Zoning Continued

Last Class

- Authority
- Permitted Uses
- Amendments
- Spot Zoning

Today

- Variances
  - Flexibility Devices
  - Area (non-use)
  - Use
  - Use Permits
  - Floating Zones
  - Contract Zoning

Two Types of Variances
Area (non-use) Variance

- Relaxation of some requirements such as height, area, setback, and side yard regulations.
- Board may authorize.

Use Variance

- Permission to use property in a manner that is different from that prescribed by the zoning ordinance (e.g., single-family to multi-family use).
- A board is not authorized to make use variances.
- It is considered tantamount to an amendment and that authority is reserved for city council.
Variance or Rezoning?

- Area v. Use (Bulk)
- Test
- Burden of proof
- Spot zoning majority jurisdiction

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**Area Variances in Texas**

A board of adjustment may “authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done.”

§ 211.009(a)(3) Texas Local Government Code.
“Special Conditions”

- Hardship unique to the property-related conditions (not unique to the property owner).
- Not authorized merely to make the “highest and best use” of property.
- Financial hardship is insufficient as a matter of law to justify granting a variance.

“Unnecessary Hardship”

- Not personal to the property owner.
- Not self-created.
- Relates to condition associated with the topography or shape of lot.
“Unnecessary Hardship” Cont’d

• Literal application of the zoning ordinance to the property would be unreasonable in light of the general statutory purpose to secure reasonable zoning.

• Reasonableness test viewed in light of **practical difficulty** of applying ordinance to property.

Flexibility Devices

• Use Permits
• Floating Zones
• Contract Zones
• Planned Unit Developments (PUDs)
Use Permits

- Special use permit
- Conditional permit
- Special exception

Uintah Mountain RTC, L.L.C. v. Duchesne County,

Use Permits

- Substantial evidence
- Arbitrary and capricious
- Assumptions
Uintah Mountain Cont’d

Findings of Fact

• Compatibility
• Traffic
• Public Safety and Welfare
• NIMBYism?
• FHA

Uintah Mountain Cont’d

Update

• Utah Anti-Discrimination and Labor Division
• Utah FHA
• Federal FHA

FAIR HOUSING
Is Your Right

Homes & Communities
U.S. Department of Housing and Urban Development
Flexibility Devices

Amendment/Rezoning

Variance

Use Permit

Rodgers v. Village of Tarrytown, 96 N.E.2d 731 (N.Y. 1951), p. 93

Floating Zones

• Spot zoning in disguise?
• In accordance with the plan?
• Form over substance?
Planned Unit Developments (PUDs)

- Flexibility device
- Large, mixed-used developments
- Efficiency
- Mitigation
PUDs Cont’d

- Aesthetics
- Lower costs
- Open space
- Affordable housing

PUDs and the Zoning Ordinance

- Directly
  - Fixed zone
- Indirectly
  - Special use permit
  - Variance
  - Floating zones
- Master/Comprehensive Plan

PUDs

- Ambiguous PUD ordinance
- Population density requirements
- Protecting agricultural districts

Contract Zoning, p. 102, n. 6

Extracting a promise from developer as condition of zoning change or placing conditions/restrictions on property that are not imposed on similarly zoned properties in consideration of the rezoning of the property
Judicial Resistance to Contract Zoning

• Police power
• Procedural due process
• Uniformity
• Corruption or appearance of favoritism