

Land Use

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Ownership of property in the United States grants the holder a long list of rights including possession, control, exclusion, enjoyment and disposition. Not included on this list is the right to use the property for whatever purpose one desires. The way that land can be used in the United States is determined by zoning codes. In order to gain a full understanding of the rights of a property holder, it is critical to understand how zoning codes work. Furthermore, property owners stand to maximize the benefits that they draw from their property by understanding the process through which zoning codes can be changed to satisfy their needs. This paper uses research to educate the reader on the history of zoning, how zoning is used today and the process for creating zoning changes in land use cases.

### **Definition of Land Use & Zoning**

#### **Land Use**

Land use is, most simply put, the purpose of a piece of property. Land use is a relevant issue because it is important to keep incompatible property uses separate. For example, loud factories that produce large amounts of smoke or other waste are generally incompatible with family homes. For this reason it makes sense to keep industrial use properties in one area and residential properties in another area. Keeping factories out of residential neighborhoods makes sense for keeping residents in the area happy, but it could create problems for a property owner in the neighborhood who sees an opportunity to generate profit by using the land that they purchased to build a factory. This establishes two conflicting parties, one that wants to preserve the conditions of their neighborhood and one that wants to use their individually purchased property for their own benefit. The potential for a conflict, such as this, to arise calls for an

organized system to determine how land can be used before someone purchases the property and finds out that it cannot be used as they desire. The system designed to solve this problem is called zoning.

### **Zoning**

Zoning answers two questions from two different perspectives. From the societal perspective it answers “what goes where?” From an individual perspective it answers “what can go here?” By answering both of these questions individuals know what they can do with their own property and a compatible layout is established in society. In order to answer these questions, local governments create zoning maps. Zoning maps are color-coded into zoning districts. Each district has clear parameters about what kind of buildings can be developed there and rules and regulations for how they operate. Five major categories of districts typically occur in an urban area. These districts are classified as residential, mixed residential-commercial, commercial, industrial, and special (Gardner, 2016). There are more specific subcategories of zoning districts that must follow more intense rules, but most developments fall into one of the five major categories. Examples of subcategories in the commercial zoning category include small retail, large retail, office use and lodging. It is important to make this distinction as the impact that a mall would have on a neighborhood is far different than that of a small jewelry shop.

### **History of Zoning**

Zoning maps are created by the local government in the area. In some cases it is the city or township that determines the zones and in other cases it is determined by the county. The need for zoning ordinances arose in the 1920's, a period deemed the Roaring Twenties in the United

States, as metropolitan development boomed. Great economic growth resulted from the rapid expansion of urban areas, but along with the growth came many problems. In New York City in 1916 the first zoning regulations came as a reaction to the development of the Equitable Building. The massive 40 story project towered over a residential neighborhood, blocking sunshine from residents. New York City officials recognized that this would only become a bigger issue as the city continued to grow and decided to create zoning laws. George Mcney, the borough president of Manhattan at the time spoke on the need, “to arrest the seriously increasing evil of the shutting off of light and air from other buildings and from the public streets, to prevent unwholesome and dangerous congestion both in living conditions and in street and transit traffic, and to reduce the hazards of fire and peril to life.” (Dunlap, 2016). McAney and Edward Basset were the chief architects behind the Zoning Resolution which divided the city into zones which determined how high buildings could be built on a ratio to the width of the street they were on. For example, a building in a “1” zone could be 60 feet tall and a building in a “2 ½” zone could be 150 feet tall, a function of the 60 foot wide street they were located on.

The revolutionary Zoning Resolution created by McAney and Basset was used for over 40 years in the city and it was highly effective at accomplishing its main goal, controlling population density. In 1910 Manhattan had a population of 2,331,542, or 164 people per acre. The 2010 population was 1,585,873, or 109 people per acre (Garfield, 2017). Another, arguably more important effect of this resolution, was that it helped to establish police power: the ability for local governments to regulate property use in the name of public welfare. This paved the way for future zoning laws that focused on controlling land use in addition to population density. Government could now proactively deal with nuisance law cases: cases in which one person’s

activity has a harmful impact on another's property. Instead of dealing with these cases after they had occurred, the government could regulate land use to prevent them from happening at all. The Constitutionality of zoning ordinances was upheld in the 1926 Supreme Court case *Village of Euclid, Ohio v. Ambler Realty Co.* Ambler Realty owned 68 acres of land in Euclid which they intended to develop for industrial use. In an attempt to maintain the character of the village, Euclid created zoning ordinances which would hinder the development of the property. Ambler Realty sued the village on the grounds that the ordinances significantly reduced the value of the property. The case made it all the way to the Supreme Court, where it was ruled that the zoning ordinance was not an unreasonable extension of the village's police power and therefore was not unconstitutional ("*Village of Euclid v. Ambler Realty Company*", 2010). The court's ruling that it was in the government's interest to maintain the character of a neighborhood and to regulate the use of land, led to a dramatic increase of zoning ordinances across the country. City's were now determining what kind of buildings could go where based on the predicted impact that they would have on the area.

Zoning codes now assured that there would not be a factory polluting a residential neighborhood or the foot traffic out of skyscraper next to a farm. These laws greatly benefited the welfare of the general public. However, it must also be recognized that in some cases zoning ordinances were used in a predatory fashion. Cities adopted ordinances which segregated districts of single-family homes from multi-family homes or apartments on the premise that the quality of a person was largely determined by their home environment. It was believed that single-family homes produced more virtuous people and therefore multi-family residences should be kept out of single-family districts. By keeping low-cost, multi-family housing separate

from single-family housing, these laws segregated neighborhoods by income which effectively segregated them by race in many cases as well (Liberty, 2003). Lawsuits from groups such as the NAACP have been successful in ending some exclusionary practices that result from zoning laws, but in large part the ability to segregate the rich from the poor is still allowed by zoning laws to this day (Klein, 2012).

### **Zoning Today**

The practice of dealing with land use cases with zoning laws has evolved over the years in reaction to new development and change in our society. Today, cities have comprehensive zoning codes that are determined and upheld by commissioners and committees in their local government. While there is variance in the way that individual cities control land use, general practices cover the majority of cities zoning operations. To narrow the scope of this paper, Nashville's current zoning operations will be exemplified. Nashville represents a strong city to use as an example due to their rapid growth over the past two decades. Of the 53 largest metropolitan areas in the United States, Nashville had the 10th fastest population growth in 2017 (Reicher, 2018). With the population expansion comes development growth, and in order to ensure that the city grows in a sustainable way, it is critical that the city is zoned correctly. This means that great emphasis is put on the zoning process in the city.

Across the nation there are five major zoning classifications that cover almost all land use. These classifications are residential, mixed residential-commercial, commercial, industrial, and special. Nashville uses 11 primary classifications for zones. While it seems like Nashville strays from the norm of five, in reality, the additional classifications used are subsets of the major five. Instead of breaking the residential classification down into subzones, Nashville uses

the uses single-family residential, one- and two-family residential, multi-family residential, and mobile home park as primary categories (“What Does my Zoning Allow”, n.d.). A single residential classification and subcategories is typical for rural communities which are home to a small number of residents who predominantly live in single-family homes. However, for a major metropolitan area such as Nashville, home to 1,903,045 residents as of 2017, broadening classifications beyond one single residential category makes sense is more fitting (Reicher, 2018). Small variances such as these are an important feature of zoning laws being determined by local, as opposed to state or federal government.

Having zone classifications is only the first step to zoning a city. More importantly the city must answer the question “what goes where?” To answer this question, Nashville starts with the big picture of the whole city and slowly narrows the view down to each individual property. The big picture view of Nashville is in the form of Nashville Next, a plan created by Nashvillians to determine where and how Nashville will grow through the year 2040. The plan is intended to guide growth, development and preservation of the City in sustainable way that will result in the best possible living conditions in the future. Key issues of NashvilleNext include, preserving our neighborhoods while building housing close to transit and jobs, protecting rural character and natural resources and making our city affordable for all Nashvillians (“The NashvilleNext Plan”, n.d.). Zoning plays a huge role in accomplishing these goals. As developers from outside Nashville pour money into projects in the city there must be measures to prevent skyscrapers from replacing historic buildings such as the recording studios on Music Row. The NashvilleNext program recognizes properties and neighborhoods that are integral to Nashville culture and seeks to protect them. The police powers that local governments are granted allow

Nashville to zone these areas so that property owners cannot make changes that would destroy cultural icons. Additionally, the NashvilleNext plan seeks to preserve and create areas with affordable housing in Nashville, again using zoning to accomplish this mission.

Comprehensive planning, such as NashvilleNext, is the first step to determining the classification of a zone. This planning paints broad strokes of what areas of Nashville should look like. Comprehensive plans are not the only plans with which developments need to agree with. Short term, community plans also play a role in determining how a zone is classified. City Council members work with the citizens in their district to determine what changes they would like to see in their community in a shorter time frame. Council members work with Planning Commission members to build a community developments plan based on this community feedback. Zone classifications must comply with these community plans in addition to the comprehensive plans. The final, and most narrow criteria for determining zone classification is the Planning Commission's determination of how zones can fit together to form a compatible city plan. This process is driven by significant research from the commission and the final recommendation they submit is voted on by the Metro Council.

### **Rezoning**

Dividing a city into compatible zones is a complex task with many factors that must be considered. The final zoning map that is created is the product of deep research, careful predictions and extensive debate. Even with all of the work put in, these maps are not always perfect. For this reason, it is possible to rezone areas over time. Areas can be rezoned by the Planning Commission if it is necessary to help the city develop properly, but property owners can also apply to have their property rezoned. Rezoning is often requested if a property owner is



interested in using their property for a different use than their zone would currently allow. For example, if a developer who owned a piece of property that was single-family home and they wanted to build a two-family home, they would have to apply for a rezone.

The rezoning process begins with submitting an application to the Metropolitan Planning Department of Nashville. Once the application has been submitted, the Planning Commission conducts research around the request. The primary focus of this research is to determine if the new development will be compatible in the current zone and if it will promote the welfare of citizens in the area. Once the Commission has conducted their research, they come to the decision to “recommend” or “recommend against” the proposed change. These recommendations are presented at Metro Council meetings. After the Commission presents their recommendations, members of the community and other stakeholders are offered the opportunity to speak in favor or against the proposed change. Finally, after hearing all concerned parties speak, the Metro Council discusses the proposed change and then votes on it. Rezoning requests can be accepted, denied or delayed until further information is gathered (“What Does My Zoning Allow” n.d.).

The rezoning process is straightforward and available for any citizen to apply for, but success in the process is not guaranteed. The Metro Council operates under the belief that the current zoning plan is a good one, so they must be convinced that rezoning a property will bring significant benefit not only to the property owner, but the community as a whole. In order to increase the chances of success for having the rezone approved there are a number of steps one can take. The Metro Council cares most about the benefit that the rezone will bring to the community, so, all actions that the applicant should take must be focused on convincing the Council of the benefits. The strongest way to show that the community will benefit from the

rezoning is having members of that community voice their support of the change. However, in order to get them to voice their support, one must first hear what they have to say on the topic. A frequently used method to hear the voices of community members is setting up a town hall style meeting where community members can learn about the project and share their opinions and concerns. After the meeting, it is critical to stay in contact with attendees and to show that their thoughts on the project are being taken seriously. If community members are convinced that the project will benefit them, the rezoning applicant should request that they let the Metro Council know in the form of a letter, petition signature or an in-person appearance at the Council meeting (Hughes, 2017). The mission of zoning is to promote the welfare of citizens, so there is no better way to incite change in zoning than bringing citizens forward to argue that it is in their best interest.

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