Zoning

Penn State Extension

Peter Wulfhorst, AICP Extension Educator
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Municipalities Planning Code

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

Zoning in the MPC

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)
7a. Traditional Nhood. Dev. (TND)
8a. Joint Municipal Zoning
9. Zoning Hearing Board & Other Administrative Procedures
10a. Appeals to Court
11. Intergovernmental Cooperative Planning & Agreements
11. Repeals
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

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

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
**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

**Limits to Zoning**

- The Police Power
- Court Decisions
- The MPC
- Nonconformities
- Other Laws
- Preemptions & Exemptions

**Basic Zoning Terms**

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

*These include and more
### Basic Regulatory Tools (c)

<table>
<thead>
<tr>
<th>Tool</th>
<th>Who allows</th>
<th>How</th>
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<tbody>
<tr>
<td>PERMITTED USE</td>
<td>Zoning Officer</td>
<td>&quot;Use by Right&quot; created by zoning ordinance</td>
</tr>
<tr>
<td>PERMITTED USE + HEARING</td>
<td>Special Exception, Conditional Use, Zoning Hearing Bd. Governing Body</td>
<td>not automatic, may be denied after hearing</td>
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</tbody>
</table>

### Considerations for Use Regulations

#### Residential
- Dwelling Types: Combination of types with non-residence provision for 5 "basic" types [604(4)]
- Densely dwelling units/acre
- Dimensions: lot area, width, depth, yards, lot coverage, height
- Accessory Uses

#### Commercial
- Degree of Impact: probability of detrimental effects by businesses, other uses
- Degree of Need for services, goods
- Service Area: neighborhood, village, city-wide, highway-oriented, free-standing

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

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.

5-Part Variance Criteria
MPC §501.2
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
Special Exception vs.

Special Exceptions & Conditional Uses

Authorize uses that are
PERMITTED
in the ordinance

Variance

Allow a property to be used in a way that is
PROHIBITED
by the ordinance

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

Non-Conforming Uses, Structures, Lots

- Nonconforming uses are protected, but they can be regulated:
  - Change of use
  - Replacement / restoration
  - Termination / abandonment
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 to show the owner intended to abandon use, either by
    - overt acts, or failure to act, that indicate the nonconforming use has been abandoned

Zoning Administration Team

Roles

<table>
<thead>
<tr>
<th>Governing Body (Elected Officials)</th>
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<tr>
<td>Approve and oversee land development projects, and review subdivision applications.</td>
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<tr>
<td>Approve or reject conditional use permits.</td>
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<tr>
<td>Appoint conditional use review committee and zoning ordinance.</td>
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<tr>
<td>Approve zoning changes and enforce land use code.</td>
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<tr>
<td>Approve or reject building permit applications.</td>
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<th>Planning Agency (Commission and/or Department)</th>
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<td>Makes recommendations on subdivision land development projects, and review subdivision applications.</td>
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<tr>
<td>Makes decisions on conditional use permits.</td>
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<tr>
<td>Revises land use code and regulates by governing body.</td>
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<tr>
<td>Makes recommendations on conditional use permits.</td>
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30/05/2017
Roles

Zoning Hearing Board:
- Approve special exceptions as specified in zoning ordinance
- Approve variances

Zoning Officer:
- Approve zoning permits for use by right
- Shall not approve zoning permit for use that does not comply with zoning ordinance

County Planning Agency:
- Receive and evaluate applications on local land use permits
- Keep public technical review files
- Sign final plat recorded for recording

Duties of a Zoning Officer

Administrative Tasks
- Process permits
- Maintain records
- Determine non-conforming use status
- Provide information
- Prepare and present reports
- Represent municipality at ZHB proceedings

Enforcement Tasks
- 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

- 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

- May be compensated
- May not be elected or appointed official
- ZHB chooses its leaders
- Removal for cause
- Should make annual report
How a ZHB Works

- An impartial tribunal
- Has no agenda
- Judges arguments presented by "parties"
- ZHB is not a "party"
- Doesn't work out solutions
- Bases decisions on facts
- Don't discuss pending cases
- Don't visit site after hearing starts
- No "advisory opinions"
- Hearings are not popularity contests
- Goal: fairness

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
   - 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
- Adopts and revises zoning ordinance and map
- Appoints members to the Zoning Hearing Board
- Pays for ZHB Solicitor
- May offer testimony at ZHB proceedings
Governing body may not
- Participate in or influence ZHB deliberations
- Overrule Zoning Officer or ZHB