no control over:

- Materials and methods of construction—this is the domain of the building code.
- The appearance of structures.
- Street design or placement of utilities.
- School sites, recreational sites and rights-of-way—these are controlled by subdivision regulations, the state or other jurisdictions.
- Preexisting conditions—zoning is not retroactive; overcrowding and substandard housing cannot be changed by ordinance. However, if a minimum housing or property maintenance code is enforced, blighted areas may eventually be eliminated.
- Zoning classifications for exclusionary purposes—in other words, a community cannot use a zoning ordinance to prohibit a legal use of property in order to insulate itself from the undesirable effects of that use. For example, a community that does not want a racetrack cannot “zone out” the race track; however, limitations can be placed on the racetrack to control noise, traffic and other nuisances.

3.5 What Does a Zoning Ordinance Do?

Local zoning ordinances throughout the United States specify the manner in which all privately owned land may be developed and used. Government property is handled separately by each municipality. Besides defining these permitted uses, zoning ordinances control the height, area and bulk of buildings, and setbacks and location of open spaces within districts.

The *International Zoning Code*[®] (IZC[®]) provides a model code for zoning ordinances.

3.6 Adopting and Preparing a Zoning Ordinance

In 1924, the US Department of Commerce established A Standard State Zoning Enabling Act. This act was, and still is, the basis for most local zoning ordinances. The act addressed the need to divide municipalities into districts to help provide for population density, building use, light, ventilation, appropriate height and area, and other zoning elements.

State enabling legislation grants local political subdivisions the authority to adopt and enforce zoning ordinances. Because every municipality has its own unique set of problems, concerns and plans for development, the municipality has the authority to devise the kind of zoning ordinance that best serves the community.

The municipal zoning or planning commission is responsible for designing the zoning ordinance. When drafting a community's zoning regulations, the commission generally follows a four-step process:

1. Conduct current economic, demographic and land use studies, to tailor the ordinance to the needs of the community.
2. Draft regulations that comply with the provisions of state enabling legislation.
3. Find reason for the ordinance that directly relates to the public health, safety and welfare.
4. Hold public hearings to solicit citizen input.

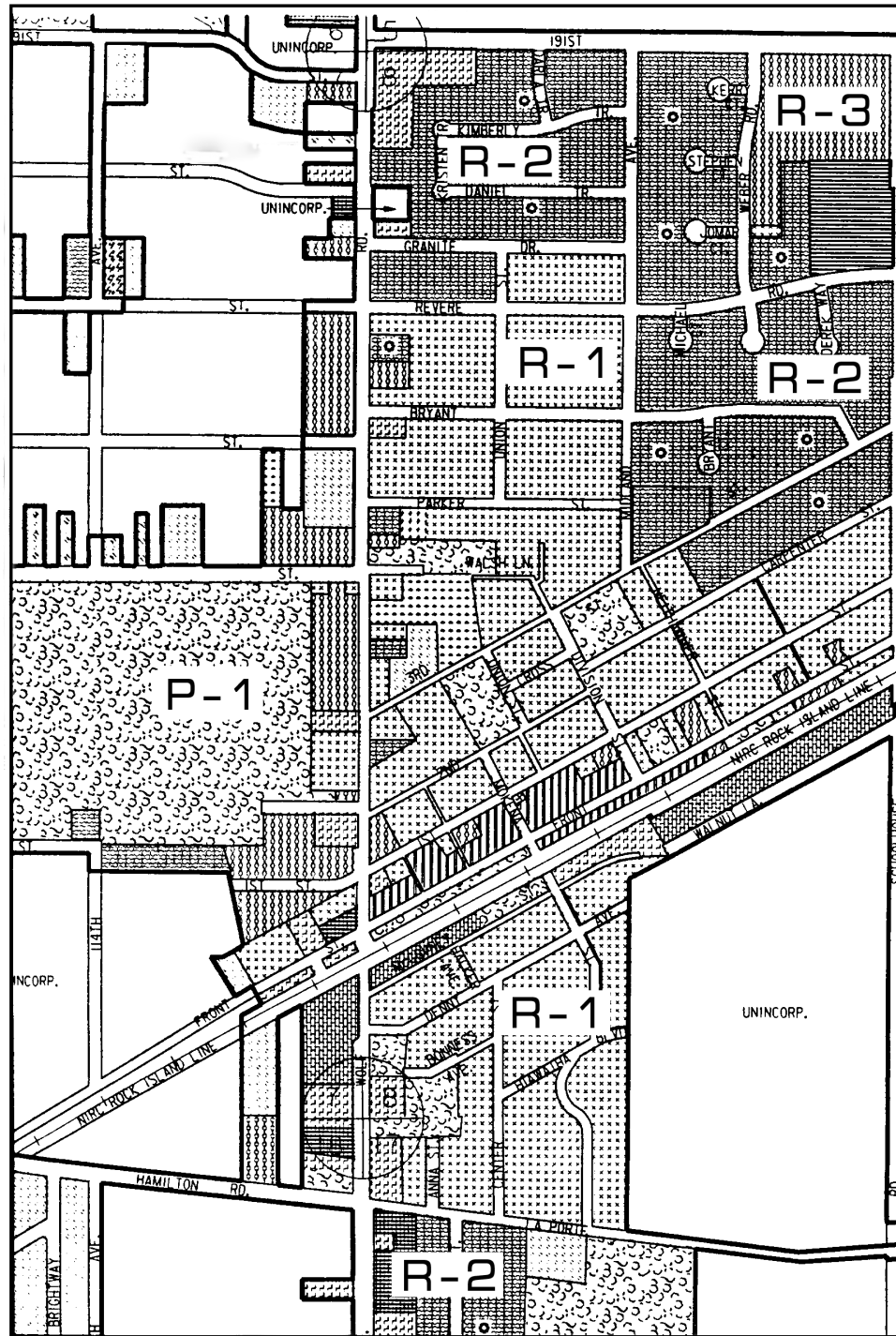
3.7 Parts of a Zoning Ordinance

A zoning ordinance is divided into two parts. The map of the ordinance shows the district boundaries. The text of the ordinance describes how land may be used in each district. Every zoning ordinance must contain text and a map to be complete and enforceable. Model text is provided in the IZC.

3.7.1 Zoning Map

The zoning ordinance establishes districts (or zones) of varying sizes, shapes and numbers. The zoning map shows the locations, dimensions and boundaries of these districts. A sample zoning map is shown in Figure 3-1.

FIGURE 3-1: Zoning Map



Zoning Divisions Classifications:

R-1: Single-Family Residences (7,500 square feet)

R-2: Single-Family and Two-Family Residences (7,500 square feet)

R-3: Multiple-Family Residences

P-1: Public and Conservation Districts

The map in the figure shows only a residential portion of a small city. A city has many districts, each one designed to make the most effective use of the land.

Most cities specify at least three major districts: residential, commercial and industrial. These three may be further divided into divisions. For example, Figure 3-1 shows that this particular city's residential district is broken down into three divisions based on type of residence:

1. Single-family.
2. Single-family and two-family.
3. Multiple-family.

In general, intensity is the basis for determining the land use in a specific district. Sometimes a less intense land use is permitted in a more intense district, but the reverse is not true. The reason for this is obvious. Allowing a less intense use, such as a commercial use in an industrial area, would permit the land to be used effectively without hardship to anyone. It would cause hardship for the people in a residential district, however, if a glue factory were built in their area.

Like building codes, some zoning ordinances are moving toward performance standards. Sometimes, industrial developments are permitted in a less intense land use district if the proposed land use creates no noise, glare, smoke, dust, vibration or other environmental stress that exceeds minimum standards. Also, adequate off-street parking, screening, landscaping and other vital amenities must be provided so that the industrial use is integrated into the district.

3.7.2 Text of the Zoning Ordinance

In addition to establishing municipal zoning districts and other general provisions, the text of the zoning ordinance prescribes what uses are permitted in each district and the specific requirements that apply within each use. These requirements usually cover lot size, lot coverage, maximum height, yards and signs.

Why are these items important? Here is an example: you have just leased and moved into the first floor of a two-family house in a residential district zoned R-2. The property is owned by Fred Jorgenson, who also owns an art supply shop in a commercial district several blocks east of your house on the same street. Mr. Jorgenson has decided that people are having trouble finding his store, so he erects a large sign on his residential property showing the name, address and directions to his shop. The sign is situated in the front yard and blocks your view of the street from your front window.

What can you do? You could pull the sign out, but you might be charged with damaging property. You could complain to Mr. Jorgenson, but what rights would you have if there were no zoning requirements covering the use of signs? Fortunately, in the example above, the city's zoning ordinance prohibits such a sign in an R-2 district.

Let us look at one more example: you are living in a residential district, and the lot next to your house is vacant. A builder wants to build a three-story house that would cover every square foot of the lot. This oversized house would totally destroy the character of your neighborhood. Making matters worse, it would overshadow your own house and cut off its natural light and ventilation.

What can you do about this situation? You probably could form a neighborhood group to protest the construction, but if there were no zoning regulations, what legal rights would you have? Your town's zoning regulations probably already prohibit this type of construction in your area. This is how zoning regulations help protect the health, safety and welfare of the entire community.

3.8 Adjustments for Inequities

Zoning ordinances allow for existing nonconforming uses to continue and have provisions for granting variances to relieve hardships.

3.8.1 Nonconforming Uses

Zoning ordinances are not retroactive; therefore, they must include provisions for nonconforming uses—that is, uses that existed before the zoning ordinance was enacted. A brief story will illustrate this point:

Doc McKensy had been practicing medicine in Albion for as long as anyone could remember. His ornate white Victorian house contained a small office and several examining rooms. Years ago, when Albion adopted a zoning ordinance, Dr. McKensy was permitted to continue practicing medicine in his home.

His offices were classified as a nonconforming use. Over the years, the town grew into a prosperous city. Since he couldn't stop progress, Doc purchased a small farm in Missouri and planned to retire. When he put his house up for sale, two young doctors wanted to buy it and turn it into a small medical laboratory.

Since this involved a different use of the building, the doctors had to apply for a building permit. They went to city hall where they met Nick Pagano, who was not only the building official but the zoning official as well. He could not grant them a permit, however, because the presence of a medical laboratory (classified as a commercial use) in a residential area would have constituted a zoning violation.

Inspector Pagano went on to explain that because Dr. McKensy could prove that his home medical practice had existed long before Albion's zoning ordinance, the city officials had permitted him to keep using the house for this purpose, even though the use did not conform under the zoning ordinance. To do otherwise, they felt, would have caused Dr. McKensy, and others in similar situations, undue hardship.

Nonconforming-use provisions generally prohibit the following:

- Enlarging or expanding the nonconforming use.
- Rebuilding the nonconforming use if more than a certain portion is destroyed.
- Resuming the use after it has been abandoned for a specified period of time.
- Changing the use to a higher classification or to another nonconforming use.

Some ordinances also state that a nonconforming use must be phased out during a period of amortization. In Dr. McKensy's case, there was no specified period of

amortization. He could have practiced medicine there indefinitely, and so could the purchasers if they wanted to use the building for the same purpose as Dr. McKensey.

3.8.2 Variances

Another way that zoning ordinances try to adjust for possible inequities is by providing for variances. A variance is an easing of the terms of the zoning ordinance to relieve individual hardship while still protecting the public interest.

For example, suppose an individual wants to build on a piece of irregularly shaped property located in a district having side yard requirements of 10 feet on a side and a minimum total lot size requirement of 10,000 square feet.

Suppose the property contains 10,200 square feet, thus meeting the area requirements. However, because of the irregular shape, only side yards of 8 feet can be provided. In this case, it would be a hardship if the exact letter of the law were imposed. Therefore, the individual could petition the zoning board of appeals for a variance.

Before any variance can be granted, an individual must show:

- Practical hardship.
- That a reasonable return on the property requires a variance.
- The character and appearance of the neighborhood is not changed.
- The public safety and welfare is protected.

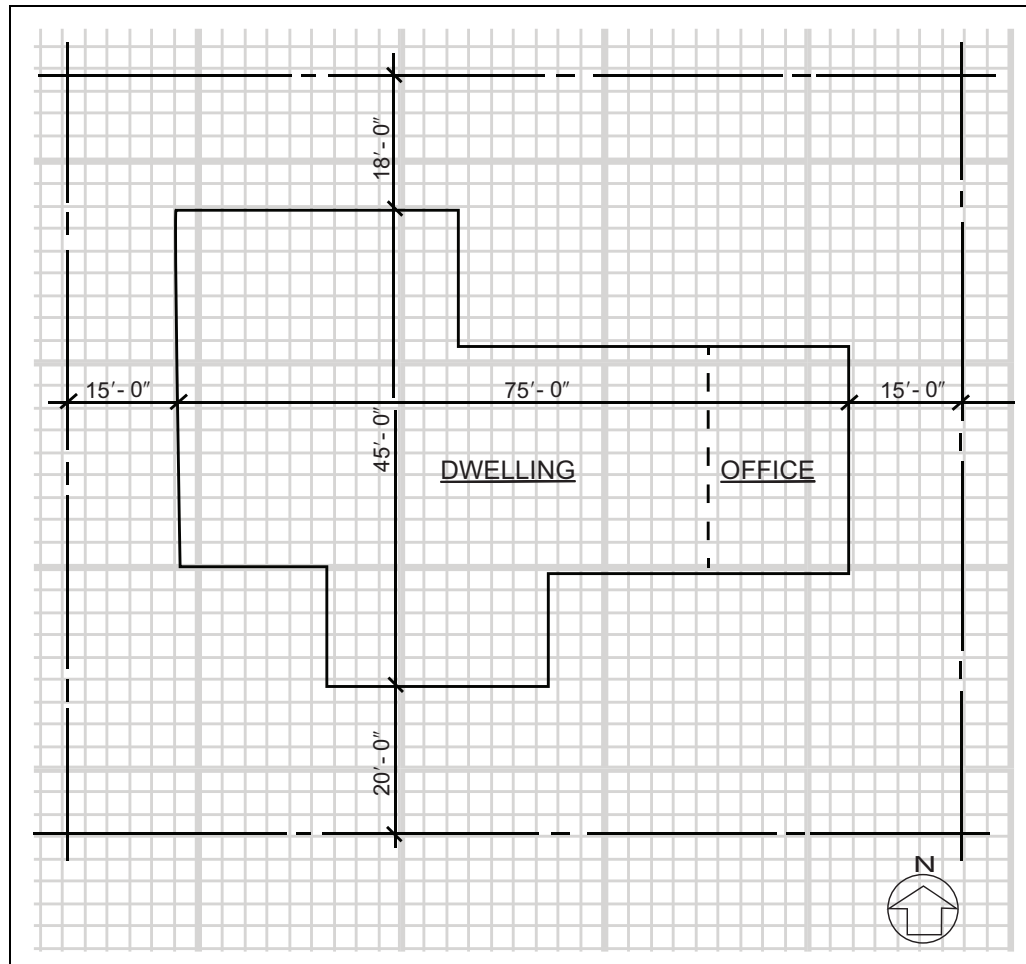
3.9 Enforcing a Zoning Ordinance

State enabling legislation permits local political subdivisions to appoint zoning officials. Some municipalities in the United States appoint their building officials to serve as zoning officials as well. Like the building official, the zoning official is considered a law enforcement officer. The IZC provides for duties and powers of a zoning official.

You will recall from the story of Dr. McKensey's house that Nick Pagano was both the building official and the zoning official in the city of Albion. Let us go back to that story to examine the zoning process and how a zoning ordinance is enforced.

3.9.1 The Zoning Process

The first step in the process is a review of a zoning request as part of an application for a building permit. By comparing actual land use against that shown on a zoning map, the zoning official determines compliance or noncompliance with the zoning ordinance. Figure 3-2 shows a typical site plan, which was completed by the two doctors with the help of Nick Pagano. This site plan would typically supplement the application.

FIGURE 3-2: Site Plan

3.9.2 Noncompliance

If a request does not comply with the zoning ordinance, the official checks department records to see if the property was a nonconforming use when the ordinance was passed, and if an exception was granted. This was the case with Doctor McKensey's house. An exception could not be granted to the two doctors because they intended to change the use.

Albion's zoning ordinance read: "There may be a change of tenancy, ownership, or management of an existing nonconforming use, provided there is not a change in the nature or character of such nonconforming use."

Next, Nick reviewed the Zoning Ordinance Plan Review form (Figure 3-3) to be sure every detail had been checked before denying the permit. The zoning ordinance was clear; a change in use was not permitted, and the permit was denied. Because no exception was granted to the doctors, the zoning official took the final step in the process. He notified the doctors that they were entitled to a hearing before a zoning board of appeals. If the doctors decided to appeal, Nick would assist them in filling out an appeal form like the model zoning appeal form shown in Figure 3-4.

For a detailed description of how to handle a zoning violation from initial notification to its resolution, read the case study in Section 3.9.3.