

Zoning

City of Castle Hills, Texas

August 24, 2021

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What is it?

- A law to organize how land may be used
- Establishes an orderly pattern of development in neighborhoods and the City
- Identifies what can be built on a piece of property
- All land is zoned, including developed land

Why do we have it?

- Keep compatible uses together or intentionally intermingle different uses
- Maintain a certain look
- Establish heights of buildings, residential density and non-residential intensity
- Establish building setbacks from street and all sides
- Preserve character and values, especially in single family neighborhoods

Where does it work?

- Where it follows a land use plan
- Where incompatible uses are proposed for consideration
- Where it is enforced

Where does it not work?

Zoning is not effective in these cases:

- Land use around airports
- Sex businesses
- Signs
- Churches and schools
- Historic districts
- Environmentally sensitive lands such as floodplains
(Performance standards are more effective)

zoning is use of police power

- Power to protect public health, safety, and welfare
- Power enforced at the local level
- Scope of zoning authority is significant in *encroaching on individual rights*

zoning requirements: two documents

- Zoning map
- Zoning ordinance

It helps to have a plan

executed by four groups

- Governing body
- Planning/Zoning Commission
- Board of Adjustment
- Staff

Planning/Zoning Commission

- Recommends boundaries of districts on original zoning map
- Reviews and recommends changes to ordinance or map
- Advisory only on zoning matters
- Adopts comprehensive plan; and/or recommends to Council

board of adjustment

- Applications for variances
- Applications for special exceptions (licenses or permits)
- Interprets unclear ordinance provisions or lines on the map

staff

- Administers zoning ordinance
- Enforces zoning ordinance
- Provides project reviews and other information for decision-makers

implementation principal activities

- Rezoning
- Reviews variances, appeals, and special exceptions
- Enforcement

rezoning

- Most important, most common zoning action
- The map amendment (rezoning) is a troublesome legislative act

(The rezoning application is a request to change the law, and in changing the law the governing body can do what it likes, subject only to broad constitutional and state legislative limitations)

variances

- Second most common zoning operation
- To alleviate unnecessary hardships inherent in the physical characteristics of the land
- Common misconceptions about variances:
 - Financial hardship justifies a variance, and/or
 - Financial hardship justifies a use variance

appeals

To hear and decide appeals where there is an alleged error in a:

- Requirement,
- Decision or
- Determination made by administrative official in enforcement of the ordinance, or
- To protect staff from having to make judgements in difficult situations

special exceptions

- A list of otherwise nonconforming uses allowed in residential zones after special review

enforcement

- Control of building permits is the primary form of zoning enforcement
- Local governments must enforce zoning to be effective

zoning enforced with other controls

- Comprehensive plan
- Subdivision regulations
- Architectural controls
- Parking requirements
- Building codes
- Covenants or deed restrictions

comprehensive plan and zoning

- Must a community have a comprehensive plan to have zoning?

No elaborate plan is required, the plan is advisory, and deviations from it in zoning are acceptable

- If a community has a comprehensive plan, must zoning follow it exactly?

Doctrines developed by the courts to implement and interpret the comprehensive plan are: “correct a mistake” rule; and “spot zoning” rule

subdivision regulations and zoning

- Regulates division of larger parcels of land into building lots
- Zoning prescribes:
 - Allowed uses of land and buildings and
 - Specifies relationships between the amount of land and the size and placement of buildings on it
- The use of land (regulated by zoning) and site design (regulated by subdivision controls) are critically interrelated in all but the simplest development projects

Why an application for rezoning precedes application for subdivision review:

- Subdivision approved only if conforms to zoning of the area
- Zoning more likely to be controversial and subdivision application is more expensive because of engineering work required

architectural controls and zoning

Zoning code is logical place for architectural and other aesthetic controls:

- It already contains similar controls
- It may be desirable to limit the effect of such controls to a particular area of the community
- Separate enabling legislation for architectural controls are rare, the zoning code is the most logical source of legal authority

covenants and deed restrictions

- Restrict use of recorded property, is enforceable by a limited group of persons – *usually landowners in the same subdivision with similar restrictions*
- Covenants have no effect on zoning and the zoning has no effect on covenants
- Generally, a local government has no power to enforce covenants and should not intervene in covenant enforcement

traditional land use categories

- Residential
- Commercial
- Industrial
- Agricultural

typical categories of allowed uses

- Principal uses:
 - Uses by right
 - Uses allowed without further review or limitation other than bulk and intensity requirements
- Accessory uses
 - Garages and outbuildings
 - Uses allowed only as uses incidental to the principal use
- Special exception - otherwise nonconforming uses allowed in residential zones after special review

residential uses

- Distinguished by density (lots or units per acre)
- Uses within residential districts are almost always cumulative (pyramid)
- Exclusion of commercial and industrial use
- Presumes superiority of the single family detached house
- Classifications of residential uses:
 - Single family detached
 - Single family attached
 - Multifamily

commercial uses

- Distinctions usually rest on the perceived impact of the uses on the neighborhood
- Commercial zoning is almost always cumulative from one commercial district to another

industrial uses

- One of the original purposes of zoning was to separate noxious industrial uses from residential uses
- Categorized as either light or heavy industrial

agricultural uses

Three types of agricultural zoning:

- In rural areas without development pressure
- Temporary or holding zone where development pressure is increasing
- Designed to preserve agricultural land in a developing area

Agricultural zoning is extremely important in rural areas near urban areas, but in developing suburban and exurban areas, not a useful tool

special uses

Land use around airports:

- Generally where zoning has caused a significant economic loss to the landowner, the courts have been unwilling to sustain zoning to protect an airport
- Sex businesses
- Signs
- Churches and schools
- Waste disposal sites
- Historic districts
- Floodplains/environmentally sensitive lands – *performance standards are more effective than conventional zoning*

intensity or density of zoning

- Specification of minimum lot sizes for single family homes was most common early form of regulating density of development
- Intensity of commercial development was governed indirectly by the combination of lot size and height & lot coverage requirements (basically bulk controls)
- More sophisticated zoning requirements use *floor-area ratio (FAR)* to impose limits on commercial intensity
- Warehouse and light industrial zones usually contain intensity limitations similar to commercial districts

planned unit development (PUD) controls

- Involves mixture of single-family residences, townhouses, apartments, some commercial and institutional/office uses
- Developed largely by the private sector to provide the public sector with an effective means of regulating mixed-use developments
- Part of PUD appeal is the emphasis on planning
- Larger tracts offer developers both the opportunity and the incentive for better planning

performance standards

- Set out a minimum requirement of maximum limit on the effects or characteristics of a use
- E.G., rather than a traditional list of uses, performance standards might describe the allowable amount of smoke, odor, noise, heat, vibration, glare, traffic generation, and visual impact of uses permitted in the zone
- Defines what the community wants as an end result but allows the developer choice in the means used to achieve that result

due process

- An individual whose rights are being determined or directly affected by a government action ought to be notified of that action and to be given the opportunity for a fair hearing before an impartial tribunal
- Local governments can take steps to ensure that its zoning procedures are not subject to a successful due-process challenge:
 - Notice of procedure should be effective
 - Tribunal should be impartial
 - Hearing must be fair to the applicant and to those opposed to the application
 - Decision should be based on the hearing and on all other information available to the hearing body

questions