

# THE ZONING ORDINANCE

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## PART I: CONSTRUCTING THE ZONING ORDINANCE

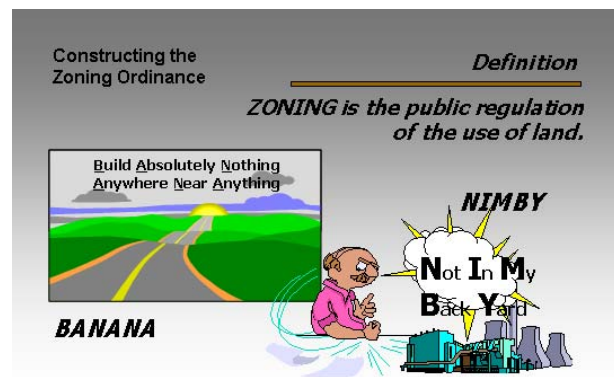
### WHAT IS ZONING?

By definition, **zoning** is the public regulation of the use of land. Specifically, zoning is used to regulate the height, footprint, and placement of structures; and to provide the processes and

outline the requirements necessary to gain approval for the use of land. Zoning is considered a **police power** regulation; one of many such laws (including building and health codes) designed to protect the public health, safety and general welfare of a community.

Perhaps the most troublesome aspect of zoning and the exercise of local control over land use, is the need to balance the diverse, often competing, interests of the property owners and neighboring residents. These competing interests are inherent to the basic concept of property rights. On the one hand, the law tells us that residents have the right to peace and quiet of the their neighborhoods, and to have the value of their property protected. Conversely, we are also told that owners of property have the right to a reasonable return on their investment through use of the land, and that zoning may not deprive the owner of that return.

In addition, there are special interest groups of people, many of whom follow the **NIMBY** and **BANANA** principles. The NIMBY's frequently agree that the project is well designed, needed in the community, but they'll argue that it is being located in the wrong place. "Not In My Back Yard!" is their battle cry. Others may believe that this particular project should not be built anywhere in the community, or perhaps anywhere at all. Their motto is "Build Absolutely Nothing Anywhere Near Anything!" or BANANA, for short.



Caught between these groups with such diverging views are the local authorities for zoning; the Zoning Administrator, the Planning Commission, the Board of Appeals, and the elected legislative body. If policies and zoning are compatible, land-use decisions are easier to make; but all too often this is not the case. While one group of citizens may support a policy and the zoning process used for its implementation, another group may be just as strongly opposed.

Satisfying all of the parties with such conflicting views is simply not possible, and the intent of zoning is to avoid the necessity of trying to judge between them. Instead, zoning provides some basic principles and procedures designed to treat each person, property, and point of view in a fair and consistent manner.

The authority for local zoning derives from the Michigan Zoning Enabling Act. The Act highlights several purposes of zoning and describe legitimate governmental interests in the regulation of land use, including:

- protecting property values;
- implementing the master plan;
- protecting natural resources;
- preventing nuisances;
- insuring compatibility of uses;
- preventing overcrowding; and
- preventing the overuse of land.

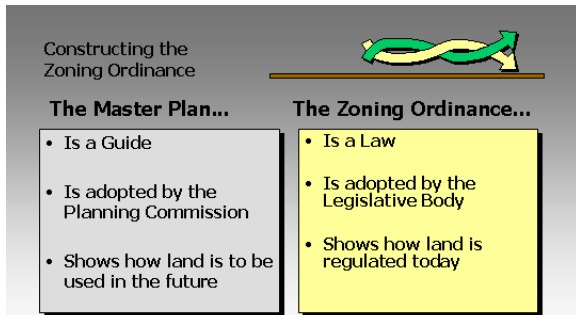
Where it exists, zoning affects every piece of property, including those owned by local and county governments and their various agencies, but excepting certain activities on state and federally owned lands, as well as certain preempted uses. The Michigan Legislature and Federal Congress have enacted legislation in many areas, which fully or partially precludes regulation through zoning. Some examples include:

- Manufactured home parks
- Oil and gas well drilling
- Wetlands regulation
- Group homes
- Foster-care family homes
- Sanitary landfills
- Gun clubs
- Prisons
- Solid waste facilities
- Family home day care operations
- Home arts and crafts
- Satellite dishes and telecommunications towers

### **The Master Plan and the Zoning Ordinance**

*The relationship between the Master Plan and the Zoning Ordinance is critical!*

Although both documents address land uses, there are significant differences between the two. One of the principal differences is timing. The Master Plan is a declaration of **policy**, which describes the *intended* use of land at the end of a planning time horizon, which could be as far as 20 years in the future. Conversely, the Zoning Ordinance shows the **regulation** of land *today*.



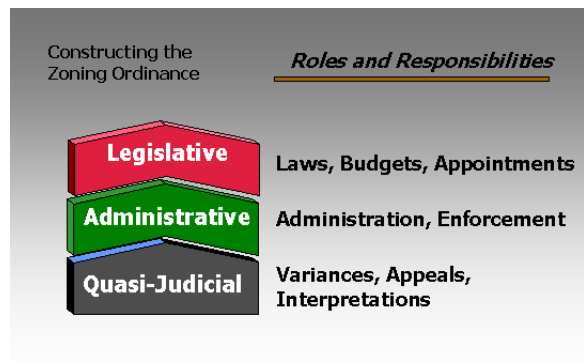
For example: the Master Plan may indicate that one area of a community is intended for industrial use, and a property owner may request that a parcel be rezoned to accommodate this. However, if the goals and objectives of the Master Plan state that industrial uses should not be established without public water and sewer services, and if the designated area does not have access to these services, a change in zoning to allow industrial uses would not be appropriate.

In order to ensure that incompatible land uses are not established, the Master Plan may instead designate that area for rural development, or agricultural use, with the stipulation that the property is intended as a future location for industrial uses, pending provisions for public utilities. In this example, the justification for requiring public utilities, as further described in the Master Plan, might be poor soil conditions which are unable to accommodate private septic and water systems on the scale necessary for industrial uses. (See Part II, Using the Zoning Ordinance for more on this subject.)

## ZONING ROLES AND RESPONSIBILITIES

### Zoning Decisions

As with all of government, zoning is built upon the principal of separation of power. Rather than being concentrated in one body or official, most zoning responsibilities are spread through the legislative body, a planning commission, and the zoning board of appeals. The decisions made by these three bodies related to zoning are considered legislative, administrative, or quasi-judicial, respectively.



### Legislative Decisions

Legislative decisions are reserved for the elected governing body of the community. Legislative decisions related to zoning generally fall into four areas.

- *Enacting local ordinances:* The Zoning Ordinance is the principal regulation governing the use of property within the community. Only the legislative body may adopt or amend ordinances.

- *Budgeting for planning and zoning activities:* The legislative body is responsible for the allocation of funds for such activities as paying staff or consultants, preparing plans, writing/amending ordinances, or attending training seminars.
- *Appointments:* The legislative body, often through the chief executive officer, is responsible for appointing (or approving) the various boards responsible for zoning.
- *Assigned duties:* The Zoning Act permits (but not necessarily requires) the legislative body to be the final approving authority for zoning actions, including site plan reviews, special land uses, and planned unit developments (unless done through a rezoning in which case the legislative body *must* be the final approving authority).

### Administrative Decisions

The majority of zoning functions are administrative, including the day-to-day enforcement, permitting, and customer assistance functions performed by the community's staff. In addition, many of the decisions delegated to the Planning Commission, such as site plan reviews, special land uses, and planned unit developments (if not done as a rezoning) are administrative. As administrative functions, these activities may be performed by any individual or body designated by the zoning ordinance, including the zoning administrator.

### Quasi-Judicial Decisions

Quasi-judicial functions, performed by the Zoning Board of Appeals, are activities that are similar to those performed by a court, where the Zoning Ordinance is reviewed and its application to specific properties interpreted. Only the Board of Appeals has the authority to waive or vary the requirements of the Zoning Ordinance, by granting a **variance**. A variance is justified only after a detailed review, following the appropriate standards, which should be included in the Zoning Ordinance. Since zoning regulations are written to protect the general health, safety, and welfare of the community, only in those instances where the application of the requirements of the Zoning Ordinance are patently unfair should relief from the requirements of the ordinance be granted. Without careful consideration of the standards of review, the actions of the Board of Appeals can have the effect of rewriting the Zoning Ordinance.

## **Zoning Responsibilities**

The following table outlines the various zoning decisions that may be made. Note that the Zoning Administrator may be given approval authority for some decisions.

Table I: Types of Zoning Decisions

Zoning Decision	Legislative Body	Planning Commission	Board of Appeals	Zoning Administrator
Zoning Ordinance Adoption	<b>R*</b>			
Zoning Ordinance Text Amendment	<b>R*</b>			
Zone District Change (Zoning Ordinance amendment)	<b>R*</b>			
Special Land Use	<b>O</b>	<b>O</b>		<b>O</b>
Site Plan Review	<b>O</b>	<b>O</b>		<b>O</b>
Planned Unit Development (rezoning)	<b>R*</b>			
Planned Unit Development (Special Land Use)	<b>O</b>	<b>O</b>		<b>O</b>
Variance (Use or Nonuse)			<b>R</b>	
Appeal			<b>R</b>	
Ordinance Interpretation			<b>O</b>	<b>O</b>

R = Required decision: final approval authority required

O = Optional decision: final approval authority must be designated in the Zoning Ordinance

\* After recommendation from the Planning Commission

## THE STRUCTURE OF THE ZONING ORDINANCE


The content and format of different Zoning Ordinances varies widely depending on the many influences affecting that particular community. The nature and content of an ordinance will often depend upon the views of the author, past ordinance language, community attitudes, and numerous other influences. Therefore, the content and format suggested as part of this workshop should be considered an example.

Constructing the Zoning Ordinance *Structure*

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**The Structure of the Zoning Ordinance**

- Administrative and Legal
- Definitions
- General Provisions
- Zoning Districts
- Development Requirements
- Board of Appeals
- The Zoning Map




Constructing the Zoning Ordinance **Structure**

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**Keys to a "User Friendly" Ordinance**

- Adoption/Revision Dates
- Table of Contents
- Index
- Graphics
- Use of Tables and Charts
- Consistent Numbering
- Logical Organization
- Clear Language



There are a number of items that can be included in the ordinance to make it easier to use and interpret, such as quality graphics, an effective table of contents, straightforward tables and charts, and, perhaps most importantly, the use of clear and concise language.

### Administrative and Legal Requirements


There are several legal and administrative requirements that every Zoning Ordinance *must* contain. These are outlined clearly in Table II below.

Constructing the Zoning Ordinance **Structure**

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**Administration and Legal**

- Title, Purpose, Scope and Effect
- Adoption/Effective Dates
- Severability
- Enforcement
- Amendments
- Duties and Responsibilities
- Others



*TABLE II: Legal and Administrative Requirements for Zoning Ordinance Contents*

Section	Purpose/Intent
Title	“This Zoning Ordinance may be known and cited as the City of Paris Zoning Ordinance.”
Scope and Effect	Indicates that the Ordinance is intended to apply to all properties, but does not take the place of any other ordinance; where another ordinance requires a more stringent action, that ordinance should prevail.
Adoption and Effective Dates	Notes when the legislative body adopted the Ordinance, and on what date the Ordinance actually took effect. This date is particularly important to establish a time frame when the provisions of the Ordinance are applied to individual properties.
Severability Clause	This provision declares that if any one part of the Ordinance is overturned by a court, the remainder of the Ordinance is not affected.

Section	Purpose/Intent
Enforcement Provisions	These set out the determination and consequences of violations of the Ordinance (see Part II for more information related to enforcement).
Amendment Procedures	Outlines the required steps to amend the Ordinance (either changes to the zoning map - rezoning, or changes to the text). This may be as simple as including a reference to the Zoning Act, unless the community elects a more involved process.
Duties and Responsibilities	These provisions may be added to further detail the duties of the Zoning Administrator or other officials responsible for administration and enforcement of the Ordinance.
Purpose	Normally, the Purpose of the Ordinance is taken directly from the Zoning Act in order to establish a clear link between the community's Ordinance and the authority granted by the State.
Other Provisions	Other provisions related to the administration of the Ordinance may be included. It is not normally necessary to include administrative procedures covered by other Ordinances, such as building permits.

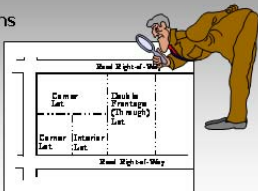
Constructing the Zoning Ordinance

**Structure**

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**Definitions**

- Definitions - Not Regulations
- Graphics
- Organization
- Use when needed, but accept common meanings



## Definitions

The definition chapter is one of the most important parts of the Zoning Ordinance. During the drafting of the ordinance, it is useful to keep a list of terms that should be defined. Some will be obvious, such as yards, types of lots and lot lines; and others will be required for certain regulations, such as “adult uses”. Other definitions, like “family day care” are required by law or by court rulings.

*Key rules for definitions are:*

- Regulatory language should not be used within definitions.
- Graphics should be used where appropriate. Graphics can not substitute for text; they should only be used to demonstrate the application of the text.
- Definitions should be organized for ease of use. An alphabetical listing, for example, is a useful method and allows for easy amendments.
- Definitions are a must if a term may be interpreted in more than one way.

- Certain definitions are commonly accepted and should not be modified except under unusual circumstances. These include lot and yard definitions and other similar terms. (See Part II, Basic Terminology for more discussion on this topic.)

## General Provisions

The general provisions of an ordinance have the greatest potential for controversy, primarily because they often affect many properties and apply in nearly all zones. For example, regulations for home occupations are often placed in the general provisions section, since they are normally permitted in most or all residential zoning districts. Other examples of General Provisions include:

Constructing the Zoning Ordinance *Structure*


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**General Provisions**

General Provisions apply to all, or nearly all zoning districts.

Common Provisions

- Accessory buildings and uses
- Fences
- Antennas
- Recreational vehicles
- Nonconforming regulations

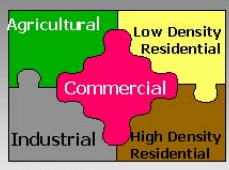


- accessory buildings and uses;
- fences;
- satellite dish regulations (over one meter in diameter);
- parking of recreational vehicles;
- projections into yards for architectural features;
- height exceptions (chimneys, silos, etc.);
- nonconforming lots, buildings, and uses.

## Zoning Districts

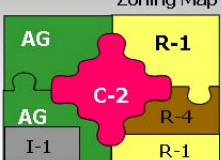
Constructing the Zoning Ordinance *Structure*

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Master Plan  
Future Land Use  
Classifications

**Zoning Districts**



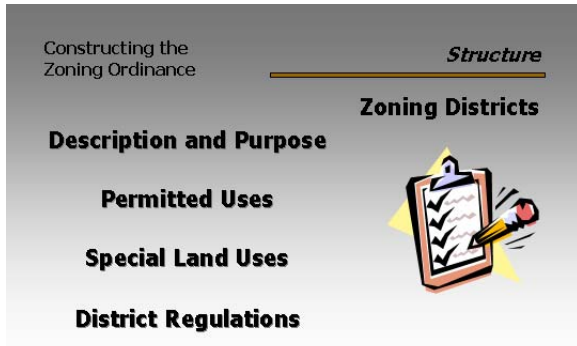
Zoning Map

Zoning districts are used to implement the various land use classifications that appear in the Master Plan. A **zoning district** is a defined geographic area within which specified land uses are permitted. The Master Plan will generally determine the complexity of the available zoning districts. Before deciding on the appropriate zoning districts, the Master Plan's Future Land Use classifications should be carefully examined. The uses permitted and the density of zoning districts should be directly related to the uses and

intensities outlined in the land use classifications of the Master Plan

The number and complexity of zoning districts will vary widely from one community to another. For instance, a rural township with little development potential might need only one or two commercial categories (e.g., Neighborhood and General Commercial). On the other hand, a township experiencing more urban development might have a greater variety of commercial

districts, such as a separate office district, Highway Commercial, Central Business District, or others.



One of the problems with many ordinances is an excessive number of districts, some of which may not be significantly different from others. In many instances, it will be possible to combine some of the districts, using the Special Land Use provisions to be more specific regarding the locations of certain uses.

The Ordinance language for each zoning district should follow these general guidelines:

Description and Purpose

This opening section will be used to describe the general intent of the district, often using language taken directly from the Master Plan. Using the Plan’s language helps create a direct tie between the zoning district and the appropriate land use classification.

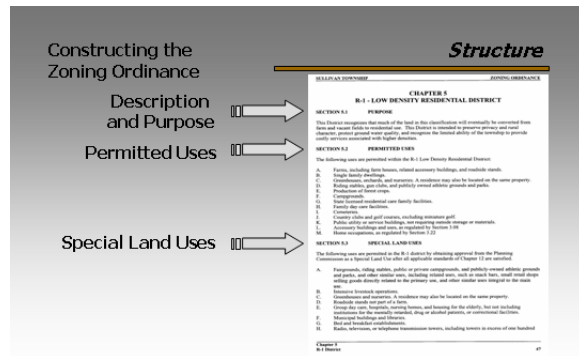
Permitted Uses

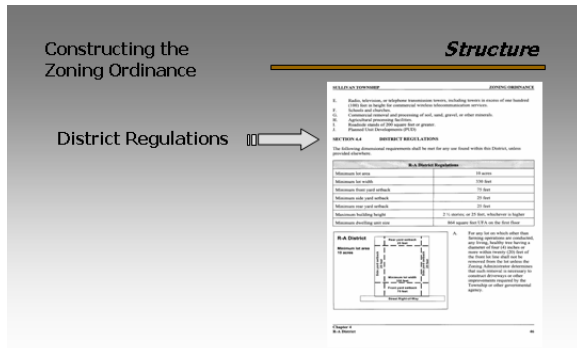
Each district will have a list of uses to be permitted “by right,” without any further discretionary approvals, although some may require a site plan review. Permitted uses are those that the community will accept in any location within the district. There are some uses that, by law, must always be permitted under certain conditions. Examples include:

- Family day care must be allowed wherever single family homes are permitted.
- Family foster care (fewer than 7 residents) must be allowed wherever single family homes are permitted.
- Home occupations must be permitted to include instruction in crafts and fine arts.

Special Land Uses

The Zoning Ordinance may also include a separate list of uses, known in the Zoning Act as Special Land Uses (SLU). SLU’s are generally compatible with permitted uses, but must be individually approved by the community’s zoning authority. SLU’s are sometimes known as “conditional uses” or “special exception uses.” More information on Special Land Uses will be addressed in Part II.





### District Regulations

Each zoning district will also contain requirements for lot sizes and widths, setbacks, dwelling unit sizes (residential districts), lot coverage, height, and other dimensional requirements. District regulations should be listed within each district (for the convenience of the casual or infrequent user), although some Ordinances list them in a single table as a “schedule of regulations.” Other dimensional requirements may apply to certain Special Land

Uses allowed in the district, but these requirements are most often listed in the specific SLU provisions. The district regulations may also contain special provisions that apply only for that district. For example, a Highway Commercial district could contain a provision that prohibits parking in the front yard setback.

### Development Requirements

The Zoning Ordinance will also contain other specific development requirements, such as:

- off-street parking and loading area requirements;
- special land use application, review, and design standards;
- site-plan application process and review standards;
- environmental regulations (critical dunes, erosion protection, wetlands, etc.);
- sign regulations;
- nonconforming property regulations (if not included in the General Provisions);
- landscaping, access management, lighting, or other special considerations.



Although many of these provisions are fairly standard, other, more specialized, provisions will be more effective if supported by language of the Master Plan. For example, if the Zoning Ordinance is to include specific landscaping or access management requirements, the Master Plan should be checked to ensure that it calls for improved aesthetics, landscaping, sign control, driveway controls or other similar actions. Regulations for environmentally sensitive areas should also be supported in the Plan by a description of the resources that are to be protected and the importance of those resources to the community.

Of all the various development requirements, some of the most important involve the requirements for individual zoning approvals. The Ordinance *must* include specific provisions for approvals, including:

### Application Requirements

The Ordinance must provide information describing the requirements for the acceptance of a full and complete application. A full application will include, at a minimum, a completed application form, a legal description of the subject property, a review fee (if any), and the required number of site plan copies (if needed). Application deadlines should also be indicated. Most applications should require at least a 30-day submission period prior to the next regularly scheduled meeting of the review body.

### Review Process

The Ordinance must state what individual or body has the authority to grant final approval (see Table I for Zoning Responsibilities) and what process will be used to review the application. Processes include public hearing requirements, which may be a reference to the Zoning Act.

### Approval Standards

All zoning approvals and denials *must* be based on standards written into the Zoning Ordinance, with the single exception of amendments to the Zoning Ordinance. If the proposal complies with those review standards, the application *must* be approved. Additional information on review standards is included in Part II.

## **Board of Appeals**

A chapter of the Zoning Ordinance should be devoted to the formation and responsibilities of the Zoning Board of Appeals, along with the application process, review standards, and relevant requirements. The makeup of a Board of Appeals differs between types of communities. The specific requirements for the Board for your particular community are contained within the Zoning Act.


Constructing the Zoning Ordinance

*Structure*

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**Board of Appeals**

- Membership
- Responsibilities
- Applications
- Hearings
- Review Standards



## The Zoning Map

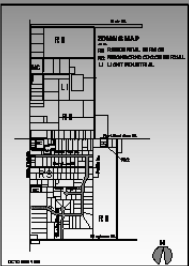
Constructing the Zoning Ordinance

**Structure**

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**The Zoning Map**

- Part of the Ordinance
- Geographic representation
- Official Map
- Rezoning - Amendments to the Zoning Ordinance



The zoning map is not a separate document or graphic; it is an integral part of the Zoning Ordinance. The map illustrates the geographic location of the Ordinance's districts. The map must be drawn as accurately as possible to avoid disputes over boundaries. An "official" map must be maintained as the source document for determining district boundaries. The official designation should be noted on the map and amended as rezoning are approved.

## Common Ordinance Errors

Although ordinances vary widely between communities, there are some common errors that may be found in many outdated ordinances. Here are a few. You may want to check your own community's ordinance and see how many of these it contains.

1. Lack of specific regulations for signs, accessory buildings, etc. (Each of these should include sizes, numbers, and locations.)
2. Regulatory language inserted into definitions
3. Parking requirement errors: excessive parking space sizes; regulations which use number of employees for computing the number of parking spaces required; lack of definition of "seat" for pews or benches
4. Unclear definition for "front yard", especially on corner or waterfront lots
5. Excessive number of zoning districts; little or no special land use provisions
6. Lack of minimum lot width or size requirements in commercial or industrial districts
7. No provisions for foster-care or day-care facilities
8. Treatment of condominiums as a use
9. "Pyramid" or cumulative zoning districts
10. Confusion between use variance and dimensional variance language
11. Lack of clear and *defensible* variance and appeal standards
12. Failure to indicate from where setbacks are measured
13. Lack of detailed submission standards and requirements for zoning approval applications
14. Listing specific fees in Ordinance, requiring an amendment every time fee is changed
15. Lack of a clause regarding resubmission of applications after denial, for special land uses, planned unit developments, variances, etc. (Usually, applicants must wait a given period of time before a denied application may be resubmitted.)


Constructing the Zoning Ordinance

**Structure**

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**Common Errors**

- Mixing definitions and regulations
- Failure to update Master Plan/or Ordinance to reflect Plan changes
- Lack of clear standards
- Excessive # of zoning districts
- Unclear application and approval process
- Poor organization
- Obscure language



16. Lack of “drop dead,” or expiration, dates for site plan approvals.
17. Failure to distinguish between “yard” and “required yard”

### **Adoption (or Amendment) of the Zoning Ordinance (including rezoning)**

The adoption of a new Zoning Ordinance, as well as amendments to an existing Ordinance, including a change to the zoning map due to the rezoning of property, must be accomplished according to the hearing and notice requirements of the Zoning Act. A request for a change in zoning, or a text amendment to the Ordinance, may be initiated by the Planning Commission, by the elected legislative body, or by an applicant who has some interest in the property affected (ownership or option, or, at a minimum, the written permission of the property owner). The adoption or amendment process must start at the Planning Commission, and several steps are required for completion.

1. The Planning Commission is must conduct a public hearing, which subject to very stringent public notice requirements, which can be found in the Zoning Act. Notices must be published and sent 15 days prior to the hearing.
2. Following the public hearing, the Planning Commission submits a report to the legislative body with their recommendation for action.
3. For townships, proposed zoning ordinances and amendments must be submitted to the county planning commission (or the regional planning commission, if there is no county planning commission) after the public hearing for their review and advice, unless the county/regional planning commission has waived that requirement.
4. The legislative body may elect to conduct further hearings, if they wish. The legislative body may then elect to adopt the requested ordinance or amendment as presented by the Planning Commission.
5. In townships, once a Zoning Ordinance or an amendment to a Zoning Ordinance is enacted by the Township Board, it is potentially subject to a voter referendum.
6. Publication requirements:
  - Once adopted, the ordinance or amendment will be in effect seven days after its publication. Publication must be accomplished within 15 days following adoption.
  - The published notice for new Zoning Ordinances need only indicate that such an ordinance was adopted (the Zoning Act contains specific language) with a brief summary. The effective date, as well as a place and time where a copy can be obtained must also be included.
  - Published notices of amendments may print it in its entirety, or simply contain a summary of the effect of the amendment. For rezoning, this must include a geographic description of the properties affected.

## PART II: USING THE ZONING ORDINANCE

## BASIC ZONING TERMINOLOGY

### Learn the Language

Travelers to foreign lands are often advised to learn some of the basic words and phrases of the country to which they are traveling. At times, the language of zoning is all too similar to a foreign tongue. Many of the terms have very specific meanings and interpretations, not familiar to those who have to use them or are affected by them. In addition, zoning terms have a number of specified legal meanings and interpretations, arising from numerous court cases, legislative actions, and legal opinions.

In this land of unfamiliar words and phrases, using the wrong words can have far reaching consequences. As a result, it is important that anyone making decisions based upon the Zoning Ordinance be familiar with the basic terminology and meanings of the Ordinance. It is equally important that each person have a clear understanding of the intent and purpose of the regulations contained in the Ordinance.

There are many examples of Zoning Ordinance terms that seem similar, or which could seemingly be used interchangeably, yet have very different meanings. Some examples include:

- Variations and appeals: **Variations** are requests to vary from the strict requirements of the Ordinance. An **appeal** is a request to overturn the decision of another person or body.
- Front yard and front setback: The **front yard** is the distance from the front lot line to the nearest part of the main building. The **front setback** is the minimum distance established by the Ordinance for the placement of a main building.
- Nonconforming buildings and uses: Different rules apply to **nonconforming buildings** and **nonconforming uses**. For example, nonconforming buildings may be required to be made conforming, if destroyed to a point where the value of rebuilding exceeds some percentage of the total value of the building. Nonconforming uses can only be eliminated upon proof that the owner “intended” to abandon the use.

Using the  
Zoning Ordinance

### **Basic Terminology**

**Why do we regulate:**

- Front Yards
- Side Yards
- Accessory Buildings
- Parking
- Signs



Understanding the purpose of the Ordinance is the first step in using it effectively.

Clearly, a well-written set of definitions, with the use of graphics where appropriate, can help make the meaning of certain terms clear. But it is equally important that care be taken in drafting the language of the body of the Ordinance to ensure that the proper terms are used.

### **Purpose and Intent**

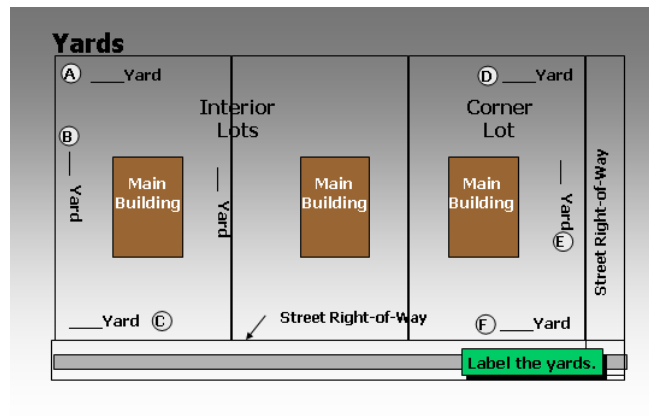
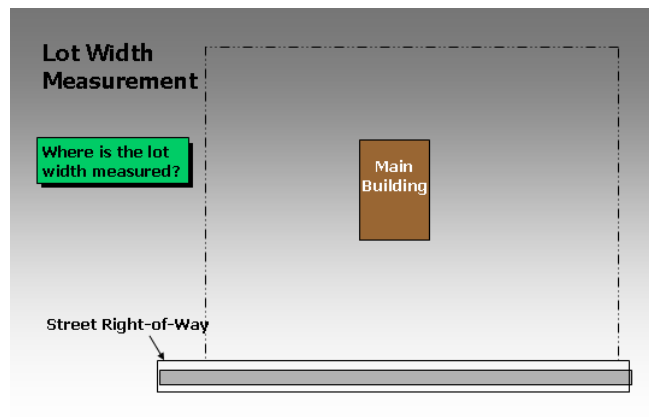
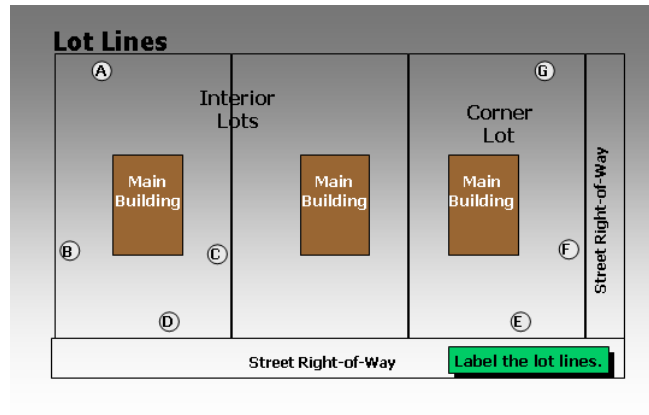
Equally important, each member of the Planning Commission, legislative body and especially the Board of Appeals, should have a clear understanding of the intent and purpose of any zoning regulation. This goes beyond simply understanding the meaning of the terms; it is also necessary to understand why the regulation is in the Ordinance, and what purpose it is intended to serve.

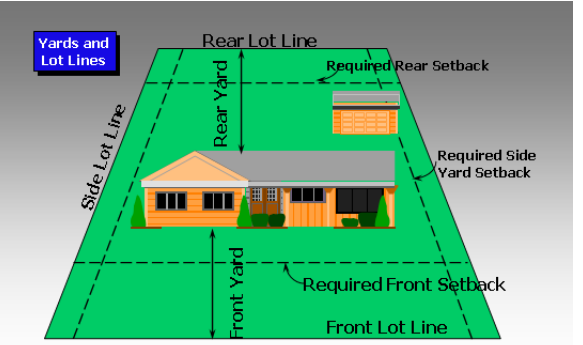
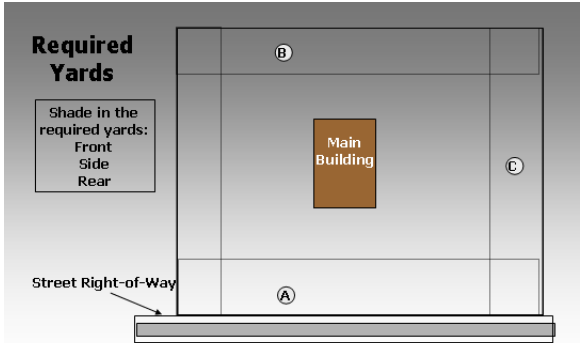
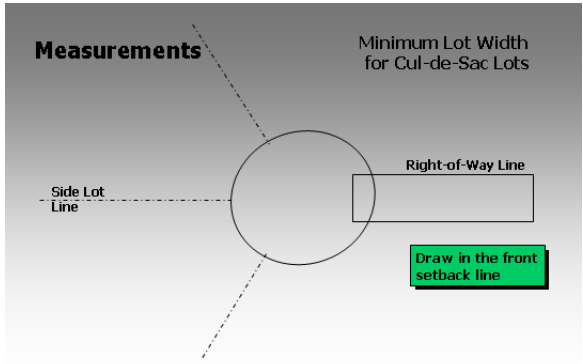
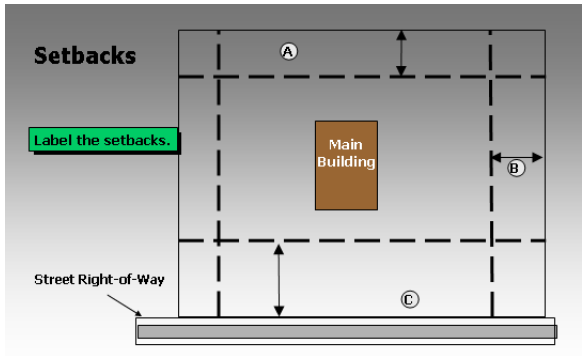
Some purposes are obvious. For example, parking regulations are needed to ensure that a sufficient number of spaces are available for the intended use, and that they are properly sized and placed. One way to test the intent of a regulation when it is not quite clear, is simply to have a general discussion about the regulation and what it accomplishes. If the Planning Commission or other body cannot determine the purpose of a regulation, a discussion should follow about whether or not the regulation should be included in the Ordinance.

For the Board of Appeals, this discussion is particularly important, since variances to regulations must only be granted if the request does not “impair the intent and purpose” of the Ordinance. At times, the Board of Appeals may be compelled to send a request to the Planning Commission, asking for clarification about the intent and purpose of the regulation.

# PLANNING EXERCISE: BASIC ZONING TERMINOLOGY

This sample exercise is provided for instruction in some basic terms, particularly with respect to lot sizes, areas, yards, and other common zoning issues. Please follow along with your instructor.





# ZONING REVIEWS

Although formed as a “planning” commission, in reality, commission members spend the majority of their time and effort in reviewing zoning applications. Legislative bodies deal with many more issues related to the development of the community but they also have a part to play in the zoning process. The board of appeals is called on only in those instances where unusual and extraordinary circumstances related to property are present.

These zoning reviews are permitted by the Zoning Act, which describes either specifically or generally the process and rules by which the reviews must be conducted. The following discussion highlights the major zoning reviews undertaken by the community. **Note:** Evaluations of rezoning proposals (amendments to the Zoning Map) are covered in Part III, *Keeping the Zoning Ordinance Current*.

## Special Land Uses

Often, communities are faced with proposed uses which, by the nature of their operation, may not always be appropriate in the location proposed by the applicant. One solution often used to address this problem is to rezone the property, or even to create a new zoning district. But there is another solution.

The Zoning Act permits consideration of **Special Land Uses (SLU’s)**. Special Land Uses are uses within a zoning district which are generally compatible with the character of the district, but which because of their individual characteristics may only be appropriate in specific locations. For example, a restaurant is a common business permitted in commercial districts. However, when a restaurant adds a drive-through window, it takes on other characteristics, which while still generally compatible in a commercial district, may only be acceptable in particular circumstances.

### Ordinance Requirements

In order to consider Special Land Uses, the Zoning Act requires three provisions in the Zoning Ordinance. *These requirements must be specified in the Ordinance:*

1. The Special Land Uses, activities eligible for approval consideration, and the body or official charged with reviewing Special Land Uses and granting approval.

Special Land Uses are written into the Zoning Ordinance through the individual zoning districts. Each district is divided into two use categories; one for permitted uses, which

Using the Zoning Ordinance

### Zoning Reviews

#### Special Land Uses

Uses that are otherwise compatible with the district, but require additional review due to special conditions and may only be appropriate in certain locations.

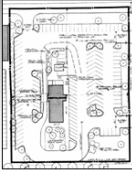
are allowed in any location, and a second list of Special Land Uses. Although there are no clear guidelines as to which uses deserve the closer scrutiny paid to special land uses, they will often have characteristics that make them unique. For example, uses that create unusual traffic patterns or generate higher rates of traffic may require special consideration. These may include car washes, drive-through restaurants, or other such uses.

Although any body or individual may be made responsible for approval of special land uses, the Planning Commission is the logical body to do so. Since a special land use approval is, by its nature, a land use consideration, the Planning Commission is in the best position to make those decisions.

2. The requirements and standards upon which decisions on requests for Special Land Use approval will be based.

Using the Zoning Ordinance

**Zoning Reviews**

Specific Standards	Special Land Uses
<p><i>"Sufficient space shall be provided to accommodate all vehicle queuing on the property, so no vehicles are required to wait on an adjoining street to enter the site."</i></p>	

Special Land Uses may have two sets of measures by which they will be judged. Firstly, there may be specific requirements that apply only to the use specified. For example, the Ordinance may require that driveways for auto service uses be placed at least 75 feet from an intersection of a public street.

Secondly, there may also be general standards that apply to all SLU's. These may include standards that require the


proposed special use to not create an undue need for public services, or that the use not create adverse impacts on the natural environment.

3. The procedures and supporting materials required for application, review, and approval.

As noted earlier, zoning applications should only be accepted after all required materials have been provided. A key element for consideration of a Special Land Use is the site plan. Site plan review is required for all special land uses. Therefore, a complete and accurate site plan is an essential part of the review of any application for a special land use.

Using the Zoning Ordinance

**Zoning Reviews**

General Standards	Special Land Uses
<p><i>"The special land use will not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors."</i></p>	

## Site Plan Review

As with Special Land Uses, the Zoning Act requires three provisions in the Zoning Ordinance to permit site plan reviews to be accomplished. Again, these requirements must be specified in the ordinance:

*The Michigan Association of Planning offers another training program specifically designed to cover the site plan review process; more detailed information may be obtained through attendance at this session.*

1. A listing of those activities which require site plan review, as well as the body or official charged with reviewing and granting approval.

The Zoning Act defines a **site plan** as, "the documents and drawings required by the zoning ordinance to insure that a proposed land use or activity is in compliance with local ordinances and state and federal statutes." The Acts also indicate that a community may "require the submission and approval of a site plan before authorization of a land use or activity regulated by the zoning ordinance."

Accordingly, the Zoning Ordinance must state which land uses or activities will need site plan approval and the conditions under which a site plan will be reviewed. For example, the Zoning Ordinance may require that all uses permitted by right (with some exceptions, as noted below) require a site plan review; or a site plan review may be required for all projects over a certain square footage or acreage.

Ultimately, it is up to the individual community to decide what zoning districts/uses will require review. Typically, single and two-family dwellings on individual lots and accessory buildings are not reviewed. However, a site plan review is required for all Special Land Uses and Planned Unit Developments. Although the site plan review can take place at the same time as these other reviews, there should be separate motions, one for the approval of the PUD or SLU, and a separate one for the approval of the site plan.

One caution: when reviewing a Special Land Use, the reviewing authority should not let itself be mesmerized by a site plan. The first issue that should be resolved is the suitability of the land use, not the quality of the site plan. After the issues of land use compatibility have been addressed, site plan details may be considered.

The Ordinance must specify the "body, board, or official," responsible for the review of site plans. Review responsibilities can be divided; the Planning Commission may review certain plans and the Zoning Administrator others. The legislative body may also be designated as the final decision maker for site plans, if desired. The Board of Appeals *may not* conduct site plan reviews, since they may be required to hear an appeal of a site plan decision.

2. The requirements and standards upon which decisions on requests for site plan reviews will be based.

The Zoning Act offers no specific guidance as to the standards for site plan review. Typical standards will address traffic circulation, landscape preservation, the adequacy of public facilities, drainage, lighting, and other similar items. The standards that are used to make a decision on the plan must be in the Zoning Ordinance. If the plan conforms to these standards and the other requirements of the Ordinance, *it must be approved*. An appendix to this handout contains example sets of standards that may be considered.

3. The procedures and supporting materials required for application, review, and approval.

- *Application:* The Zoning Ordinance should describe the minimum application requirements, which will normally be the same as those for other zoning reviews. Site plans should be submitted far enough in advance to allow the reviewers sufficient time to study the plan, to post required notices, arrange site visits, etc. Site plans reviewed by staff can have different submission and application procedures for "administrative" reviews normally conducted with the Building Permit process.

A final site plan should be as complete as possible, including details on utilities, curb cut design, drainage, signs, etc., to ensure compliance with the Ordinance and other community regulations. An application for review should not be accepted without ensuring that the items required by the Ordinance are on the plan.

- *Review:* The Zoning Act does not require a public hearing for site plan reviews, although some communities elect to have one. If a hearing is to be held, the Ordinance should specify the notice procedures to be used. At a minimum, the notice should contain a description of the property, the proposed use, the time and place of hearing, and where the plan may be reviewed and/or comments submitted.

- *The Two-Stage Review:* At times, it may be necessary or desirable to conduct a site plan review in two stages. A "preliminary" site plan review may be used for larger, more complex development projects, or for those times when an applicant wishes to get a general opinion from the reviewing authority before committing the funds to conduct the more thorough studies needed for a final site plan. Generally, the preliminary site plan will a "concept" plan, with fewer details, showing the general street layout, areas where various uses will be proposed, etc.

Using the Zoning Ordinance

	<b>Zoning Reviews</b>
<b>Site Plan Review</b>	<b>Two-Stage Review</b>
<ul style="list-style-type: none"> <li>Preliminary Site Plan               <ul style="list-style-type: none"> <li>Optional</li> <li>Less detailed plan</li> <li>Comments without approvals</li> </ul> </li> <li>Final Site Plan               <ul style="list-style-type: none"> <li>Detailed plan</li> <li>Final approval</li> <li>Drop Dead Date</li> </ul> </li> </ul> <p>Required for Special Land Uses/PUD's</p>	

The purpose of the preliminary review is to provide the applicant with some guidance in the preparation of a final site plan. Using this procedure, the Planning Commission grants preliminary approval with comments. This preliminary approval does not permit construction of the project, or relieve the applicant from obtaining approval of a final site plan.

The "final" site plan will have enough detail to allow the reviewers to determine whether or not the plan complies with the Ordinance. Approval of the final site plan grants the applicant permission to construct the project according to the approved plan (after receiving any other necessary permits).

A final site plan approval will often have a "drop dead" date if the project has not started substantial construction. This period is usually from six months to one year. This ensures that the conditions in the neighborhood at the time of approval have not changed.

- *Approval:* Following approval, the reviewing authority should sign three copies of the approved plan, one for the community's records, one for the applicant, and one for the Building Inspector (to make sure that the appropriate revisions are incorporated into the building permit process).
- *Amendments:* The Zoning Act states that: "subsequent actions relating to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance receives the mutual agreement of the landowner and the individual or body which initially approved the site plan."

Many Zoning Ordinances divide amendments into "major" and "minor." The Ordinance should specify what a major amendment would be; all others would be minor amendments. Major amendments might include such changes as increasing the size or moving the building by more than a determined amount, changes to the internal arrangement of a parking lot, altering access locations, or other similar changes.

For minor changes, the zoning administrator is normally given the authority to approve the amended plan. Major changes are resubmitted as a new site plan review, conducted in same manner as the original plan review.

- *Appeals:* An "aggrieved" person may appeal a decision on a site plan review. (A site plan review is considered an administrative decision, subject to appeal.) This provision should be written into the Ordinance for clarification. The appeal is taken to the Board of Appeals. In hearing the appeal, the ZBA is limited to a determination as to whether or not the Planning Commission or other approving authority properly applied the standards of the Zoning Ordinance. If they find that the standards were

not properly applied, they may reverse the decision and approve the site plan, along with any conditions that they feel are appropriate.

## Planned Unit Developments

A **Planned Unit Development**, commonly known by its abbreviation, PUD, is a regulation that allows some flexibility in the normal zoning requirements. In certain instances, these projects may be granted exceptions to such requirements as uses allowed, setbacks, density, and others. As with the other zoning reviews, the Ordinance must contain specific provisions about PUD's.

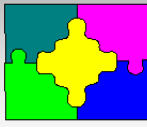
Using the Zoning Ordinance

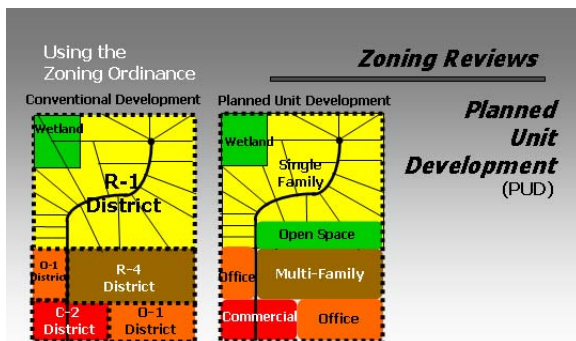
### Zoning Reviews

**Planned Unit Development (PUD)**

Land development process based on the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area.

Definition





1. The eligibility requirements and standards upon which decisions on requests for site plan reviews will be based.

Generally, PUD's should be reserved for special situations, such as preserving natural areas, development on larger parcels, allowing multiple or mixed uses on the same property, or innovative project designs. Some communities view PUD's as a method to "lock in" uses for various parcels.

Using a PUD solely for this purpose is not justified. PUD's are not a substitute for a rezoning. When reviewing a PUD, the planning and land use issues involved must still be addressed. PUD's are commonly used to address difficult site and land use situations, where rezoning or use variances are not appropriate remedies.

The Ordinance should indicate certain minimum requirements, which must be met before a PUD can be submitted. One important requirement is a minimum size. PUD's will generally be located on larger parcels, although there may be unique circumstances where small-parcel PUD's are a suitable solution to a specific problem. Other requirements could include compelling the property to be under one ownership, or jointly developed under multiple owners; specifying a minimum amount of open space; and other conditions that relate to the objectives desired by the community.

The PUD provisions may list separate objectives that a PUD is designed to achieve in order to help determine eligibility. For example, if a community goal (as expressed in the Master Plan) is preservation of the environment, this may be reflected in the PUD objectives as an intended purpose of the regulations. Other objectives will tend to paraphrase the language of the Zoning Act, which calls for "innovation in land use and


variety in design, layout, and type of structures constructed; economy and efficiency in the use of land, natural resources, energy and the provision of public services and utilities; encourage useful open space; and provide better housing, employment, and shopping opportunities."

Using the Zoning Ordinance
**Zoning Reviews**

**Planned Unit Development (PUD)**

- Eligibility requirements (size, uses, site features)
- Body or official approving (rezoning or special land use)
- Standards for decisions
- Application and review procedures (preliminary/final/phased)

**Ordinance Requirements**



2. The body or official charged with reviewing and granting approval.

PUD's may be approved by one of several methods:

*Rezoning:* A rezoning may be required, which will create a separate zone district with its own set of development requirements and approval standards for site plans. The PUD zone may either be mapped, as any other zoning district, or be described as a "floating" zone.

- *Mapped:* If the PUD is a mapped zone, a change is made to the Zoning Map to indicate the location of the PUD District. PUD's may be based on specific districts for each type of PUD, such as a Commercial PUD, Industrial PUD, or Residential PUD. The District(s) would state which uses were allowed and under what conditions. For example, a Residential PUD may permit residential uses by right, but require separate approval of small areas of commercial uses subject to certain restrictions.
- *Floating:* A floating zone is one that attaches special regulations to the underlying zone district. The basic district does not change, but the PUD zoning district requirements attach additional regulations to it. The zoning map continues to show the underlying district.

PUD's approved by rezoning will require a Zoning Ordinance amendment to implement the action. The amending ordinance will normally contain all of the site development requirements, any conditions of approval (conditions may be attached to an affirmative decision for any PUD), and other relevant information, such as site location, uses permitted, reference to a dated site plan, etc. The ordinance amendment should contain as much detail as possible in order to properly document the approval and the requirements attached to the approval. A Special Land Use PUD will be documented through the minutes of the meeting and any other administrative notices normally completed for any Special Land Use approval.

Properly written, there are no significant advantages or disadvantages to either PUD rezoning method. However, one aspect of the mapped district that may provide a slight

advantage is that the PUD is reflected on the zoning map to remind future commissioners and administrators that the PUD exists.

*Special Land Use:* PUD's may also be approved as a Special Land Use. This requires that the ordinance list PUD's under the appropriate zoning districts, and that standards and requirements be developed for their approval. The review standards may be the same as those for other Special Land Uses.

3. The procedures and supporting materials required for application, review, and approval.

All PUD's are required to receive a site plan review. The Ordinance may permit a larger, multiple-phase PUD to be reviewed on two levels. The first may be a preliminary approval a conceptual site plan, including a general description of land uses, road layout, and other major elements proposed in the entire PUD. The second may allow a detailed, final site plan review of individual phases. This review would ensure that the plans were generally in compliance with the concept plans and that they meet the requirements of the Ordinance.

As noted earlier, the review procedures may take a number of forms, but the procedure, including application and site plan requirements, as well as the processes to be used to evaluate the proposal, such as public hearings, staff reviews, etc., must be specifically stated in the Ordinance.

All PUD provisions must include the standards by which the development will be evaluated. The Zoning Act contains some guidance on suitable standards, but they will often include protection of the environment, general compatibility with adjacent land uses, ability to be served with public facilities and services, and protection of the public health, safety, and welfare. Other standards, such as those noted for site plan review, will also be applicable, since a site plan review is required for all PUD's

## VARIANCES

A **variance** is permission to depart from a requirement or limitation of the Zoning Ordinance. Variances may only be reviewed and approved by a Board of Appeals established for that purpose. The Zoning Ordinance should address two types of variances, **use** and **nonuse**, or **dimensional**.

Using the Zoning Ordinance

### Zoning Reviews

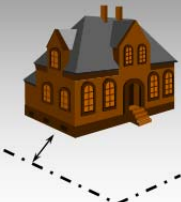
#### Variances - Definition and Proof

**Use**

- Allow use not otherwise listed in District.
- Proof of Unnecessary Hardship

**Nonuse (Dimensional)**

- Vary from the requirements of the Ordinance.
- Proof of Practical Difficulty




Using the Zoning Ordinance

### Zoning Reviews

#### **Use Variances**

- Only cities/villages and some townships/counties
- Allow use not permitted in district.
- Proof of *Unnecessary Hardship*  
Property cannot be reasonably used as zoned
- Variance must not alter the essential character of the area.

**The Paragon Rule**  
Rezoning denials cannot be litigated until all administrative remedies are exhausted! ( i.e. a USE VARIANCE)



### Use Variances

A use variance is a modification of the literal provisions of the Zoning Ordinance, which is authorized by the ZBA when strict enforcement of the Ordinance would cause unnecessary hardship for the property owner due to circumstances unique to the property. A use variance permits a use of land that is otherwise not allowed in that district.

The Michigan Zoning Enabling Act allows cities and villages to provide for granting of use variances in the zoning ordinance. Townships and counties that expressly provided for use variances in their zoning ordinances before February 15, 2006, or actually granted a use variance before that date, are authorized to continue to grant use variances; otherwise, a township or county may not grant a use variance. Any municipality that is allowed to grant use variances may decide (by amending the zoning ordinance) that they no longer wish to do so.

To obtain a use variance, the applicant must show an *unnecessary hardship* exists. This requires demonstrating that the review standards for obtaining the variance are met. Examples of these standards may be found in the appendix of this handout.

Rather than granting use variances, the community may consider rezoning the property to a more reasonable district, consider a conditional rezoning to limit the uses on the property (see Part IV), or amending the Zoning Ordinance by adding uses to the district to make it more functional.

### Nonuse/Dimensional Variances


A nonuse variance, also known as a dimensional variance, is a modification of the literal provisions of the Zoning Ordinance. This type of variance may be authorized by the ZBA, in specific instances when strict enforcement of the Ordinance would cause practical difficulties for the property owner, due to circumstances unique to the property. Nonuse variance requests are typically associated with modifications of required yard setbacks, building heights, parking requirements, landscaping buffering restrictions, and related building or facility placement matters and sizes.

Using the Zoning Ordinance

### Zoning Reviews

#### **Nonuse/Dimensional Variances**

- Permission to vary from the requirements of the Zoning Ordinance.
- Proof of *Practical Difficulty*  
Property right would be taken away if made to comply with the strict requirements of the Ordinance.
- Variance must be related to conditions of the property, not to the applicant.



To obtain a nonuse variance, the applicant must show *practical difficulty* by demonstrating that the review standards for obtaining the variance are met. Examples of these standards may be found in the appendix of this handout.


*Variations were never intended to be easily obtained.* Unfortunately, for some communities this is not the case. In most situations, the liberal granting of variances is a result of the Zoning Board of Appeals members feeling that they are there to grant relief from the Ordinance. In fact, the opposite is true; the ZBA is actually tasked with upholding the Ordinance, and granting relief only in those special circumstances when conditions unique to that property are present.


**Zoning Reviews**

Using the Zoning Ordinance

**Appeals**

- Decision has already been made
- Action is limited to determine if decision was properly made
- Decision based on record
- SLU and PUD appeals only if specifically allowed by the Ordinance





**Interpretations**

- Map interpretation based on rules
  - Text interpretations narrow
  - Keep records
- Benefit of doubt to applicant

## Appeals

The Board of Appeals may reverse, affirm, or modify a prior decision by an administrative official or body. Appeals of decisions on special land uses and planned unit developments may only be submitted if this action is specifically provided for in the Zoning Ordinance. Appeals must be filed within the time restrictions specified in the Ordinance.

## Interpretations

The Board of Appeals is the *only* body authorized to issue an official interpretation of the Ordinance. Interpretations are usually made with respect to the text of the Zoning Ordinance, or in the event that the location of a zoning district boundary is unclear. There are several general rules to be included in the Ordinance that will provide guidelines for interpretations. These guidelines will indicate, for example, that if a boundary appears to follow a particular line, such as a creek, then that is the boundary line intended by the map.

Text interpretations will normally be narrowly drawn, based on a thorough reading of the Ordinance as applied to the situation at hand. Interpretations should not have the effect of amending the Ordinance.

Other suggested guidelines include:

- If the Ordinance is silent on a particular use, and that use is not similar to others already listed in the Ordinance, then that use is not allowed, and the applicant should seek an ordinance amendment.
- Decisions should give weight to reasonable practical interpretations by administrative officials, if applied consistently over a long period of time.
- Records must be kept of all official interpretations.
- Where legislative intent is unclear, and the facts cannot be read to support only one interpretation, the benefit of doubt should go to the property owner.

## Conditions of Approval

All zoning approvals, with the exception of a rezoning, may be approved with conditions. Generally, conditions must be related to the review standards contained in the Ordinance. The Zoning Act provides some guidelines for reasonable conditions. By law, any imposed conditions must be:

- reasonable, and intended to protect natural resources, the health, safety, and welfare and the social and economic well being of people;
- related to a valid exercise of the police power;
- necessary to meet the intent and purpose of the Zoning Ordinance,
- related to the standards established in the Ordinance for the land use or activity under consideration; and
- necessary to ensure compliance with those standards.

One way to test a proposed condition is to look at the review standards and see if they would be met without the condition being placed on the approval. For example, if a review standard requires consideration of access and traffic circulation, and a proposed condition requires a plan to eliminate or relocate driveways, would the standard still be met if the driveways were kept or left in their original location? If not, the condition is appropriate. Conditions of approval must be included in the motion for approval.

## ZONING ENFORCEMENT

### The COP

Even the best ordinances are of little value without the willingness to enforce them. An effective enforcement program requires three essential pieces that together make up the **COP**: **C**ommitment; **O**rdinances; and **P**rocess.

#### Commitment

Without a strong commitment to an effective enforcement program, the quality and content of a Zoning Ordinance matters little. Commitment to enforcement may be evidenced in several ways. First, both the legislative body and the enforcing officer must have a strong philosophical commitment to enforcement. They must understand that once the Zoning Ordinance is adopted, it requires consistent and unbiased enforcement.

Using the Zoning Ordinance

### Zoning Reviews


**Conditions...**

- may be attached to any affirmative decision (except rezonings)

and

- must be related to the standards of review

"If this condition was not attached to the decision, the standards for review would not be met and the request denied."




Using the Zoning Ordinance

### Zoning Enforcement

An effective enforcement program requires a:

<b>C</b> ommitment:	The willingness to commit manpower and resources.
<b>O</b> rdinances	Ordinances that are effective and enforceable
<b>P</b> rocess	A process that allows due process and fairness



The legislative body must also be willing to support and encourage the efforts of enforcement officials by not attempting to influence or discourage enforcement against particular violators. Once the task of enforcement is given over to the proper officials, the only involvement of the legislative body should be ensuring that the official acts professionally and within the boundaries of his/her authority and discretion.

The legislative body must make available the necessary financial resources to provide personnel and equipment, including an enforcement officer. Communities that require the enforcement officer to also conduct building inspections, planning reviews, assessments, or other duties must understand that setting priorities will be necessary; there will certainly be times when one duty or the other will have to suffer.

Finally, there must be a strong commitment to legal action when necessary. Enforcement will suffer if violators are not subjected to court action when other efforts fail. If there is no desire or intention to enforce a regulation, it should not be left in force. This includes Ordinances that require technical or other resources that are not available to the community. A common example of this is the inclusion of industrial performance standards requiring technical expertise that is beyond the capabilities of the community.

Once a violation is discovered, enforcement actions should begin as quickly as possible. Lengthy delays in enforcement signal a lack of intent to correct a violation. If a violation is ignored for too long, a court will be far less likely to sanction any enforcement.

### Ordinances

Ordinances must be practical in order to be effectively enforced. As an example, until the Michigan courts addressed the issue, many Ordinances attempted to limit the number and relationships of individual in their homes. Proper enforcement required zoning officials to determine not only the number, but also the relationships of the people living in a home. The stated purpose of these provisions, to regulate overcrowding, while legitimate, was nearly impossible to implement.

An Ordinance must also be written so that it can be easily understood and applied. A simple test of this might be accomplished by asking the enforcement officer how he or she would interpret the text, and equally important, what process they might use in its enforcement.

### Process

Every community should have established enforcement procedures. Normally, the specific enforcement process will not be in the Zoning Ordinance. Rather, it is accepted as an administrative process, which allows for a certain amount of flexibility. Each set of procedures should include a few essential steps.

1. Discovery

The first decision to be made is how violations will be detected. Violations are generally discovered by complaint or through an active enforcement program. Complaint-based enforcement occurs when action occurs after an individual has reported a potential violation. One drawback to this method is the potential for claims of discriminatory enforcement. Those who are the subject of a complaint will often counter the enforcement officer with descriptions of other similar violations. When this occurs, it is important that the officer take note of these locations, but continue to address the violation at hand. It is also necessary to point out that when a violation is reported, the officer must actually observe and verify the violation.

An active enforcement program requires the enforcement officer to seek out violations on a regular basis. Although avoiding discriminatory enforcement, this method requires a significantly greater commitment of time and resources.

2. Notice

*First Notice:*

Once a violation is discovered, proper notice must be given prior to enforcement. The first notice may be verbal, either in person or by phone, or by mail. Even when a verbal notice is given, it should be followed by a written, mailed notice. Photographs or other visual evidence should also be gathered to verify the violation.

The first written notice should include, at a minimum:

- the name and address of the property owner (since the owner is ultimately the subject of enforcement actions),
- a description of the violation (including a copy of the ordinance or provision which is being violated),
- the date and by whom the violation was discovered,
- what action is necessary to correct the violation, and
- the date by which correction of the violation must be completed.

Important notes:

- The time limit given for correction should be somewhat related to the effort required. On the other hand, clear safety hazards should require immediate correction.
- Violations of the Zoning Ordinance may be appealed or a variance may be requested from the Board of Appeals. Unless a safety problem is present, enforcement actions are normally suspended until the Board acts on the request.

### Second Notice

Shortly after the date given for correcting the violation, the enforcement officer should visually determine whether or not the violation is still present. If the violation has not been corrected, the next step may either be legal action, or the sending of a second notice. If sent, the second notice will normally be more strongly worded, and be sent by return receipt mail. It is normally helpful to send a copy of any second notice to the community's attorney or prosecutor, alerting them to the possibility of further legal action. The second notice will generally contain the same information as the first, but with a shorter deadline for compliance.

### 3. Citation

Should all notices fail to gain compliance, legal action may be necessary. The method of legal action will vary depending on the nature of enforcement procedures used by the community. Violations may either be treated as a criminal misdemeanor or as a civil infraction. The latter is virtually the same as that used by the police for speeding tickets. To use civil infraction enforcement, an implementing ordinance must be adopted by the community, naming those officials who are authorized to issue infraction tickets.

There are different points of view as to the preferred citation method. The criminal process may be more effective because of the stigma attached to having a criminal record and the possibility of jail time. The civil infraction method may have the advantage of speedier action.

## PART III: KEEPING THE ZONING ORDINANCE CURRENT

## LAND USE CHANGES: EVALUATING REZONING REQUESTS

(Note: Conditional Rezoning is discussed in Part IV)

### Before the rezoning...

The first consideration when reviewing a request, is whether or not a rezoning is necessary. Often, rezoning is requested because a property owner wishes use a property for something not permitted in the district for which the property zoned. Another option may be an amendment to the present zoning district, adding the use requested. Since a Zoning Ordinance cannot anticipate every possible use that may be desired within a district, new uses may be considered as times and circumstances change. Obviously, the proposed use should be compatible with the other uses in the district in which it is being considered.

### If and when a rezoning seems appropriate...

As with any zoning related decision, the use of standards is essential for reaching fair and consistent decisions. Although the Zoning Act does not permit including written standards in the Ordinance for the evaluation of rezoning requests, a number of court decisions and professional and legal writings have resulted in some common evaluation tools. The following steps outline the major factors that should be considered when faced with an application requesting rezoning.

#### 1. Goals and Objectives:

Examine the proposal and its effect on the Goals and Objectives of the Master Plan. Determine which of these goals applies to this request, and whether or not granting the request would advance these goals.


A Plan that is not actively followed and implemented may discredit any future attempt to use the Plan as a defense for actions challenged by property owners or developers. Likewise, consistent and vigorous use of the Plan will lend credibility to the community's attempts to implement controversial land use decisions.

While the courts of the State of Michigan do not recognize the absolute authority of the Master Plan, they do lend much more credibility to actions that are consistent with a community's Plan. Keeping the Master Plan up-to-date is critical (in fact the Planning Acts require the Planning Commission to review the Plan every five years to determine if a update or a new plan is needed). A current Plan, reflecting the needs and desires of the community

Keeping the Zoning Ordinance CurrentEvaluating Rezoning Requests

*Step One*

- *Examine the proposal and its effect on the Goals and Objectives:  
Which Master Plan Goals apply to this request?  
Does the request advance these goals*
- Has the Plan been used consistently?
- Is the Plan current? Have the conditions on which the Plan was based changed significantly? (The 500 pound gorilla)



can be used to focus the discussion of individual projects, to see how they fit in the character of the community. An outdated Plan is subject to attack as not relevant to today's conditions. If the conditions upon which the Master Plan was developed have changed significantly since the Master Plan was adopted, the Planning Commission and legislative body should consider these events as part of their deliberation to insure that the Master Plan is current. Conditions that could effect the Plan include economic factors, demographic shifts, new utility lines, changing traffic conditions, or other factors that alter the basic character of the community.

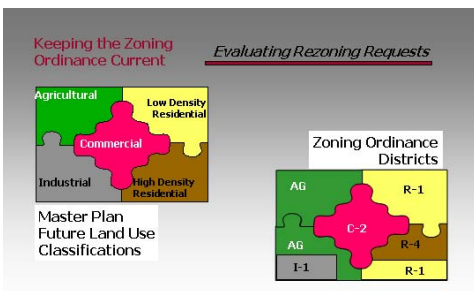
The reasons that Master Plans are begun vary widely; often they result from land use "crises," such as proposals for major developments that were not anticipated. Other times, the desire for a Plan comes from new residents or a new administration that wishes to set a new course for the community. Whatever the reason, the direction of the Plan, and of the community, should be written into the Goals and Objectives. To be most effective, the Goals and Objectives should have been developed jointly by the Planning Commission and the legislative body.

Examining the language of the Goals and Objectives will allow the Planning Commission to evaluate whether or not a proposed change advances or hinders the Goals or Objectives. Unlike the elements of future land use, discussed in the next section, Goals and Objectives are not considered to be as flexible as other parts of the Plan. If a proposed land use change conflicts with one or more of the Goals, and is approved, it may be time for the Planning Commission and legislative body to meet to discuss the overall community direction and philosophy.

## 2. Future Land Use:

Examine the Future Land Use section of the Master Plan and determine what conditions were present when the Plan was adopted, and whether or not any of those conditions have since changed.

Simply because a proposed land use change is consistent with the Future Land Use map does not mean it should automatically be approved. On the other hand, if a rezoning request is not



Keeping the Zoning Ordinance Current      Evaluating Rezoning Requests

*Step Two*  
*Examine the Future Land Use element of the Master Plan. What conditions were present and have any of those conditions changed since the Future Land Use Plan was adopted?*

- Applications consistent with Future Land Use should not be automatically approved.
- Applications not consistent with Future Land Use should not be automatically rejected.

consistently with that shown in the Plan, it should not automatically be rejected, particularly if the Plan has not been reviewed in some time. Each request should be evaluated with respect to the Plan with the idea that if the conditions that were originally considered when the Plan was adopted, have changed, then the Plan itself deserves reconsideration. However, if all of the preconditions of the Master Plan are met, and if the

request is in accordance with the Plan, approval of the request should logically be forthcoming. The heart of the Master Plan is Future Land Use. Proposals for land use changes must be evaluated in light of the *planned* use of the property and the vicinity.

### 3. Land Use Evaluation:

Examine the potential effects of the proposed land use change. Determine whether or not there will be any community impacts that should be considered, such as increased traffic, or environmental consequences.

Changing the zoning or land use designation on any piece of property can have far-reaching consequences, physically, environmentally, financially, and legally.

Therefore, a careful evaluation of the potential effects of a proposed land use change is essential. This step is not necessarily the review of a proposed zoning district, but rather a review of the range of land uses that may be involved should a change to the Master Plan be approved.

The key element in the review of any proposed land use change is the evaluation of the *complete range of potential land uses*, rather than simply reviewing any single use that may be proposed by an applicant. Keep in mind that ALL of the uses permitted in the proposed land use designation or zoning district have the potential to be placed on the site; not just the one shown on the site plan. To accomplish this, an evaluation of the full development potential of the site will be necessary. This is done by examining the lot and density characteristics of the proposed land use designation, along with any of the possible zoning designations that may be placed on the site.

Once the ultimate development potential is determined, the effects of that potential can be fairly evaluated. This evaluation involves a straightforward review of traffic, environmental impacts, and other physical factors, as applicable. Normally this examination will not include

issues such as financial strength of the applicant, increases in school aged children, whether or not the proposed land use will compete with other business, and any other factors that are beyond the control and authority of the community.


Keeping the Zoning Ordinance Current

Evaluating Rezoning Requests

*Step Four*

*Is the proposed zone district, along with all of its uses, compatible with the surrounding area?*

- Review proposed district and all of its uses.
- Site plans should not be considered, unless the rezoning is for a PUD.
- Evaluate maximum potential for development.



### 4. Compatibility:

Determine whether or not the proposed new zoning district, and *all* of its potential uses, is compatible with the surrounding area.

This step in the evaluation process is intended to examine the specific zoning district that is either proposed, or could be requested, as a result of the land use change. Determine if each of the uses that could be placed on the site are compatible with other uses in the immediate vicinity, especially in terms of density, character, traffic, aesthetics, and effect on property values.

As noted earlier, the *complete range of potential uses*, rather than any single use that may be proposed by an applicant must be compatible. Site plans should never be considered as part of a land use change or rezoning request (with the exception of a PUD). The Planning Commission and/or legislative body must not be swayed by a specific proposal from the petitioner.

Another legitimate part of this review is a determination as to the reasonableness of the existing zoning district. It is the right of every property owner to receive a reasonable return on the investment placed on property. This does not mean that zoning is a slave to the "highest and best use," which is not a zoning, but a real estate, term. It does mean that there should be a reasonable use available within the zone district. But if the property is capable of being used as zoned, there should be a compelling reason to change.

***Evaluate the full Development Potential***


A proposed amendment to the Master Plan is submitted that changes the land use designation for a ten-acre parcel from Low Density to High Density Residential. The Plan indicates that High Density allows for residential development of up to twelve units per acre. The applicant has submitted a site plan showing a development density of seven units per acre, stating that "the development will be at a lesser density than the Ordinance permits, but will be more upscale and lower density to attract the market that I am seeking."

While this objective may be commendable, and honestly stated, the Planning Commission must still consider the possibility of development at the full twelve units per acre. Changing the land use designation indicates willingness on the part of the community to fairly consider the development of the property to its full potential.

Keeping the Zoning Ordinance Current      Updating the Zoning Ordinance

***The best time to update the Zoning Ordinance is...***

- A. Whenever we get sued, and lose...
- B. When our attorney or planner tells us
- C. Whenever something comes up we hadn't thought of
- D. After the Master Plan is completed
- E. Once a year
- F. All of the above



**UPDATING THE ZONING ORDINANCE**

Zoning is a constantly changing process. Key indicators of the need to update the Ordinance may include court cases (particularly those at the appellate level or higher), legislative changes, and the creation of new uses.

**Litigation**

A frequent source of new or revised Zoning Ordinance provisions are court actions that may take place either within the community or in other communities. Decisions at the local or county courts only affect the communities directly involved. On the other hand, decisions by higher state courts, such as the state Court of Appeals and the Michigan Supreme Court affect not only

the communities that are the subject of the actions, but on any other community similarly situated.

Decisions from higher courts have created a number of changes in Zoning Ordinances throughout the state. Examples of this include the rules applicable to manufactured homes outside manufactured home parks, statutory definitions of “family,” regulations applying to mineral resource recovery (sand and gravel mining), and a host of others. Other decisions by the U.S. Supreme Court regarding such issues as land use takings and other important topics also demand attention.

It is essential that every community be aware of court decisions that may affect its Zoning Ordinance. This requires close communication between the administration and the municipal attorney. Other reliable sources of information include the Michigan Township Association, Michigan Municipal League, The Michigan Association of Counties, and the Michigan Society of Planning.

### **Legislation**

On occasion, although fairly infrequently, the Michigan Legislature amends the Zoning Enabling Act. It's important to check with your planner, planning consultant, or municipal attorney from time to time, because changes may affect the language of the local zoning ordinance.

### **The Board of Appeals**

Another indicator of the possible need to amend the Zoning Ordinance is heightened activity by the Board of Appeals. If the ZBA is consistently hearing the same types of variance requests, a review of these requests may reveal the need to consider an amendment. The standards of review imposed upon the Board of Appeals require that they deny variance requests that occur frequently, or which may have the effect of changing a provision of the Ordinance. If the Board is acting properly in these cases, the Planning Commission representative should indicate to the rest of the Commission that the specific Ordinance provision should be reviewed.

One way to ensure that this review occurs is to take some time at the end of the year to simply list all the variance requests heard throughout the year to see if there are any recurring themes. The Planning Commission may then review the relevant provisions and indicate to the Board of Appeals whether an amendment is appropriate, or that the provision is still applicable and should be enforced. The Board of Appeals should respect that decision and only grant variances in those instances where the review standards are clearly met.

### **Administration**

The Planning Commission should also be in continual communication with the zoning administrator and building inspector. These officials are on the front line of zoning on a daily

basis and can be a valuable source of information about which parts of the Ordinance are or are not working well.

### **New Uses/Techniques**

The drive-through restaurant, when first introduced, was a startling new concept. Many communities found themselves scrambling to develop appropriate zoning regulations to take into account the special nature of these uses. Similarly, new planning and zoning techniques are constantly being developed and refined. Cluster, or open space development, although a relatively old concept, has been rediscovered and is garnering much attention. Information on new uses or techniques can be obtained from many sources, including educational conferences, planning-related periodicals, staff members, attorneys, and consultants.

## PART IV: ZONING ISSUES

### Spot Zoning

Public hearings on rezoning issues are often filled with comments about the creation of a "spot zone," and the dire results of such an approval. But spot zoning is a derogatory and often misused term. True spot zoning has some specific characteristics; it is not simply the appearance of a "spot" on a zoning map. Many acceptable zoning districts may be islands surrounded by other zoning districts. The key to understanding the difference is being able to distinguish between an inappropriate spot zone, which would be detrimental, and a desirable spot zone, which could advance the aims of the community. In order to qualify as an inappropriate spot zone, the proposed zone will meet each of the following four characteristics:

#### 1. Small in Size

As the term "spot" implies, the location of a spot zone will be a relatively small parcel, particularly with respect to the sizes of the other parcels in the vicinity. While there are no firm rules on what size property constitutes a spot, generally, the larger the area, the less likely it is to be considered a spot. If the property is large enough to accommodate buffers or transition areas, landscaping or open space could be used to soften the impact on surrounding properties or uses.

#### 2. Inconsistent Uses

A spot zone will permit uses that are inconsistent with the uses already established or allowed in the vicinity. The inconsistent nature of the spot zone's uses should be clear, i.e. the uses should be very different. These uses, either by virtue of building design, traffic, or intensity, will be incompatible with uses allowed in surrounding districts. For example, a proposed two-family district rezoning in a single family zoned area would not be an inconsistent use. A sporting goods store in the midst of a residential area, however, would be an entirely different use of land.

#### 3. Special Benefit

Spot zoning also confers a special benefit on a single property owner that is not available to others in the area. Since the uses allowed by the spot zone are inconsistent with, and often more intense than, those allowed in surrounding districts, a special benefit is given to the holder of the spot zone, to the detriment of nearby properties.

**Zoning Issues** **Spot Zoning**

**A spot zone is one that:**

- Is on a parcel that is **small in size**, relative to its surroundings;
- Allows uses that are **inconsistent** with those allowed in the vicinity;
- Confers a **benefit** to the property owner that is not generally available to other properties in the area;

**A spot zone is appropriate:**

- If it complies with the Master Plan

**Spot Zoning**

#### 4. Contrary to the Master Plan

The final characteristic of a spot zone is the one that distinguishes it as a poor zoning practice. If the Master Plan designates a small parcel in a rural or agricultural area for commercial use to serve residents in the general area, it may have the look of a classic spot zone. In fact, it may even meet the first three characteristics. But it is not a spot zone since the Master Plan planned for its creation. As a result, labeling a rezoning a "spot zone" simply because it is on a small parcel and the uses allowed are different from the other uses around it is not always correct.

### **Nonconforming Uses and Buildings**

A legal, nonconforming use or building is one that met the requirements of the Zoning Ordinance when it was established, but as a result of new or amended regulation, no longer complies with the Ordinance. Legal, nonconforming uses and buildings can be created in several ways:

1. Amending the Zoning Ordinance, or adopting a new one, may create new zoning districts or rezoned areas. This may create a number of uses within the newly zoned area that no longer conform to the Ordinance. This can be a particular problem in residential areas rezoned for commercial uses. Scattered commercial development among the homes can cause significant problems for existing uses.



2. Legal nonconformities may be created by changing individual district regulations, such as setbacks, lot areas, lot widths, lot coverage, or dwelling unit sizes, or when two or more districts are combined. Before accomplishing these tasks, the community should evaluate the possible number of nonconformities that may be created. If excessive, the regulations may have to be "tweaked" to reduce the number and avoid future variance requests.
3. Although less common, legal nonconformities may also be caused by other governmental actions, such as a road widening which involves the purchase of additional right-of-way. The loss of a portion of a lot may cause the lot size to drop below that allowed by the Zoning Ordinance, or may cause a front yard setback problem.

**Important:** The Zoning Act requires communities to include regulations concerning legal nonconformities in the Zoning Ordinance. *It is important to distinguish between regulations that apply to legal nonconforming buildings, and those that apply only to uses.* In addition, separate provisions are needed to deal with nonconforming lots of record.

## Legal, Nonconforming Uses

The Zoning Ordinance should address nonconforming uses separately from nonconforming buildings because different considerations apply. The principal issues related to treatment of nonconforming uses in the Zoning Ordinance are expansions, abandonment, and replacement.

### 1. Enlargement/Expansion

Normally, the Zoning Board of Appeals reviews expansions of nonconforming uses, if it is permitted at all. Generally, the expansion of the area used for the nonconforming use will be limited in scope, often to some percentage of the original nonconforming area. Other standards for this approval may also indicate that the expansion must not act to extend the life of the nonconforming use.

### 2. Abandonment

Nonconforming uses may only be eliminated by demonstration that the owner intended to abandon the use. Some indicators of abandonment should be included in the Zoning Ordinance to provide guidance to the Zoning Administrator for a declaration of abandonment. These indicators, usually used in combination, may include the disconnection of utilities, removal of building fixtures needed for the use, property falling into disrepair, removal of signs, and other similar actions (or inaction). Normally, a set time limit is also used to indicate periods of abandonment; six-month to one-year periods are common.

### 3. Replacement

Once a nonconforming use is deemed abandoned, the Zoning Ordinance must address the use alternatives available to the owner. The regulations may require: 1) that the property be put to a use that conforms to the Ordinance; or 2) the nonconforming use may be replaced with another nonconforming use, provided that the second use is either equal to, or more conforming than the original.

### 4. Classification

Communities may also develop a classification system, allowing different treatment of nonconforming uses. Often the classifications will be considered as either desirable or undesirable nonconforming uses. Different regulations may be established for each type.

- Desirable Nonconforming Uses:

These are uses which, while non-conforming, are acceptable in their current location and do not disrupt land use or quality of life in the neighborhood. The regulations applicable to this classification of uses may allow the nonconforming use to continue, subject to only modest restrictions on replacement or expansions.

- Undesirable Nonconforming Uses:  
These are uses that are generally disruptive to an area, and may require elimination because of the degree of impact on the neighborhood. They may be subject to tight expansion and replacement restrictions, or may be purchased and eliminated.

### Nonconforming Buildings

The principal issues regarding nonconforming buildings that should be addressed by the Zoning Ordinance are rebuilding, expansion, and extensions.

#### 1. Rebuilding

The Ordinance should address nonconforming buildings damaged or destroyed by an “Act of God” (fire, flood, storm, etc.). Most Ordinances will allow a nonconforming building to be reconstructed, as long as the cost of replacement or reconstruction does not exceed a specified percentage of the building's original value. A low percentage, less than 50%, will make it difficult to rebuild nonconforming buildings; a high percentage, over 50%, indicates a willingness to let nonconforming buildings continue. The Zoning Ordinance must not, however, restrict the ability of the property owner to maintain the nonconforming building in a safe and sanitary condition.

#### 2. Expansion

Zoning Ordinances may allow for enlargement or expansions of nonconforming buildings or uses, but approval by the Board of Appeals is usually a requirement for doing so. The standards of review used by the Board generally will include some or all of the following:

- The expansion will not unreasonably extend the duration of the nonconforming use and the expansion will take place on the same parcel as the existing use.
- The need for the expansion should not be created by an increase in the intensity of the use. Rather, it should be to accommodate the use as it exists, perhaps by adding indoor space to eliminate outdoor storage.
- The expansion will not lead to requests for similar expansions in the area. As with other variance requests, if similar requests could be expected for neighboring properties, the problem should be addressed through an ordinance amendment instead of a variance.
- The expansion will not have a negative affect on neighboring properties. If the expansion will intensify the nonconforming use or make nuisance problems worse, it should be denied.

There may also be provisions that limit the degree of expansion. For example, the Ordinance may permit an expansion of only 50 percent (or some other percentage) of the area of the original nonconforming building. In addition, parking should be provided for the added space, as required by the Ordinance. Most Ordinances do not permit the building to expand in any direction that would make it more nonconforming than it was prior to the request for the expansion.

### 3. Extensions

The Ordinance may include a provision that permits a nonconforming building to be extended along the same line as an existing nonconformity. For example, if a building has a nonconforming side yard, extension may be permitted parallel to the side lot line, but not infringing any closer into the nonconforming yard.

## Nonconforming Lots of Record

The use of **nonconforming lots of record** is a frequent nonconforming situation. A lot of record is a parcel that is legally recorded in the Register of Deeds office. Many nonconforming lots are often found around inland lakes (although they may be found nearly anywhere). Many of these waterfront lots, created decades ago, were intended for small cabins and resort cottages. Today, many of these once seasonal homes are used year round. Owners wishing to add bedrooms, family rooms, decks, enclosed porches, and other improvements find that nearly every action requires a variance. The following three possible solutions may be useful in these situations.

1. The community may elect to create a new zone district that more closely reflects the realities of the are of nonconforming development. The yard and setback requirements of the new district should be based on a careful study of the existing lot sizes and setbacks in order to prevent more variances.



2. The Zoning Ordinance may include a provision that allows existing lots of record to be used if the lot area and lot width meets a set percentage of what is currently required. For example, if the current lot area requirement is 10,000 square feet, and the lot of record is 8,000 square feet, that lot meets 80% of the requirement. It may then be considered a legal lot and be used for the purposes allowed in the district.
3. Finally, other, more liberal Ordinances allow the use of any existing, legal nonconforming lot, provided that it complies with lot and yard requirements to the "greatest possible extent," although a minimum side yard requirement is normally set.

## Conditional Rezoning

Conditions may be attached to most zoning decisions. The one exception is a rezoning. Michigan law does not permit a community to attach conditions to a rezoning. If a property is rezoned it must be done so without any other requirements imposed. This is due, at least in part, to recognition that a rezoning is not intended to specifically identify a use for a property. It is, instead, an action that permits a fundamental change in the land use of a property, under which a broad range of uses is permitted.

However, in 2005 the Zoning Acts were changed to allow for *conditional rezoning* whereby the applicant *voluntarily* places restrictions on the property in exchange for a rezoning approval. For instance, on a property where certain uses may be appropriate, but the other uses allowed in the new zoning district would not be appropriate, the applicant can voluntarily restrict use of the property to only those uses that would be appropriate. Or, if lack of infrastructure leads to a rezoning being denied, the applicant can voluntarily propose to construct the necessary infrastructure in return for the rezoning.

### Zoning Issues

#### Conditional Rezoning

##### **Much is unknown but the following is likely true:**

- The conditional rezoning cannot permit that which is otherwise prohibited in the proposed district
- Implementing ordinance provisions are needed
- When reversion is necessary – normal rezoning procedures are followed (reversion is not automatic)
- The conditional rezoning should be part of the amending (rezoning) ordinance and recorded with the land
- All other zoning procedures remain the same (special land use, site plan review, variances, etc.)

untried in Michigan. However, the statute is clear that conditional rezoning cannot be used to permit that which is otherwise not allowed; in other words, conditional rezoning cannot supersede use requirements, setbacks, etc. Communities are cautioned that conditionals must be voluntarily offered and agreed to by the applicant; the community may not coerce (directly or indirectly) any conditions. In addition, “single use” offers (where the use of the land is limited to only one use) are discouraged, because if that use is unsuccessful there are no other options for use of the

### Zoning Issues

#### Conditional Rezoning

- First adopted in 2005 and made a part of the MZEA in 2006
- Rezoning for “certain use and development”
- Voluntary agreement – cannot be required as part of rezoning
- Cannot permit that which is otherwise prohibited in the district

The offer by the applicant results in a *rezoning agreement* that sets out the specific conditions and limitations. The agreement must contain a time limit (with extensions) before which the conditions in the agreement must be fulfilled. If the applicant does not meet the conditions within that time frame, the property can revert back to the original zoning.

Conditional rezoning is still new and relatively clear that conditional rezoning cannot be used to

### Zoning Issues

#### Conditional Rezoning

##### **Practices for conditional rezoning:**

- Be careful not to indirectly (or directly) coerce “offers”
- Consider marking the zoning map where conditional rezoning is in effect
- Avoid “single use” offers
- Evaluate rezonings in the same manner (consistency with Plan, etc.) – offers may be used to make the action more acceptable
- Keep the public informed throughout the process (including any changes to the offer)
- Get advice from attorney, planners, etc.

property. Finally, the public should be kept informed during the entire process to avoid any appearance of impropriety. There is some concern that conditional rezoning may be a way to make “backroom” deals between communities and developers, so keeping the entire process in the open can help to avoid this impression.

## **Other Related Zoning Provisions**

### *Nonconforming Lots in Single Ownership*

Multiple nonconforming lots of record bordering one another and under the same ownership, which individually do not meet the requirements of the Zoning Ordinance should be considered a single lot for zoning purposes. The Ordinance may require prohibit the use of the individual lots, and instead require that they be combined into conforming lots.

The purpose of this requirement is to ensure that compliance is mandated wherever it is possible to meet the requirements of the Ordinance. If there are many lots in the same situation, one of the other solutions for nonconforming lots may be applicable. Otherwise, in isolated situations, individual, adjoining nonconforming lots in single ownership should be required to conform to the Ordinance.

### *Yard Projections*

A common zoning provision allows some projection of architectural and other incidental physical features into yards. For example, bay windows, cornices and other similar features are often permitted to extend from a building into a yard, and sometimes into a required yard. Most of the time, however, this includes only front and rear yards. Side yards should be protected from encroachments, particularly when the lots are not wide at the start. This solution may be customized to address certain lakefront lot problems.

One of the most common problems, for example, is dealing with decks or open, unenclosed porches. A provision may be included for lakefront lots permitting a certain distance for encroachment into the yard. This can cover those situations where the buildings are already nonconforming for front and rear yards. However, make sure that the Ordinance does require some minimum setback for all structures from the shoreline.

### *Averaging*

The Ordinance may include a provision that allows an averaging of setbacks. In practice, this would allow a new structure to be built at the setback that is the average between the setbacks already established in the area. The area from which the averages are taken can be as limited as adjoining lots, or can include all lots within the same block. It is essential that the Ordinance specify the setbacks to be averaged, and clearly define the front yard (lake side or street side).

These solutions, specifically targeted at nonconforming or lakefront lots, can assist the Board of Appeals in their determination of those cases that truly deserve a variance. The Board must be advised to strictly interpret the standards for variances, particularly since the Ordinance already includes, through these regulations, a strong measure of fairness.