



**PDHonline Course C367 (1 PDH)**

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# **Introduction to Zoning: A Land Planning Tool**

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# Introduction to Zoning: A Land Planning Tool

*Martina L. Moore, P.E.*

## Course Content

### **Introduction**

Prior to the 1900's, use of land was regulated by private restrictive covenants, which were developed in the 1800's, and tort law. Tort law addressed nuisances "which prohibited harmful or offensive use of the land."<sup>1</sup> For example, tort law would have addressed the complaint of one landowner about his neighbor who was putting blasting caps into his land and setting them off for fun. A private restrictive covenant is a restriction that would be placed on land that controls future uses by the seller of the land. An illustration of a private restrictive covenant was the banning of open fires on a wooded lot.

In the United States, individual States were given jurisdiction over land planning and land use controls rather than the Federal government. In the early 1900's, Enabling Acts were enacted which allowed local authorities to make specific rules and administer them in accordance with the comprehensive land plans that they had developed. Because the local authorities were government legislative bodies composed of volunteer or low-paid elected officials with limited resources, in the 1920's the Enabling Acts were modified to allow the States to administer land use controls.

"The original Enabling Acts allowed two agencies to be created to deal with these matters. A planning commission was authorized to draft a master plan and detailed ordinances. A board of adjustment was authorized to deal with appeals from decisions by the local administrator or public officials."<sup>2</sup>

Today, land use is controlled in the same manner as the original Enabling Acts specified. However, many States legislate the authority for land control to their Counties or Local Governments. One tool to control land use is the zoning ordinance.

### **Zoning**

Zoning is used by a government to control the use of land and direct the development of land within their borders. The regulations and requirements to administer zoning are compiled into the zoning ordinance (law).

Zoning regulates the use of the land and the use of the building or structures placed on the land. It seeks to keep compatible uses together and to minimize the impact or disturbance of differing land uses on each other. Compatible land uses would be a single-family detached dwelling development that is adjacent to a multi-family building of walk-up apartment buildings.

An example of incompatible uses would be a cement mixing plant located next to a single-family detached dwelling. The cement mixing plant may begin operations very early in the morning and continue into the evening creating a lot of truck traffic. Additionally, there is noise and dust created in the mixing of concrete. These factors would be annoying to the homeowner who lived next door. The homeowner would complain to the cement mixing plant operator about the amount of truck traffic, the noise, the dust, and the long hours of operations. The owner of the plant would be frustrated because these issues are integral to the cement mixing process. Zoning the single-family detached dwelling and the cement mixing plant into separate districts and planning the location of those districts carefully would alleviate the complaints from both parties.

There are many different types of land uses. Land uses are broadly characterized as residential, government, institutional, educational, commercial, industrial and agricultural. A brief list of examples of each type of land use follows.

- Residential uses include single family detached dwellings, two-family dwellings and multi-family dwellings such as apartment buildings.
- Governmental uses include district courts, county buildings and Federal government facilities such as a US Naval Base.
- Institutional uses include hospitals, assisted living facilities, group homes for the disabled and prisons.
- Educational uses include schools, colleges, universities and trade schools.
- Commercial uses include retail stores, restaurants, pharmacies, gas stations, physician offices, etc.
- Industrial uses include manufacturing and processing plants and facilities.
- Agricultural uses include farming, the raising of livestock, and other similar activities such as mushroom growing.

It is important to be aware that the zoning ordinance is separate and distinct from the building code or building ordinance. With respect to buildings and structures, a building code regulates construction materials and design, while a zoning ordinance regulates where the building or structure is placed on the land.

## **Components of A Zoning Ordinance**

A typical zoning ordinance includes the following sections and each will be described briefly.

- Preamble or Introduction.
- Establishment of Zoning Districts.
- Zoning Districts.
- General Standards.
- Specific Use Standards.
- Non-Conforming Use Regulations.
- Zoning Hearing Board Procedures.
- Administration.

### **Preamble or Introduction**

Here the purpose of the zoning ordinance is described. In its most basic form the Zoning Ordinance protects the health, safety and welfare of the residents. However, typically this section also identifies the community development objectives as formulated in the comprehensive or master plan for the municipality. For example, a community objective would be to add commercial development to an area and the subsequent zoning purpose would be to minimize traffic congestion and the impact of the commercial development on the adjacent residential properties. Also this section should include wording that repeals any past ordinances and mandates that the current ordinance is the controlling one.

### *Establishment of Zoning Districts*

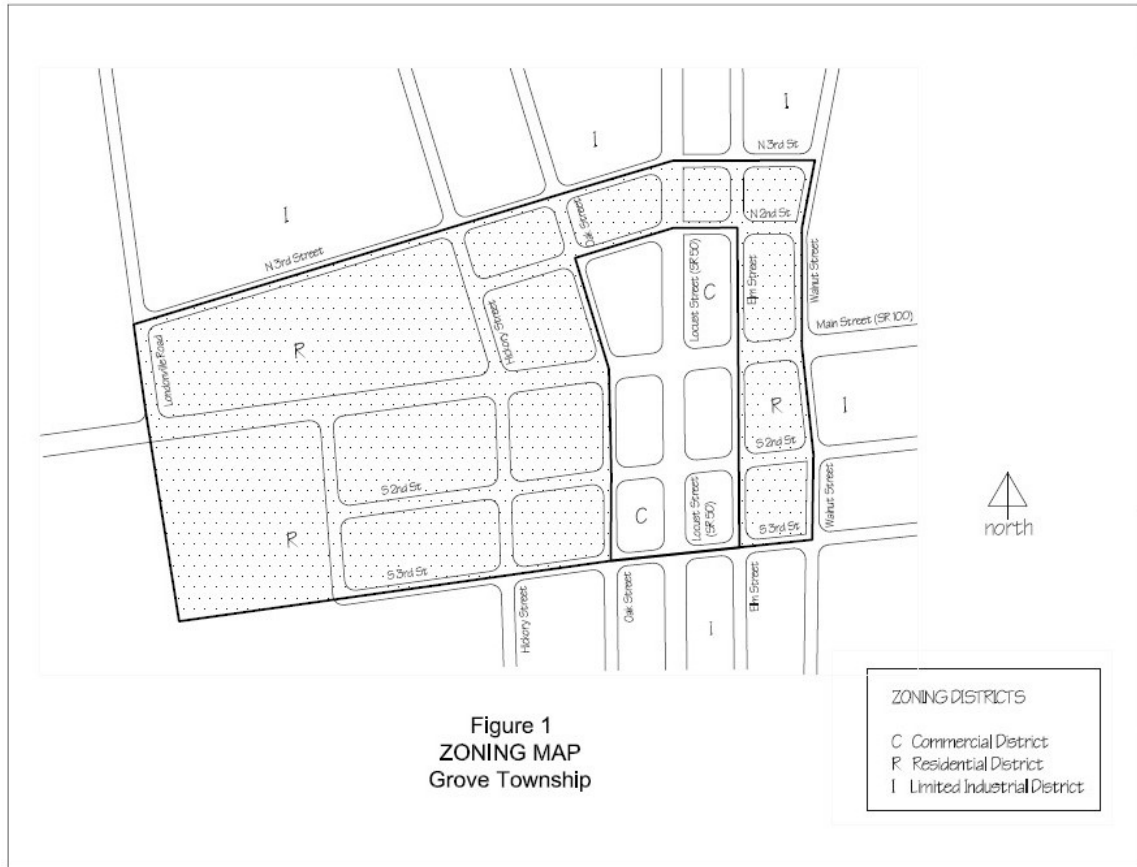
The main purpose of this section is to list the various zoning districts and to include the zoning map. The zoning map locates the various zoning districts. See Figure 1 for an example of a zoning map. Also, there should be wording on how to determine the exact location of a zoning district boundary line as interpreted from the zoning map. For example, if the zoning map shows the boundary line between two zoning districts to be the centerline of a road right-of-way, then wording would define that the centerline of the road right-of-way is the actual boundary line thus preventing the argument that the edge of the road right-of-way is the boundary line.

### *Zoning Districts*

This portion of the zoning ordinance lists each zoning district and the associated regulations. Typically each zoning district is a separate section in the zoning ordinance due to the complexity and/or specificity of the regulations.

Most zoning districts cover certain areas within the governmental boundaries and are non-overlay zoning districts. An illustration would be the commercial district that would

encompass areas surrounding the through travel roads. There are other special zoning districts are specified as “overlays” in that they cover portions of other zoning districts.



An example of an zoning overlay district is a district that regulates flood hazards. The flood hazard zoning district occurs in any area where there is a watercourse and a floodplain as determined by the Flood Insurance Rate Map, published by the Federal Emergency Management Agency (FEMA). Because a watercourse and a floodplain can occur in any zoning district (residential, commercial, agricultural, etc.) the flood hazard zoning district therefore may cover parts of the non-overlay zoning districts.

*General Standards*

This section describes the zoning standards which are applicable to all zoning districts. Typical zoning standards are regulations for screening, exterior lighting, landscaping, storage, internal vehicular circulation on a parcel, off-street parking, off-street loading (deliveries of materials and supplies), building/structure height limitations and lot size/shape requirements. Sometimes regulations for signs are included in this section, but if the sign regulations are rather lengthy, they may be in a separate section of the zoning ordinance. Similarly, regulations for stormwater management may be included in this section but typically are also in a separate section of the zoning ordinance.

It may seem odd that some governments include stormwater management regulations in the zoning ordinance when it would appear that stormwater management is a function

of land development. Thus, it would make sense that stormwater management would be part of a separate subdivision and land development ordinance. However, in order to make sure that requirements for stormwater management are not waived or modified easily for any type of development, many governments include stormwater management in the zoning ordinance or insert a statement in the zoning ordinance that the stormwater management ordinance located elsewhere must be followed. Waiving or modifying a zoning ordinance provision requires a legal proceeding, called a zoning hearing, which makes the act of waiving or modifying a provision more difficult.

### *Specific Use Standards*

This section describes the zoning standards that are applicable to a specific zoning district or land use. An example of a specific use standard would be regulations that apply specifically to pet kennels. A pet kennel may be specified to house only dogs, cats or other small animals. The standard may list how many square feet of enclosed kennel space would be required for different sized animals. It may specify the size of the outdoor exercise area. It may require the installation of an enclosing fence and specify the minimum height and type of fencing.

Other specific uses that may be further regulated are public-use facilities such as swimming pools and golf courses, convenience stores, vehicle service and repair facilities etc. Regulations may address times of operations and deliveries and allowable noise levels from the use, among other things.

### *Non-Conforming Use Regulations*

A non-conforming zoning use is a use that existed before the current Zoning Ordinance was enacted and does not meet the regulations of the zoning district in which it is located. Non-conforming uses may related to the use of the land or lot or use of the building/structure or location of the building/structure or a combination of these.

A typical Zoning Ordinance allows a non-conforming land use to continue or the non-conforming use to be converted to a similar use that would continue. For example, if an existing farm parcel fronted a highly traveled road and the land is re-zoned commercial, the farming activity would be a non-conforming use in the commercial zoning district. The non-conforming use regulation would allow the farming activity to continue even though farming is not specified as a permitted use in the commercial district.

Similarly, a non-conforming use in a structure or building would be allowed to continue. For example, a copying and offset printing business is located in a building that sits on land that the government re-zones that land and the surrounding land to residential use. The copying and offset printing business would be allowed to continue in its location.

However, a Zoning Ordinance usually allows a non-conforming use (land or building/structure) to continue as long as there is no interruption in the practice of the use. In the copying and offset printing business example, if the business were to close down and the building were to be vacant, even for a few days, another copying and offset printing business could not be established or the original business could not be

re-started, without requesting a waiving of this part of the ordinance through a zoning hearing.

A building or structure may be non-conforming because it is not located at the minimum distances (setback distances) specified from the property boundary lines or road right-of-way. (See the later discussion on zoning district regulations for information about setback distances.)

A Zoning Ordinance allows a non-conforming building or structure to be altered or enlarged under certain conditions. Typically, the non-conformity may not be increased with respect to setback distances, parcel coverage, etc. Some ordinances allow a non-conforming building or structure to be enlarged by some portion of their original size, such as no more than 50 percent larger in area. Even if the building or structure is enlarged, excepting for other known non-conformities, it still must conform to the other specific regulations of the zoning district.

### *Zoning Hearing Board Procedures*

The Zoning Hearing Board is charged with deciding matters brought before it that relate to the Zoning Ordinance. These matters would include appeals from the Zoning Officer, Special Exceptions, Variances and Validity of the Ordinance. This section of the zoning ordinance describes the makeup of the Zoning Hearing Board and its functions.

Appeals from the Zoning Officer's determinations include allegations where the Zoning Officer failed to follow the procedures of the Zoning Ordinance, allegations that a Zoning Ordinance issue was applied incorrectly or petitions to dismiss an enforcement notice that was issued for a violation.

The Zoning Hearing Board is typically composed up of a odd number of members in order to achieve a majority during voting. Usually the minimum number of members is three. The members are appointed by the governing authority and typically serve staggering terms.

Some Zoning Hearing Boards meet regularly throughout the year, but in smaller governments, the Zoning Hearing Board may only meet when there is a hearing scheduled.

Because a Zoning Board Hearing is a legal activity, an Applicant who believes they received an unfavorable decision from the Zoning Hearing Board may appeal it in a court of law. Zoning Hearings take place a governmental building rather than a court of law. All hearings must be published at least once in a public notice in a widely area read newspaper a certain number of days prior to the hearing. Additionally, notices of the hearing are sent to property owners within a specific distance of the property which is the subject of the hearing.

### *Administration*

This section describes the duties and functions of the Zoning Officer as well as the penalties for violation of the Zoning Ordinance. The Zoning Officer is usually charged with the following responsibilities:

- Review, approve and issue permits.
- Record and file permits.
- Investigate zoning complaints received from the public. If the complaint is valid, take appropriate enforcement action.
- Maintain enforcement action files.
- Identify non-conforming uses and building/structures and maintain an up-to-date listing.
- Issue permits approved as a result of zoning hearings, special exception hearings or conditional use hearings.
- Maintain a current copy of the Zoning Ordinances, including all amendments.
- Maintain a current copy of the Zoning Map.

Additionally, the procedure for issuing an Enforcement Notice for a zoning ordinance violation is often included here. A typical procedure would be to send the Enforcement Notice giving the violator thirty (30) days in which to correct the violation and if the violation is not corrected, then a court proceeding would be initiated by the Zoning Officer on behalf of the government.

If the court finds that the violation is valid, then the enforcement penalties specified in the Zoning Ordinance are applied. The enforcement penalties may include some type of money fine for each day the violation continues. In many locations, the maximum enforcement penalty that can be applied is subject to State law.

### ***Zoning District Regulations***

All standard zoning districts, with the exception of the overlay zoning districts, have common sub-sections in their regulations. The parts are:

- Purpose.
- Use.
- Height.
- Area and Bulk.
- Design Standards.

#### **Purpose**



This part describes the reason that the particular zoning district was created. For example, the purpose for a commercial district would be to provide retail services to the area's residents. An additional purpose that is stated may be to manage pedestrian and vehicular traffic so that their movements are safe.

## Use

"Use" refers to the activity or function that is allowed on the property. There may be three sub-sections under allowable uses: 1. Permitted or Permitted By-Right, 2. Uses Allowable by Special Exception, and 3. Uses Allowable by Conditional Use. These uses are also referred to as the allowable principal uses.

- A use that is Permitted or Permitted By-Right is a use that can occur without any other approval, such as a approval by special condition or conditional use.
- A use that is Allowable by Special Exception means that the Applicant who wants to perform that use is required to seek approval from the Zoning Hearing Board for that use.
- A use that is Allowable by Conditional Use means that the Applicant who wants to perform that use is required to seek approval from the Governing Body for that use.

Both the zoning hearing board and/or the governing body are required to approve the special exception and/or conditional use respectively. The reason for the additional hearings are because the use, although allowed in the zoning district, may be problematic. Thus the zoning hearing board and/or the governing body can put special conditions or requirements on the use.

An example will help explain these concepts. In a commercial zoning district in a township, the uses are listed as follows:

- Permitted Uses – Retail shops, automotive service stations, restaurants and gasoline stations.
- Uses by Special Exception – Animal hospital and hotel.
- Uses by Conditional Use – Single-family detached dwelling.

The township classifies the animal hospital and hotel as a special exception use because it wants the option to be able to put some specific conditions and requirements on these uses. Perhaps the animal hospital would be allowed to only serve small animals such as dogs and cats if it was to be located in the township village. Perhaps the hotel would be required to notify the neighbors if it held any outdoor events as part its service to its clients.

The township classifies the single-family detached dwelling as a conditional use because it wanted to make sure that the owners of the proposed dwelling were aware that they were building in a commercial district. Because dwellings, both single-family

and multi-family, can co-exist peacefully alongside small retail shops, the township did not feel that a more stringent approval by the zoning hearing board was required.

There is one other use that is usually included with permitted or permitted by-right uses and that is the Accessory Use. An Accessory Use is a use that is subordinate to the principal use on the property. It may be an activity or it may be a building or structure. For example, on a residential zoned lot, a shed would be an accessory use because it would house bicycles, lawnmower, etc. which are items used by persons in a single-family residential dwelling. On a commercially zoned lot, an outbuilding that is used to hold additional retail inventory would be an accessory use.

### Height

Often a height restriction will be stated. In a residential zoning district, for example, the maximum height of a building or structure may be 35 feet.

### Area and Bulk

Area and bulk regulations may include the following:

- Lot area.
- Lot width at building line.
- Lot width at street line.
- Lot coverage.
- Building setback line (front yard).
- Side yard setback line.
- Rear yard setback line.
- Accessory use setback line.

A typical set of Area and Bulk regulations for a single family detached dwelling use in a Residential District is listed below. See Figures 2A and 2B.

#### *Residential District*

#### Single Family Detached Dwelling

Lot Area	1 acre minimum
Lot Width at Building Line	150 feet minimum
Lot Width at Street Line	100 feet minimum
Lot Coverage	25% maximum
Building Setback Line	50 feet minimum
Side Yard Setback Line	25 feet minimum
Rear Yard Setback Line	25 feet minimum
Accessory Use Setback Line	10 feet minimum

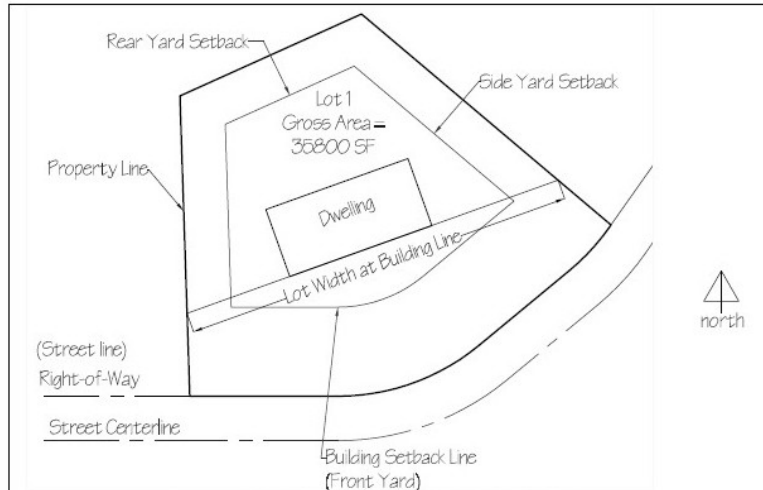


Figure 2A - PRINCIPAL USE SETBACK LINES

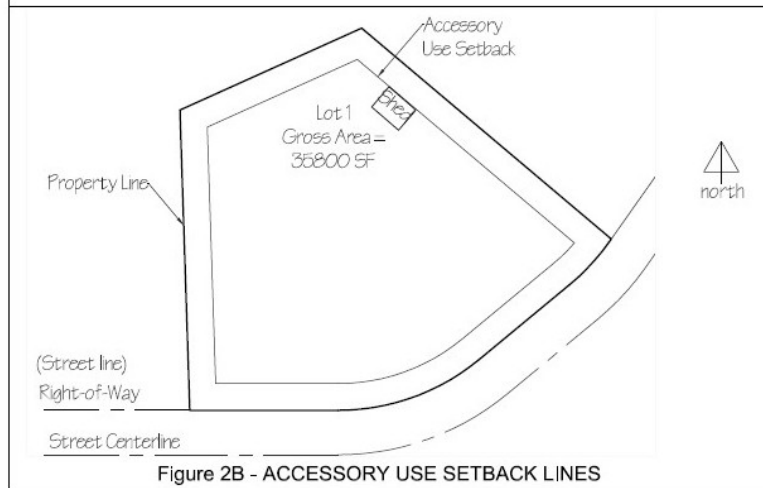


Figure 2B - ACCESSORY USE SETBACK LINES

Lot area may be the gross area of the property or the net area of the property. Gross area is the area within the property lines. Net area is usually the area of the property after subtracting out easements and street rights-of-ways. Older lots include the street right-of-way within the property lines of the lot; on a very old lots the property line may run to the centerline of the street right-of-way. Now, the trend is to place the property line on the street right-of-way line. It is important to review the definition of “lot area” in zoning ordinance to make sure that the correct one is used. In the typical Area and Bulk Regulations example above, “lot area” is not specified to be “gross” or “net” and the definitions section of the zoning ordinance should clarify it.

Lot width at building line is the width of the lot at the line of the front of the building.

Lot width at street line is the width of the lot at the street line. The “street line” is another way of stating “right-of-way line”; again the Definitions section should define “street line” in this manner.

Lot coverage is the maximum amount of the land that can be covered with impervious surfaces. These surfaces include buildings, structures, driveways, patios, swimming pools and so forth.

Building Setback Line is the minimum distance from the front property line that the principal use building can be placed. Some Zoning Ordinances use the term “front yard setback line” in place of “building setback line”.

Side Yard Setback Line and Rear Yard Setback Line are the minimum distances from the side and rear property lines respectively that the principal use building can be placed.

Accessory Use Setback Line is the minimum distance from the property line that an accessory use building or structure can be placed. Some Zoning Ordinances prohibit accessory use buildings or structures to be placed in the front yard.

### *Design Standards*

Under this title is the list of relevant design standards that apply to the particular zoning district. These design standards are located in other sections of the Zoning Ordinance. The relevant design standards for a Commercial zoning district may be as listed below.

#### *Commercial District*

##### Design Standards

- A. Off-street parking as established in §27-1305.
- B. Off-street loading as established in §27-1306.
- C. Screening as established in §27-1301.
- D. Signs as established in §27-1308.
- E. Lighting as established in §27-1307.
- F. Stormwater management as established in §27-1310.
- G. Internal Circulation as established in §27-1304.
- H. Vehicular Access and Traffic Control as established in §27-1303.
- I. Pedestrian Access as established in §27-1302.
- J. Landscaping as established in §27-1311.

### **Bibliography**

1. Sweet, Justin, Legal Aspects of Architecture, Engineering and the Construction Process, West Publishing Company, St. Paul, MN, c1977, page 200.
2. Ibid, page 202.