

Zoning



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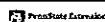
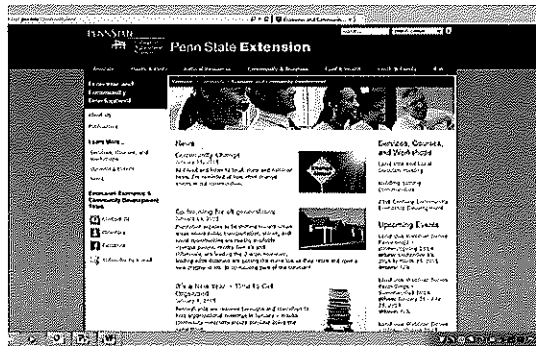
Peter Wulforst, AICP Extension Educator
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Penn State Extension Economic & Community Development

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- Grant-writing Workshops
- Volunteer Management Workshops
- Strategic Planning
- Ag Policy Workshops
- Community Economic Development Analysis



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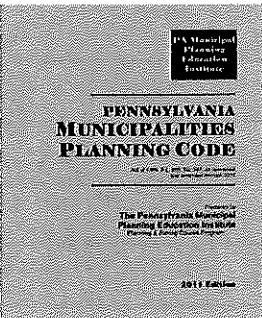


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Municipalities Planning Code

PA Municipalities Planning Code
 Planning Code
 MPC
 247 (of 1968)
 Act 170 (of 1988)



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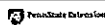
Zoning in the MPC

<ol style="list-style-type: none"> 1. General Provisions 2. Planning Agencies 3. Comprehensive Plan 4. Official Map 5. Subdivision & Land Dev. 5a. Municipal Capital Improvement (Transportation Impact Fee) 6. Zoning 7. Planned Residential Development (PRD) 	<ol style="list-style-type: none"> 7a. Traditional Nbhd. Dev. (TND) 8a. Joint Municipal Zoning 9. Zoning Hearing Board & Other Administrative Procedures 10a. Appeals to Court 11. Intergovernmental Cooperative Planning & Agreements 11. Repeals
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Zoning

What words or ideas come to your mind when you hear the word "Zoning"?



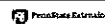
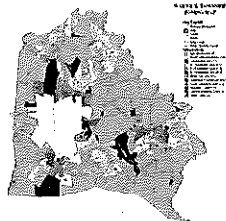
A definition of "ZONING"

Zoning is the division of a municipality into districts or zones in which certain activities are permitted and others are prohibited



Zoning is-

- a community-wide ordinance
- based on the Police Power
- dividing a municipality into zones
- for regulating use, height, spaces
- of land and structures
- to achieve a community purpose



Police Power

To protect and promote public health,
safety, morals and the general welfare

minimum standards
regulation not confiscation
substantial relationship

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What Zoning Regulates (Sec. 603)

- ✓ Uses of *land, watercourses & water bodies*
- ✓ Size, height and location of *structures*
- ✓ Areas on lots to be *occupied* or left *open*;
- ✓ *Density* and *intensity* of uses;
- ✓ *Natural, historic* and *agricultural* land & activities

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Section 603 – Zoning Ordinance Provisions

1. Special Exceptions, Variances, Conditional Uses, TDR's
2. Not unduly restrict religious symbols being used for religious purposes
3. Not unduly restrict forestry activities and is a permitted use in all districts
4. Shall encourage viability of agricultural operations
5. Reasonable development of minerals
6. Shall permit no-impact home-based businesses

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Police Power Safeguards

- Minimum standards – “*threshold*” needed to protect public health, safety etc.
- Reasonable, clear, direct relation to the Police Power
- Not capricious or arbitrary
- No compensation for being zoned – it’s a general burden on all properties
- Can’t confiscate property – not even temporarily
- Must provide due process and equal protection

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Limits to Zoning

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Basic Zoning Terms

- Permitted Use
- Special Exception
- Conditional Use
- Variance
- Nonconforming Use*

Uses, Structures and Lots

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Basic Regulatory Tools (c)		
<i>Tool</i>	<i>Who allows</i>	<i>How</i>
PERMITTED USE	Zoning Officer	"Use by Right" created by zoning ordinance
PERMITTED USE + HEARING <i>Special Exception</i> <i>Conditional Use</i>	Zoning Hearing Bd. Governing Body	not automatic may be denied after hearing

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Considerations for Use Regulations		
Residential	Commercial	
<ul style="list-style-type: none"> ● Dwelling Types combination of types mix with non-residence provide for 5 "basic" types [§604(4)] ● Density dwelling units/acre ● Dimensions lot area; width; depth; yards; lot coverage; height ● Accessory Uses 	<ul style="list-style-type: none"> ● Degree of Impact <i>probability of detrimental effects</i> nearby residences other businesses other uses ● Degree of Need for services, goods ● Service Area neighborhood, village community-wide highway-oriented free-standing 	<ul style="list-style-type: none"> ● Presumed Degree of Obnoxiousness subjective experience ● Performance Impacts scientific measurable (noise, odor, smoke, etc.) ● Scale of Industrial Activity light medium heavy

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Summary: Special Exceptions & Conditional Uses
<ul style="list-style-type: none"> ● Optional categories of permitted uses ● <i>May be allowed after hearing by appropriate body</i> ● Authority is in MPC Section 603 (c) (1) & (2) ● <i>Either one or both may be used (or none)</i> ● A specific use in a zoning district ● <i>Not a deviation from the ordinance</i> ● Standards & criteria must be in zoning ordinance ● <i>Conditions & safeguards may be added</i>

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More Basic Terms

VARIANCE

- + *modifies zoning standards to relieve "unnecessary hardship"*
- + *zoning hearing board decides*

NONCONFORMING USE

- + *zoning standards are not met- but the use pre-dates ordinance*
- + *has a right to stay; may be regulated*

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What's a Variance

- A variance is a *variation*– or modification– to the exact provisions in a zoning ordinance.
- *It's purpose is to give relief to properties subjected to "unnecessary hardship" by the ordinance.*
- The principle is to remove the excess burden on an individual property that others do not have. Relief is in the public interest.

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5-Part Variance Criteria
MPC §910.2

1. Unique physical conditions or circumstances **and**
2. Not possible to develop in strict conformity with the ordinance **and**
3. Not self-created **and**
4. Not detrimental to neighborhood **and**
5. Least modification needed for relief

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Special Exception vs.

Special Exceptions & Conditional Uses	Variations
Authorize uses that are PERMITTED in the ordinance	Allow a property to be used in a way that is PROHIBITED by the ordinance

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Non-Conformities

- “Created” by the zoning ordinance
- May be: *uses, lots, structures*
- A valuable property right
- Status given to property, not owner
- Owner has burden of proving NC status *when was the use established*
what were the rules at the time (if any)
was it legally established

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Non-Conforming Uses, Structures, Lots

Nonconforming uses are protected, but they can be regulated-

- ♦ **Change of use**
- ♦ **Replacement / restoration**
- ♦ **Termination / abandonment**

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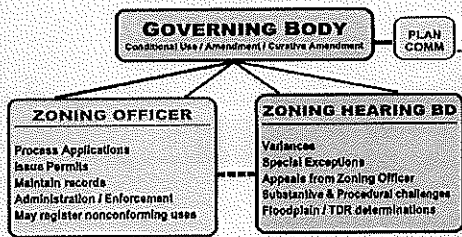
Abandonment of Nonconforming Use

- **The sequence for establishing abandonment:**
 - + *after the period of non-use* in the ordinance
 - + there is a *presumption* the owner intends to abandon or discontinue the use
 - + this presumption can be *rebutted* by owner
 - + *burden is on municipality* show the owner intended to abandon use, either by ***overt acts, or failure to act, that indicate the nonconforming use has been abandoned***

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Zoning Administration Team

ZONING ADMINISTRATION



PA Council on Community Planning 1-2004 PPR12

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Roles

Governing Body (Elected Officials)

- Approves subdivisions & land developments, plus modifications & waivers
- Signs final plat (required for recording)
- Approves conditional uses specified in zoning ordinance

(Also, governing body enacts SALDO and zoning ordinance, and appoints people to Planning Commission, Planning Department, and Zoning Hearing Board)

Planning Agency (Commission and/or Department)

- Makes recommendations on subdivisions & land developments, plus mods & waivers
Can render decisions if delegated by governing body
- Makes recommendations on conditional uses

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Roles

Zoning Hearing Board


- Approves special exception uses specified in zoning ordinance
- Approves variances

Zoning Officer

- Approves zoning permits for uses by right
- Shall not approve zoning permit for use that does not comply with zoning ordinance


County Planning Agency

- Reviews and makes recommendations on local SALDO applications
May provide technical review help
- Signs final plat (required for recording)




Duties of a Zoning Officer

Administrative Tasks	Enforcement Tasks
<ul style="list-style-type: none"> ▪ process permits ▪ maintain records ▪ determine non-conforming use status ▪ provide information ▪ prepare and present reports ▪ represent municipality at ZHB proceedings 	<ul style="list-style-type: none"> ▪ discover and investigate violations ▪ seek ordinance compliance informal persuasion formal notice (616.1) ▪ prosecute violations – Filing: civil complaint Hearing: District Judge (617.1)




Organization of ZHB

<ul style="list-style-type: none"> • Created by governing body • A “Board” that makes final adjudications • 3 or 5 members; 3 or 5 year terms • May have “alternate members” • Must be a resident 	<ul style="list-style-type: none"> • May be compensated • May not be elected or appointed official • ZHB chooses its leaders • Removal for cause • Should make annual report
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How a ZHB Works

<ul style="list-style-type: none"> <input type="checkbox"/> <i>An impartial tribunal</i> <input type="checkbox"/> <i>Has no agenda</i> <input type="checkbox"/> <i>Judges arguments presented by "parties"</i> <input type="checkbox"/> <i>ZHB is not a "party"</i> <input type="checkbox"/> <i>Doesn't work out solutions</i> <input type="checkbox"/> <i>Bases decisions on facts</i> 	<ul style="list-style-type: none"> <input type="checkbox"/> <i>Don't discuss pending cases</i> <input type="checkbox"/> <i>Don't visit site after hearing starts</i> <input type="checkbox"/> <i>No "advisory opinions"</i> <input type="checkbox"/> <i>Hearings are not popularity contests</i> <input type="checkbox"/> <i>Goal: fairness</i>
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The Zoning Appeals Process

1. Individual applies for zoning permit
2. Zoning officer denies application based on zoning ordinance
3. Individual applies to ZHB
4. Hearing is scheduled - public notice requirements
5. ZHB makes decision
 - o Has 45 days after hearing to reach decision
6. If applicant is denied, he can go to County Court of Common Pleas




Only The ZHB Can Hear Appeals

Governing body

- o Adopts and revises zoning ordinance and map
- o Appoints members to the Zoning Hearing Board
- o Pays for ZHB Solicitor
- o May offer testimony at ZHB proceedings

Governing body may not

- o Participate in or influence ZHB deliberations
- o Overrule Zoning Officer or ZHB



Peter Wulfhorst, AICP Extension Educator
Penn State Extension
570-296-3400 ptw3@psu.edu

