

MN2000  
EF-251  
Rw 1978

# Zoning

## Principles and Definitions

Robert W. Snyder

# Zoning

## Principles and Definitions

Zoning has become a household word in much of rural Minnesota since 1965. Yet, its complexity still makes it widely misunderstood. Then, too, a number of other regulatory devices have been introduced in many localities simultaneously with zoning. Consequently, many citizens have become confused about regulations' effect on property use and on the financial prospects and personal and business lives of landowners, proprietors, wage earners, and other community residents.

This publication is to acquaint citizens with the basic features of zoning, particularly in rural areas. Because the word "zoning" often is improperly used to refer to any land use control mechanism, careful distinctions must be drawn. Each control should be considered separately before it can be successfully combined with others. Even in a blended approach, each control is usually handled by different administrative jurisdictions. When there are apparent exceptions, such as in planned unit developments (PUDS), administrative difficulties may occur. Citizen understanding and effective participation in local government is frustrated unless each type of land use control is distinguished from its regulatory brethren.

Zoning is only one of many measures of government to guide the use and development of privately owned real estate. Other regulatory devices include building, housing, and sanitary codes; official maps; subdivision controls; licensing; and special purpose ordinances. Nonregulatory measures include the acquisition and sale or lease of property rights; planned extension of water and sewer lines, roads, and other public utilities; preferential treatment with respect to property taxes, insurance availability, financial subsidies, loans and grants; and the provision of public services and free technical assistance. Local, state, and federal government, including agencies in the administrative branch of government, can be involved.

The starting point toward effective comprehensive land use planning is a basic understanding of the separate guidance mechanisms.

### General Definition

Zoning is a process through which a community divides itself into two or more districts or zones allowing only designated land uses in each district and imposing certain development standards on all future



construction and other land development activity. Adopting a zoning ordinance is an exercise of regulatory powers granted to local governments by state statutes called enabling legislation. Ordinance provisions must be reasonable, nondiscriminatory, based on a comprehensive plan, and related to the health, safety, morals, and general welfare of the community. Most existing land uses and structures are not affected, even though they may not conform to the ordinance.

### History of Zoning

Land use zoning in the United States dates back to colonial times when certain offensive or dangerous uses such as slaughterhouses and gunpowder mills had special locations set aside for them. Today's comprehensive zoning emerged in New York City in 1916. The principal advantage of zoning over public nuisance laws which preceded zoning and now coexist with it, is that zoning is prevention of undesirable patterns of land use and below standard developments. Nuisance laws can be used only to correct consequences of unwise development. Comprehensive zoning has been widely adopted in metropolitan areas to promote orderly development and redevelopment of land for urban purposes.

Rural zoning is not nearly as widespread as urban zoning. Its early use was to reduce public service costs and prevent personal hardship in land cleared areas of Minnesota, Wisconsin, and Michigan during the thirties. More recently, urban sprawl, with its related problems for commercial farming and the excessive cost of providing public services, highways, and utilities for scattered nonfarm residences, has caused many to look to rural zoning as one possible solution. Superhighways and greater mobility plus an increasing interest in rural living and outdoor recreation has brought more urban people into the countryside. The result is new land use conflicts and undesirable land use practices. Zoning is considered a useful tool for combating these problems. Federal and state financial assistance grants have provided the means for many communities to develop sound zoning ordinances based on carefully conceived comprehensive land use

plans. Since 1969, in certain areas, state law has required zoning and other controls to protect the natural environment.

## Purposes of Rural Zoning

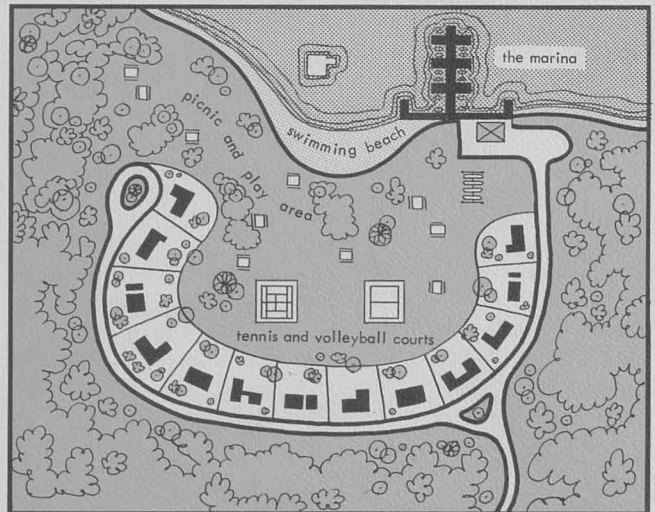
Most modern-day reasons for zoning fall in one or more of the following categories:

- Protecting property values from being undermined by the development of incompatible or below standard uses on adjacent or nearby properties.
- Improving the quality of the physical environment by screening or eliminating unsightly uses of land such as junkpiles and dumps, regulating billboards, preventing lake pollution, etc. This can make a community a nicer place to live and more attractive to recreation seekers or new industry. Residential property values are directly related to environmental quality.
- Preventing legal and personal problems that might result from the development of incompatible uses on adjacent tracts; for example, disputes between farmers and rural residents or between drive-in restaurants and summer home owners.
- Facilitating efficiency in providing public services and facilities and protecting the public investment in parks and highways and other governmental infrastructure.
- Protecting public health and safety by preventing development that could lead to ground and surface water pollution, keeping flammable structures a distance apart, providing room for use of firefighting equipment, and similar measures.
- Preserving and developing the economic base. This is of particular significance in areas where economic

existence is based on natural resource-based industries such as agriculture, forestry, recreation, or mining. Then the economic health of the entire community may be directly related to scenic attractiveness, maintenance of surface water quality, local government efficiencies that keep taxes reasonable, and the ability to provide suitable sites and superior public services for commercial and industrial development.

## Zoning Responsibilities

Zoning ordinances are officially adopted by the elected representatives of the legislative branch of the local government unit involved, such as a board of county commissioners, town board, or city council. Ordinances to be considered for adoption are normally recommended by citizen groups, usually called planning commissions. Commission members usually are representative community leaders appointed by the local legislative unit. They are charged with the re-



sponsibility of studying their community, charting its future development, and drafting zoning ordinances and other control measures to implement a comprehensive land use plan. Through study and contact with other citizens, they must become knowledgeable about community needs and goals and attempt to develop an ordinance that reflects them. The planning commission usually is assisted by a professional planning consultant or resident planner. It also is responsible for helping the community understand comprehensive zoning and react constructively to it.

Before a zoning ordinance comes to a vote, public information meetings are usually held and an official public hearing is essential to give all views a chance to be heard.

Once the ordinance has been adopted, a zoning administrator is designated who is responsible for seeing that the standards and regulations are observed.

Private citizens have a continuing responsibility to understand the purposes of zoning and the regulations contained in the ordinance. Their views should be made known to the planning commission which continues to function and can recommend changes as the need for them becomes apparent. Individuals may also exercise influence through their elected legislative representatives.

A board of adjustment is appointed and is responsible for reviewing decisions of the zoning administrator when private citizens think they have been treated unjustly and for issuing variances when the strict application of the ordinance would be unfair. Occasionally controversies are taken to court.

Obviously, many people become involved in developing, adopting, and applying a zoning ordinance. This involvement is necessary to achieve the kind of ordinance that reflects community needs and aspirations and to insure that the adopted development standards and land use restrictions are observed.

## **Types of Regulations**

There are three different ways to categorize regulations contained in zoning ordinances.

### **• LOCATION-CONTROLLING V. CHARACTERISTIC-CONTROLLING**

The first distinguishes between regulatory provisions that seek to control the location of different kinds of land uses and those intended to influence characteristics of development other than location. Characteristic-controlling provisions concern physical aspects within the boundaries of the lot or tract of land involved such as the relative position of improvements and the amount of open space. Although the most apparent of the location-controlling provisions are those confining specific land uses to designated zoning districts, the imposition of development standards may also be used to that end. Large lot zoning to discourage residential development in agricultural districts is one example.

The significance of the distinction between provisions that do and do not attempt to control location lies both in their political feasibility and probability of suc-

cess. Location-controlling elements are likely to be rigorously opposed and ingeniously circumvented by interested parties whose land development potential and market value are negatively affected. Characteristic-controlling elements, to the extent they are not also location-controlling, are seen as relatively innocuous. The difference is mainly in the amount of money involved.

### **• AREA OF APPLICATION**

Zoning regulations can also be categorized according to the geographic area of application. Although one would expect from its definition that it would include only those regulations that vary from one zone or district to another, zoning ordinances have for some time contained development standards that are applied uniformly throughout the jurisdiction of the enacting governing unit. These may be considered a second category of regulations because of usage and convention. Under some circumstances, the imposition of areawide standards may be more significant than zoning in the strict technical sense suggested by definition.

### **• PHYSICAL CHARACTERISTIC AFFECTED**

A third classification scheme separates zoning restrictions according to the physical characteristics that are affected. Five classes can be identified:

- Those intended to determine population density such as lot size and coverage and type of dwelling. Desired densities are often based on the capacities of sewer lines, roadways, or other public investments.
- Those concerning land-structure relationships. Minimum frontage, setback distances, and side-yard and backyard requirements for residences are almost universal. Minimum overall lot sizes may be of special significance where individual wells and septic tanks are used. Billboard spacing and offstreet parking requirements also fit this category.
- Restrictions on gross dimensions of structural improvements. Standards of this type usually specify maximum height and may specify minimum floor space area for different types of residential structures. They also may regulate dimensions of signs, billboards, and screening fences.
- Those directly controlling land use. Lists of permitted, conditionally permitted, and prohibited uses are set aside in certain land areas. The aim is to provide for orderly development and reduce conflicts among incompatible land uses and landowners.
- Those imposing performance characteristics. This may be a composite category with very diverse elements. Examples include standards and restrictions relating to the emission of heat and glare, excessive sound levels, hours of commercial activity, and surface water runoff. These types of constraints are most commonly used in approving conditionally permitted development.

These categories do not encompass all the provisions found in all zoning ordinances. They do, however, provide a framework that makes it easier to analyze the general effects of zoning on land use practices.

## Definitions

**BOARD OF ADJUSTMENT (Board of Appeals)** — a board of citizens, appointed by the local legislative unit, which hears and decides appeals from decisions of the zoning administrator and requests for variances. (See variance definition.)

**BUILDING PERMIT (Zoning Permit)** — a printed form that must be obtained from the zoning administrator before a new structure can be built or an old building altered. A nominal fee is usually involved. Getting the permit puts the landowner in contact with the zoning officials and provides an opportunity for the zoning administrator to inform the landowner of the standards being applied in the zoning district.

**CERTIFICATE OF OCCUPANCY (Certificate of Compliance)** — a form that must be obtained from the zoning administrator before a new structure can be occupied or a new use of open land begun. Before issuing it, an administrator may inspect the premises to be sure zoning standards have been met. Not all ordinances provide for such a certificate.

**COMPREHENSIVE LAND USE PLANNING** — a community process for deliberately planning its own future physical development. A study phase including an inventory and analysis of existing physical, economic, and demographic conditions is followed by the development of goals and policies for future development and the formulation of specific plans with regard to land use, public utilities, future streets and highways, parks and recreation areas, and so forth. The implementation phase, using zoning and other devices to effectuate a comprehensive land use plan is an essential part of the planning process.

**CONDITIONAL USE PERMIT (Special Permit, Special Exception)** — a printed form that must be obtained from the zoning administrator on order of the planning commission or some other designated body as specified in the zoning ordinance before land can be developed for certain purposes. Types of land uses and structures requiring such permits are listed in the zoning ordinance, usually in a separate list for each zoning district. The standards and criteria for granting or de-

nying these requests also should be listed in the ordinance. Certain conditions and special restrictions can be attached to the permits to insure that listed criteria are adequately satisfied.

**DISTRICT REGULATIONS** — standards and restrictions that are listed separately for each zoning district and apply only to land development activity within that district. (See definition of supplemental regulations.)

**EXCLUSIVE ZONING** — a type of zoning which allows only specific uses listed in the zoning document for a particular district. It contrasts with cumulative zoning in which districts are arranged in a hierarchy with so-called higher use zones, such as residential districts, at the top of a list which ranges down to industrial districts. Under cumulative zoning, uses allowed in higher use zones also are permitted in lower use zones. In effect, only the highest use zone is exclusive. This zoning permits single family homes in heavy industrial zones, but does not permit heavy industries in single family home districts. Since one object of zoning is to separate incompatible land uses, cumulative zoning often is unsatisfactory. It still can be found in older ordinances.

**INTERIM ZONING ORDINANCE** — a legal document that may be adopted before a comprehensive plan has been developed. Minnesota law provides specifically for interim zoning for county units, but limits its applicability to 2 years. Interim ordinances differ from so-called permanent ordinances in being less detailed, having fewer zoning districts, and requiring conditional use permits for more types of land uses and structures. Interim ordinances provide immediate protection for communities that have delayed becoming involved in comprehensive planning.

**NONCONFORMITIES** — a use of land or structure existing when a zoning ordinance is adopted that does not conform to the standards and regulations in the ordinance. Most nonconformities are allowed to continue, but may be required to conform to some physical development standards, such as fencing or setback, and may lose their preferential status if the nonconforming use ceases or there is some physical destruction (such as storm or fire). A list of properties with nonconforming uses and structures should be compiled when an ordinance becomes effective.

**PERFORMANCE STANDARDS** — standards relating to noise, heat, fumes, glare, radio interference, and other types of emissions that can be detected beyond the location of a particular activity. Such standards are useful where equipment and technicians are available for measuring emission levels.

**PERMITTED USE** — a use or structure included on the list of permitted uses for the zoning district. Before land can be developed for permitted uses, a building or zoning permit must be obtained from the zoning administrator.





**PLANNING COMMISSION** — a group of citizens appointed by the local legislative body and charged with the responsibility of developing the elements of a comprehensive land use plan and recommending an appropriate zoning ordinance and other plan implementing mechanisms to the governing body. The commission is normally assisted by a professionally trained planner. It also hears requests for amendments to an existing ordinance, including a zoning map; makes recommendations to the local legislative body; and may be authorized to order the issuance of conditional use permits.

**PLANNED UNIT DEVELOPMENT** — a development, frequently large, that includes a combination of residential units and other land uses and facilities but is planned, developed, and approved as a single unit. In lakeshore areas, it often is referred to as cluster development. Frequently, dwelling units are owned individually, but other facilities, such as a beach, docks, and other recreation-related items are owned in common. Planned unit developments usually are regulated by a special section found in either a zoning ordinance or subdivision regulations since such a section includes elements of both types of controls.

**SUPPLEMENTAL REGULATIONS** — requirements that apply uniformly throughout the jurisdiction of the unit adopting the zoning ordinance. They usually apply to particular uses or situations such as offstreet parking, spacing standards, billboard size and location, and junkyard characteristics. (See definition of district regulations.)

**VARIANCE** — a legal permit to depart from the requirements of the zoning ordinance. Variances are issued by the zoning administrator on order of the board of adjustment and apply only to a particular piece of real estate. Variances are issued when following the strict letter of the zoning ordinance would result in significant personal hardship for a landowner. It usually is stipulated that the hardship must be due to the effect of the zoning ordinance rather than an unrelated personal misfortune; that the hardship be unique to the property rather than shared by a large number of nearby landowners; and that the granting of the variance not have an adverse effect on nearby property or community welfare. Variances may not be used to allow land uses that are prohibited by the terms of the ordinance.

**ZONING ADMINISTRATOR** — an individual with direct authority to issue building permits and certificates of occupancy, and on order of the appropriate governmental body the authority to issue variances and conditional use permits. The administrator also keeps records of zoning decisions, maintains files of zoning related materials, and sees to it that ordinance provisions are observed.

**ZONING ORDINANCE** — a legal document that can be adopted by the local legislative body as part of a comprehensive planning process. Besides definitions and provisions related to the legal enforcement and amendment, it includes district regulations, conditional use permit, and variance procedures, provisions for nonconformities, supplemental regulations, and

provisions relating to the operation and authority of the planning commission and board of adjustment. The ordinance also must include a map showing the location of the zoning district boundaries.

### **Suggested Outline for Zoning Ordinances**

1. Large-scale map of zoning districts
2. Written ordinance
  - A. Purposes
  - B. Definitions
  - C. Establishment of districts
    1. List of districts
    2. Zoning map
    3. Interpretation of district boundaries
  - D. Regulations
    1. Application of regulations
    2. Schedule of regulations for each district
      - a. Permitted and conditional uses
      - b. Physical development standards
      - c. Standards for conditional use permits
    3. Supplemental regulations
    4. Nonconformities
  - E. Administration
    1. Enforcement
    2. Planning commission
    3. Board of adjustment
    4. Violations
  - F. Amendments
    1. Procedure for amendments
  - G. Miscellaneous
    1. Interpretation
    2. Validity
    3. Repealer
    4. Short title
    5. When effective

Robert W. Snyder is an associate professor, Department of Agricultural and Applied Economics, and extension land economist, Agricultural Extension Service.

Issued in furtherance of cooperative extension work in agriculture and home economics, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Roland H. Abraham, Director of Agricultural Extension Service, University of Minnesota, St. Paul, Minnesota 55108. The University of Minnesota, including the Agricultural Extension Service, is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, creed, color, sex, national origin, or handicap.

15¢

