



CITY COUNCIL

Committee of the Whole

Monday, April 5, 2021

5:00 pm

Virtual Meeting

Agenda

Under the current COVID-19 Declaration of Emergency the public is prohibited from attending the Committee of the Whole meeting. This meeting can be viewed LIVE on the City's website while the meeting is taking place or at any time at <https://www.readingpa.gov/content/city-council-video>.

Join from a PC, Mac, iPad, iPhone or Android device:

Please click this URL to join.

<https://readingpa.zoom.us/j/94414813594?pwd=ZC9PTXhERVQwR2dNai9leXpWVDIJZz09>

Passcode: 442705

Or One tap mobile:

+16465588656,,94414813594#,,,,*442705# US (New York)

+13017158592,,94414813594#,,,,*442705# US (Washington DC)

Or join by phone:

Dial(for higher quality, dial a number based on your current location):

US: +1 646 558 8656 or +1 301 715 8592 or +1 312 626 6799 or +1 669 900 9128 or +1 253 215 8782
or +1 346 248 7799

Webinar ID: 944 1481 3594

Passcode: 442705

- | | | |
|-------------|-------------------------------------|----------------|
| I. | Zoning 101 | 30 mins |
| II. | Real Estate Value Analysis | 20 mins |
| III. | Gun Buy Back Update | 20 mins |
| IV. | Executive Session Litigation | |

Outtakes from the PA DCED Planning Series - Zoning

II. Introduction

Zoning is the means by which a municipality regulates the use of land and structures and the extent and character of development. Zoning, along with a subdivision and land development ordinance, which regulates the creation of property lines and development of and improvements to those properties, are two principal means to help achieve planning objectives outlined in a comprehensive plan. Zoning is an ordinance – a local law enacted by the elected governing body of a municipality – designed to protect public health, safety, and welfare and to guide growth.

When zoning was first utilized, its primary purpose was to prevent a property owner from using his or her property in ways which were a nuisance or actually harmful to neighboring property owners. Over the years, the scope of zoning has expanded, and its technical provisions have been improved to better fit communities, are more easily comprehended by the general public, and deliver a more effective approach for achieving the development that will benefit the community. As such, municipal governments and the courts no longer look upon zoning as only a “negative” tool to keep certain land uses out of a neighborhood. They also recognize zoning’s value as a “positive” tool for encouraging certain development and for creating a more livable community. Modern zoning ordinances encourage preservation of natural (i.e., wetlands, forests, aquifers, floodplains) and historic features, plus farmland and agriculture, and promote innovative techniques such as traditional neighborhood development (TND), form-based zoning, cluster development, transit oriented development (TOD), lot averaging, and flexible building setbacks. Now more than ever, urban, suburban, and rural communities alike have the ability to establish both land use controls and development incentives to create sustainable and livable communities for future generations.

Too often zoning is thought of as a mechanism to control suburban expansion into rural areas, but it is an equally effective tool to preserve an urban community’s historic resources and reinforce its walkable and traditional neighborhood development patterns. Many of Pennsylvania’s urban communities are experiencing an increase in their redevelopment opportunities through downtown revitalization, economic restructuring, brownfield redevelopment, and blight eradication. Zoning has an important role to ensure redevelopment fits and enhances the urban fabric and its orientation to pedestrians, walkability, and lively mixes of land uses that are fueling the urban resurgence.

III. Statutory Overview of Authority

The power to zone and to adopt zoning ordinances is granted to local governments by the Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, as reenacted and amended, 53 P.S. § 10101, et seq. Specifically, Section 601 of the MPC authorizes municipal governing bodies to enact, amend, and repeal a zoning ordinance. Counties are also empowered to enact zoning, but as specified by Section 602, they are restricted to zoning municipalities or portions thereof that have no zoning in effect at the time a county zoning ordinance is enacted. Such county zoning is repealed at the time that a municipality subject to the county zoning enacts its own zoning ordinance.

The MPC establishes the basic rules which a municipality must follow to enact, amend, administer, and enforce a zoning ordinance, as well as the authorized purposes and regulatory content of the zoning ordinance. Municipalities also are required to follow the body of law established by the decisions of the courts when administering matters under the MPC.

In Pennsylvania, the Municipalities Planning Code is the uniform planning and land use enabling law for all municipalities and counties, including those under home rule, but not for the cities of Philadelphia (consolidated with Philadelphia County) and Pittsburgh.

Section 604 of the MPC requires that a zoning ordinance be designed to achieve the following objectives:

1. Promote, protect, and facilitate any or all of the following: public health, safety, and general welfare; coordinated and practical community development and proper density of population; emergency management preparedness and operations; airports, and national defense facilities; the provisions of adequate light and air; access to incident solar energy; police protection; vehicle parking and loading space; transportation; sewerage; schools; recreational facilities; public grounds; the provision of a safe; reliable and adequate water supply for domestic, commercial, agricultural, or industrial use, and other public requirements; preservation of the natural, scenic, and historic values in the environment; and preservation of forests, wetlands, aquifers, and floodplains.
2. Prevent one or more of the following: overcrowding of land; blight; danger and congestion in travel and transportation; loss of health, life, or property from fire; flood, panic, or other dangers.
3. Preserve prime agriculture and farmland considering topography, soil type, and classification and present use.
4. Provide for the use of land within the municipality for residential housing of various dwelling types encompassing all basic forms of housing, including single-family and two-family dwellings, and a reasonable range of multi-family dwellings in various arrangements, manufactured homes and manufactured home parks, provided, however, that no zoning ordinance shall be deemed invalid for the failure to provide for any other specific dwelling type.
5. Accommodate reasonable overall community growth, including population and employment growth and opportunities for development of a variety of residential dwelling types and non-residential uses.

Section 606 of the MPC also requires that a zoning ordinance reflect the land use policies of the municipality set forth in a statement of community development objectives. This statement can be supplied by reference to the comprehensive plan, or it may be provided in a statement of legislative findings of the governing body which may be and often is included as a preamble in the zoning ordinance. The community development objectives are an important part of the zoning ordinance and a foundation for analysis of a legal challenge to the requirements of the zoning ordinance.

A fundamental requirement of the MPC, found in Section 605, is that, except for counties, no part of any municipality enacting a zoning ordinance may be left un-zoned. Different districts may be

created, and different rules may apply within these zoning districts, but the zoning ordinance must apply to all areas of the municipality. The zoning districts created must be delineated on a map. This zoning map is an integral part of the zoning ordinance.

Within a given zoning district, uses are classified as permitted by right, by special exception or by conditional use, or prohibited. The zoning officer administers the provisions of the zoning ordinance to uses permitted by right (which must meet the requirements for such use stated in the zoning ordinance) and prohibited uses. The zoning hearing board is vested with exclusive authority to grant a use by special exceptions; the governing body is vested with exclusive authority to grant approval for a conditional use.

Another fundamental requirement of the MPC is that requirements for each class of use or structure within any one zoning district must be uniform throughout that district. However, Section 605 of the MPC authorizes classifications within a single district for:

- Making transitions at zoning district boundaries;
- Regulating nonconforming uses and structures; and
- Regulating, restricting, or prohibiting uses and structures at, along, or near:
 - Major thoroughfares, their intersections and interchanges, transportation arteries, and rail or transit terminals;
 - Natural or artificial bodies of water, boat docks, and related facilities;
 - Places of relatively steep slope or grade or other areas of hazardous geological or topographical features;
 - Public buildings and public grounds;
 - Aircraft, helicopter, rocket, and spacecraft facilities;
 - Places having unique historical, architectural, or patriotic interest or value; and
 - Floodplain areas, agricultural areas, sanitary landfills, and other places having a special character or use affecting and affected by their surroundings.

These latter provisions of the MPC invite the option of establishing an overlay zone superimposed upon the established zoning district. If, for example, a floodplain lies within a zoning district, the MPC permits the municipality to enforce a different set of regulations within the flood-prone area of the zoning district than those that are enforced within the remaining portion of the zoning district. Therefore, the provisions pertaining to the floodplain supplement – or overlay – the zoning district provisions.

Exclusionary Zoning and the Fair Share Doctrine

According to Pennsylvania court doctrine dating back to the 1960s, a municipal zoning ordinance must provide for – and may not exclude from the municipality – all lawful uses of land. Failure to provide for a lawful use is exclusionary and grounds for a legal challenge for which relief is to permit the use as and where proposed. However, it is near impossible for a zoning ordinance to provide for all possible legitimate uses, including emerging uses (a recent example is the cellular telecommunications tower). Municipalities can protect against exclusionary challenges by including a “savings clause” in the zoning ordinance. In general terms, a savings clause provides for any use not otherwise provided for in the zoning ordinance. An example of a savings clause is a provision that any use not expressly provided for in the zoning ordinance shall be permitted as a

use by special exception [or conditional use], or a provision that any use not expressly provided for in the zoning ordinance as a permitted use the zoning officer shall apply the standards and requirements of the use permitted by the zoning ordinance that is most comparable in scale, character, and impact.

When an exclusionary challenge is lodged against a municipality, the municipality bears the burden of proof and must justify the exclusion of a proposed lawful use. A municipality cannot successfully defend against an exclusionary challenge by reliance upon having nominally provided for the use, as such practice will be challenged as illusory zoning. However, if the exclusionary challenge asserts that the land zoned for a particular use has been fully developed, a municipality may defend against an exclusionary claim on the basis that it has adequately provided for such use in light of demonstrable current demand in the community.

A total exclusion of any of the basic forms of housing is unlawful. MPC Section 604(4) says a purpose of zoning shall be to provide for “residential housing of various dwelling types encompassing all basic forms of housing, including singlefamily and two-family dwellings, and a reasonable range of multifamily dwellings in various arrangements, mobile homes, and mobile home parks”. In *Surrick v. Zoning Hearing Board of Upper Providence Township* the Pennsylvania Supreme Court established the fair share doctrine. It includes a multi-part test to determine if a municipal zoning ordinance appropriately and adequately accommodates a fair share of regional housing growth. Pennsylvania’s judicially-created fair share doctrine rests on constitutionally protected property rights.

Contents of the Zoning Ordinance: An Overview

The text of the zoning ordinance contains numerous regulations. Some of these apply equally to every area within the municipality. Others vary from zoning district to zoning district. MPC section 603 prescribes what types of provisions may be in zoning ordinances. The following is a basic explanation of these regulations.

Use Regulations – Control over the use of land is the foremost type of regulation contained within the zoning ordinance. All land within the municipality is divided into various zoning districts, with different types of land uses permitted within each zoning district. For example, specific zoning districts may be created for residential, agricultural, commercial, and industrial uses. This approach of segregated uses, known as Euclidean zoning, is traditional to zoning and seeks to assure compatibility between land uses. Other zoning approaches create zoning districts such as town center, village, conservation, and transitional which encourage mixing of uses and assure compatibility by performance or form standards.

Dimensional Regulations – Regulations establishing lot and building sizes and density and intensity of use are common to zoning. Different lot sizes may be established for each zone or for various types of land uses. For example, a single-family residential district may have a minimum lot size requirement of 10,000 square feet, while in a conservation district the minimum lot size requirement may be one acre or larger. There may be requirements for lot width and depth, and for front, side, and rear yards, which may vary from one district to another. These regulations may be in the form of minimums designed to provide sufficient light and ventilation to ensure privacy

and to protect public safety by maintaining space between buildings and between streets, or they may be maximums designed to maintain the historical integrity or traditional neighborhood character of an area. Building floor areas and heights, as well as the amount of lot area buildings occupy, can also be controlled.

Additional regulations – Zoning ordinances usually contain additional regulations addressing use of land and buildings for parking and signs. These types of regulations are used to promote public safety and enhance community character objectives. Off-street parking requirements generally specify a certain number of spaces for each type of land use. For example, apartment buildings may need two parking spaces per dwelling unit, while an apartment for the elderly may only need one space per unit. Places that generate a high volume of traffic require more parking spaces. For offices, one space may be required for each occupant, plus additional spaces for visitors. It is not uncommon for retail stores to have parking standards based upon floor area; one space for every two hundred square feet of gross leaseable area, for example. In terms of signs, zoning regulations typically regulate a variety of characteristics that affect safety and mobility of motorists and pedestrians. These include number, size, location, and placement of signs, plus lighting, flashing, moving parts, continuous changing content, and structural integrity of signs. MPC section 605(2)(vii) provides authority for floodplain regulations to be included in zoning ordinances. In Pennsylvania, the Flood Plain Management Act (Act 166 of 1978) requires all flood-prone municipalities to enact regulations controlling development in identified floodplain areas. Regulations must meet minimum specifications of the National Flood Insurance Program and typically require elevation and flood-proofing of structures.

Nonconforming Uses and Structures – When any zoning ordinance is enacted, lawfully existing structures, lots, and uses of land may not comply with new zoning regulations. These are known as nonconforming uses, lots, or structures. The right of such nonconforming conditions to continue is constitutionally protected. Such nonconformities may continue until abandoned. As established by the Pennsylvania courts, abandonment requires both actual abandonment and the intent to abandon the nonconformity. Additionally, the right of a commercial or industrial nonconforming use to expand upon the lot occupied by the business at the time of the enactment of the ordinance that made the use nonconforming in order to maintain economic viability or to take advantage of increases in trade also is constitutionally protected. This principle is known as the doctrine of natural expansion. Municipalities may regulate expansion, change, restoration, and abandonment of such uses by provision in the zoning ordinance of reasonable restrictions, so long as the constitutionally protected rights to continue and expand are respected.

Administrative Regulations – Zoning ordinances also contain regulations necessary to administer the ordinance which typically provide for:

- A zoning permit system by which proposed development and uses of land and buildings are submitted to the municipality for review and approval if conforming to the zoning ordinance;
- Procedures for enforcing zoning violations;
- A zoning officer to be appointed to administer the ordinance and review and issue zoning permits (See Planning Series No. 9: The Zoning Officer); and

- A zoning hearing board to be appointed to hear and decide requests for variances, special exception uses, and appeals of zoning officer determinations and validity of the zoning ordinance (See Planning Series No. 6: The Zoning Hearing Board);
- Reasonable fees for administering the zoning ordinance.

Zoning Districts

The fundamental aspect of a zoning ordinance is the establishment of zoning districts or “zones.” The ordinance establishes, in text and on a map, different zoning districts at different locations in the municipality. Each zone contains a unique set of land use rules that specify 1) permitted uses of land and buildings; 2) density and intensity of land use as expressed by lot, setback, yard, area, and height requirements; and 3) other requirements to promote public health, safety, and welfare, and achieve MPC-authorized zoning purposes.

The design and mapping of zoning districts is typically based on two things: 1) the goals and community development objectives of the municipality, including what types of land uses and character of development are desired at which locations in the municipality and 2) “reality” factors that influence suitability of certain land uses, including environmental conditions (soils, slope, wetness), economic factors, and availability of public infrastructure (roads, utilities, parks) and services (police, fire). A comprehensive plan is the primary means for a municipality to study local conditions and set objectives for the design of zoning districts.

Section 605 of the MPC provides the authority for creation of zoning districts. It says various zoning districts can be created by applying different provisions to different classes of situations, uses, and structures. It also says provisions shall be uniform for each class of uses or structures within each zoning district. Section 605 also provides flexibility for additional zoning classifications where needed to address transitions between zoning districts, regulating non-conforming uses and structures, and regulating uses near major transportation facilities, natural features, public buildings and grounds, places with historical/architectural value, and other places having special character or use. Lastly, Section 605 requires that all parts of a municipality (except in the case of a county zoning ordinance) must be included in some zoning district.

The traditional approach has been to create separate zoning districts for residential, commercial, industrial, and other classes of uses. Single-use zones are often further classified by density or intensity, such as R-1 single-family residential, R-2 multi-family residential, C-1 downtown commercial, C-2 highway commercial, etc. This approach of segregated land uses is known as Euclidean zoning, named after the landmark case *Village of Euclid v. Ambler Realty Co.* (U.S. Supreme Court, 1926), in which the zoning ordinance upheld by the Supreme Court was designed in large part to limit encroachment of industrial uses into residential areas.

Mixed-use districts are becoming more common in zoning. Changes in the economy, lifestyle preferences, and community values are creating market demands for mixed-use development that traditional Euclidean zoning cannot accommodate. Communities are seeking the social and cultural vibrancy of mixed-use development. Also, mixed-use development is arranged more conveniently for walking (growing in demand) and for less auto dependency and its related traffic

and parking problems. Zoning ordinances are more commonly creating districts such as traditional neighborhood, town center, and village which promote mixed-uses.

Uses by Right

A zoning ordinance will identify for each zoning district a list of uses permitted by right. These are uses for which an applicant demonstrating compliance with specific requirements for such uses set forth in the zoning ordinance has a right to approval and issuance of a permit. The zoning officer administers these use provisions of the zoning ordinance.

Uses not expressly identified as permitted by right or permitted by special exception or conditional use are not permitted in the zoning district. Some zoning ordinances also list prohibited uses, but this is done only for emphasis. In such instance, if a use is not listed as prohibited, and it is not listed as permitted (by right, special exception, or conditional use), the use is not permitted in the district.

Special Exceptions and Conditional Uses

In addition to uses by right, zoning ordinances may designate uses permitted as special exceptions or conditional uses within a given zoning district. In enacting the ordinance including uses permitted by special exception or conditional use, the governing body makes the determination that these uses are not contrary to public health, safety, and welfare. Rather, they are permissible and legitimate uses within the zoning district. Their designation as special exceptions or conditional uses subjects them to additional criteria and safeguards and a closer examination by a body beyond the zoning officer in granting their approval. For example, a zoning district may provide for single-family houses by right, but may provide for townhouses by special exception or conditional use. Both uses are permitted within the zoning district. However, the individual wishing to construct townhouses is subject to additional application and review procedures and must meet additional safeguards and criteria to proceed with his or her plans.

Special exceptions and conditional uses are usually reserved for those land uses that will have a significant impact on the zoning district or the whole community, or for those uses that necessitate additional safeguards. These additional safeguards take the form of specific standards for special exceptions and conditional uses. Such standards must be stated in the zoning ordinance. The applicant for a special exception or conditional use is required to demonstrate conformance with the specific standards stated in the zoning ordinance; having done so, the applicant is entitled to approval of his or her special exception or conditional use. In general terms, a specific standard is one that allows compliance to be objectively measured. Often a zoning ordinance contains subjective standards as well as specific standards. However, those objecting to the application – not the applicant – bear the burden of proving that the proposed development does not conform to the subjective standards. And the objector must prove noncompliance with a subjective standard with credible and particularized evidence and further prove that the proposed use will create harm greater than normal for a use of that type.

The prime difference between a special exception and a conditional use is the entity making the decision on the application for approval of the proposed use. Special exceptions are presented to the zoning hearing board for approval. Conditional uses are presented to the governing body of a

municipality. The decision to provide for a use as a special exception or a conditional use in the zoning ordinance is in the sole discretion of the governing body. That decision rests on such factors as whether the governing body seeks to retain an active role in the review and administration of the zoning ordinance for such uses and the impact of the use on the community. See Planning Series No. 7: Special Exceptions, Conditional Uses and Variances.

Variances

A variance is a means to obtain relief from the strict administration of the requirements of the zoning ordinance. It enables a property owner to use his or her land which, due to specific location, topography, size, or shape, would otherwise not be suitable for development under the strict application of the requirements of the zoning ordinance. It is a permission granted as relief from the unnecessary hardship that would be imposed by strict administration of ordinance provisions. Only the zoning hearing board has authority to hear and decide upon an application for variance from a requirement of the zoning ordinance. The zoning officer has no power to grant variances. The governing body has no power to grant variances.

Section 910.2(a) of the MPC contains the criteria for the grant of a variance. A municipality has no authority to modify these criteria by different provision in its zoning ordinance. The zoning hearing board is required to apply these criteria to the application for variance that has been presented.

The zoning hearing board may grant a variance provided that all of the following findings are made where relevant:

1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located.
2. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
3. That such unnecessary hardship has not been created by the applicant.
4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

In the case of a use variance (as contrasted with a dimensional variance), in addition to the statutory criteria, the zoning hearing board must find one of the following (a) the physical conditions of the property are such that it cannot be used for a permitted purpose; (b) the property can be conformed for a permitted use only at a prohibitive expense; or (c) the

property is valueless for any purpose permitted by the zoning ordinance. *Allegheny West Civic Council, Inc. v Zoning Bd. of Adjustment*, 689 A.2d 225 (1997).

In granting any variance, the board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of the MPC and the zoning ordinance. See Planning Series No. 7: Special Exceptions, Conditional Uses and Variances