

ZONING: WHAT YOU NEED TO KNOW

Did you know that zoning was invented in 1916 when a group of Manhattanites became alarmed when tenement housing began to encroach on their Fifth Avenue townhouses? Well, whether true or not, the zoning office printing presses have been rolling ever since creating layer upon layer of land use restrictions that have shaped the course of development across the United States.

To understand a community's plan for their future development, one need only to read their General Plan. A city's zoning ordinances are the single most effective tool to implement a general plan, however, on the fringes, that land use can be shaped through the government's right of taxation, eminent domain, and escheat (the right for the government to assume title in certain estate situations). Of note is a recent Supreme Court decision allowing developers to team up with municipalities to use the inherent police power of eminent domain purely for redevelopment.

The basic tenant of zoning is the separation of land uses according to their impact and neighborhood relevance. An often quoted example is that planning separates slaughterhouses from residential housing. The zoning ordinances therefore spell out regulated land use as well as the height, bulk, and setback of permitted structures. However, as governmental bureaucracies have evolved, zoning oftentimes covers numerous local planning hot buttons such as traffic, parking, housing, historic and cultural resources, advertising signs, noise, and odors.

The allowance of conditional use permits and variances has created a legal industry where specialist attorneys petition the authorities to allow non-conforming uses or construction. In some New York City neighborhoods, there have been so many requests for variances, specifically for residential conversion in industrial neighborhoods, that the city's zoning plan is being rewritten through



the use of variances.

Zoning code is tightly specific as to development density in all zones; however, the residential zone is the most highly differentiated. The size of a development is regulated in ratio with the amount of land area: this floor area ratio calculation "FAR" is expressed as a multiple of the land area. For example, in an R3A residential zone, construction can be one time (1.00 X) or equal to the plot area. However, an R5 is 1.25 X, an R7A is 4.0 X, an R8X is 6.02 X and so on and so forth. There are over 29 separate residential districts in the New York City boroughs of Queens and Brooklyn. However, each promulgated FAR ratio can be modified depending on the width of the street, the planned use as a community facility, if inclusionary zoning is planned, or if there is a special plaza or arcade.

True free market thinkers believe zoning is unnecessary because it artificially overrides basic capitalistic economics that dictate that land should always be utilized to its highest and best use for the benefit of owners, consumers, and the general economy. Further, they point to the clear evidence that traditional zoning has promoted urban sprawl, segregated housing, and isolated middle class and wealthy residential enclaves. Their position is that impact zoning makes sense where-in land use is regulated based on measurable performance standards such as noise, traffic, and visual appearance, rather than categories such as residential, commer-

cial, and industrial use.

Their position is countered by today's modern planners with their argument that zoning has curbed land speculation, encouraged affordable housing, and has protected environmental resources.

However, there is a third group who argue effectively that current zoning is too lax and is unfairly enforced. Their position is most zoning decisions are political or economic, and are not based on scientific social findings and environmentally sound land use research. They point to the creation of over 1,100 private, not-for-profit land trusts which have been created across the country to protect valuable sites from local zoning boards' need to rezone for the creation of taxable income for their municipalities.

The New York City zoning authorities have been dynamically rewriting zoning ordinances over the past 5 years, creating new waterfront neighborhoods, as well as protecting existing residential communities from higher density development. In this respect zoning has followed economic demand and the political will of the city's residents. As waterfront land lay dormant due to the lack of industrial growth over the past decade and as apartment occupancy rates climb past 99%, the rezoning of heavy industrial waterfront land became a political win-win.

As I write this article, the skyline of Queens and Brooklyn has changed dramatically, allowing for thousands of new residences, as well as waterfront esplanades, and retail developments. Many municipal governments look to the manner in which New York City has shepherded neighborhood development with envy. While there is always potential conflict and unfairness at the fringes of any zoning ordinance, the majority has been well served by the methods and practices of New York City's government officials. It is unarguable that without carefully thought out and implemented zoning ordinances, today's New York City would be unrecognizable.

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