Flexible, Innovative Zoning Techniques

WHAT’S NEW IN THAT OLD, STAID, FIELD OF ZONING ???
WELL . . . LOTS!

Don Elliott, FAICP    Kristin Cisowski, LEED AP
Clarion Associates
Denver, CO
WHO ARE WE?

• 18 Planners, Attorneys, Urban Designers, and Landscape Architects

• Over 130 development code projects in the U.S. and Canada

• Hybrid form-and-use codes, sustainable codes, and graphically illustrated codes
WHO ARE WE?

Don Elliott, FAICP
- Planner/Lawyer – 27 years
- A Better Way to Zone
- The Rules That Shape Urban Form

Kristin Cisowski, LEED AP
- Planner/Lawyer/Engineer
- Development Code Drafting
OUTLINE

New Types of Codes
- Form Based and Hybrid Codes

New Land Uses
- ADUs
- Cottage / Pocket Neighborhoods
- Urban Agriculture

Legal Changes
- Fair Housing
- Cell Towers
- First Amendment Timeframes

Questions and Answers
NEW TYPES OF CODES

- Predictability
  - Early Use-based Zoning
  - Post-war Use-based Zoning
  - Performance Zoning
  - PUDs

- Flexibility
  - Form-based Zoning
NEW TYPES OF CODES

- Uses
- Process
- Form

Diagram showing the relationship between Uses, Process, and Form.
NEW TYPES OF CODES

FBCI Core Elements List

- Building Form Standards
- Building Type Standards
- Frontage Type Standards
- Public Space Standards
- Block and Subdivision Standards
- Regulating Plan
NEW TYPES OF CODES

Building Forms & Types

Downtown Building

<table>
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<tr>
<th>Building Types</th>
<th>MS-1 (Main Street)</th>
<th>MS-2 (B Street)</th>
<th>MS-3 (Transitions)</th>
<th>DT-1 (High Street)</th>
<th>DT-2 (Support)</th>
<th>DT-3 (East High)</th>
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<tr>
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● = Permitted within district
○ = Permitted only on corner parcels
○○ = Permitted on secondary street only

Table 1129.40 (1). Permitted Building Types by District.
NEW TYPES OF CODES

Frontage Types

Storefront Frontage
NEW TYPES OF CODES
## NEW TYPES OF CODES

### The Take-aways

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<th></th>
<th>Austin</th>
<th>Mooresville</th>
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NEW TYPES OF CODES

Other Routes to Flexibility

1. Conditional Zoning
   - Rezoning to another district with conditional prohibiting
   - Legality depends on state law – but some version of this is pretty common

2. Neighborhood Conservation Zones
   - An Overlay Zone that includes tailored character/scale/feature controls for specific neighborhoods
   - Group them together under an umbrella district, but controls differ in each
NEW LAND USES

1. Accessory Dwelling Units

• A second, size-limited, dwelling unit accommodated on the same lot as a primary dwelling (typically a S-F detached or S-F attached dwelling) — intended for smaller households (elderly, students)

• Can be either “internal” — within the envelope of the primary structures — or “external” — in a freestanding garage or carriage house
NEW LAND USES

1. Accessory Dwelling Units

Almost Universal Standards
- Limit one per lot
- Size limited to 600-800 sq. ft.
- Property owner must reside in one of the two units

Frequent Standards
- 1 more parking space
- No entrance facing the street
- Only on large lots
1. **Accessory Dwelling Units**

The Big Myth

- “This will double the density of our single-family neighborhoods”

- No
  - Many properties cannot accommodate them
  - Many property owners do not want a second resident
  - Participation has been low
NEW LAND USES

1. Accessory Dwelling Units

Advice

- If you really want ADUs, don’t require the extra parking space
- Don’t include a “relatives only – no rentals” clause – it’s practically unenforceable
- Don’t over-regulate the design – the existing housing stock is too varied
- Try it – monitor impacts – and adjust
NEW LAND USES

2. Cottage/Pocket Neighborhoods

A collection of small footprint houses (often 800-1200 sq. ft.) on private streets, designed to fit into unused small, irregular parcels either

- Within existing single-family neighborhoods
- OR
- At the edges between single-family neighborhoods and more intense areas

Think: Regulating the density by square footage of housing instead of dwelling units
New Land Uses

2. Cottage/Pocket Neighborhoods

Third Street Cottages
Langley, WA

8 cottages on 29,400 sq.ft. site
11.8 du/ac
NEW LAND USES

2. Cottage/Pocket Neighborhoods

Danielson Grove Cottages
Site that would have 10 7,200 sq ft. lots can accommodate 15 smaller lots
NEW LAND USES

2. Cottage/Pocket Neighborhoods

Typical Standards

• Limit on FAR for the site – but usually not # of DUs
• Sometimes a limit on 2x # of DUs under prior zoning
• Minimum project separation = 500 to 1,500 ft.
• 50% lot coverage
• Parking = 1 space < 700 sq. ft., 1.5 < 1,000 sq. ft.
• Front porch required = 64 sq. ft.
• Normal 20 ft. front setback
NEW LAND USES

Accessory Gardening
-- was always OK but many codes are silent and should be clarified

Urban Agriculture
A primary use – 1-3 acres – allows sales and structures – and sometimes larger animals

Farms (think Tractor)
A primary use--historically not an urban land use but cities with large areas of land now allow it

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NEW LAND USES

Do You Need a Separate “Urban Ag” Zone District

Philadelphia
• No – just allow urban agricultural uses in most districts

Dayton
• No – address it as a use allowed in some districts

Youngstown
• Yes – to discourage larger investments on big vacant areas that we would then have to serve with water/sewer/police/fire

Cleveland
• Yes – for sites on where gardens are “highest and best use” for the community

The real issue
Who owns the land, and what is it worth for other uses?
NEW LAND USES

Can you Sell Produce Grown on the Property?

Increasingly -- Yes

Usually includes processed food grown on the property as well

Sometimes subject to a business license

Sometimes limited to back yard or not in front setback

Size often limited (e.g., 50 sq. ft.)
NEW LAND USES

What About Support Structures?

Tool & equipment sheds often allowed at 120-400 sq. ft.

Hoop houses often allowed – subject to height limits

Cold frames generally allowed

Usually subject to maximum total lot coverage and setbacks
NEW LAND USES

Soils – the aaargh!! Topic

Greening the World meets public health realities

Everybody must test for lead

If a commercial or industrial parcel – must test for 5 heavy metals and clarify which concentrations levels are OK

So . . . Trucked-in soil is the norm

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LEGAL CHANGES

Fair Housing – has gotten harder
- -- and is going to get MUCH harder

1. Fair Housing Act of 1968 (and 1988)
2. State antidiscrimination acts
3. State zoning enabling laws
4. State “Group homes” statutes

AND
5. Obligations under federal funding programs
   - CDBG, HOME, other HUD programs
LEGAL CHANGES

Fair Housing

Protected Classes
- Race, Color,
- National Origin
- Religion
- Sex
- Familial Status
- Handicap
  - Includes recovering drug users & HIV/AIDS

But Not
- Sexual Orientation
- Homelessness
- Victim of Abuse
- Income
  - Fair Housing is NOT the same as Affordable Housing
Fair Housing

**Handicap—protects persons with disabilities or those associated with them**

(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance
Fair Housing

Ways that local regulations can violate the FHA:

- Disparate **treatment**
- Disparate **impact**
- Failure to make **reasonable accommodation** in your rules, or to allow reasonable modifications of a structure – to accommodate a disability
LEGAL CHANGES

Fair Housing

Watch out for:

• Restrictive “family” definitions
• Facility spacing requirements not backed by medical evidence
• Special permit requirements that address who is housed
• State laws protecting “developmentally disabled” and “mentally ill”
• Far narrower than FHA
Fair Housing – the BIG Change

New proposed HUD rule move from “Analysis of Impediments”
-- show you did nothing bad

to

“Affirmatively Furthering Fair Housing” ---
-- show you’re doing good

60 day comment period is over
-- Final rule expected soon
LEGAL CHANGES

Fair Housing – the BIG Change

AFH Tool:

- Methodology and Focus Topics Required
- Very data heavy – and you must use (or consider) the HUD data
- Areas of focus
  - Integration and Segregation
  - Concentrations of Poverty
  - Disparities in Access to Community Assets
  - Disproportionate Housing Needs in Protected Classes
LEGAL CHANGES

Fair Housing – the BIG Change

Map 1. Race/Ethnicity 2010, Jurisdiction X

Map 1. Race/Ethnicity 2010, Region X
Cell Towers – the Shot Clock

A rebuttable presumption that you should be able to review and decide on:

- A collocation application within 90 days; and
- A new tower application within 150 days
LEGAL CHANGES

Cell Towers – Collocations

Very hard to deny an application for collocation that does not “substantially change” the tower size:

• Tower height increase < 10%
• Antenna array height increase < 20 ft.
• Widen < 20 ft. or width of tower
• < 5 new cabinets
• No excavation beyond site

These are now declared by Feds as “no biggie”
Cell Towers – Findings Required

- Roswell, GA Planning Commission recommends approval of cell tower
- City Council denies in light of strong neighborhood opposition
- Denial refers to transcript of hearing for written findings of reasons for the denial
- Provider challenges whether that meets the “in writing” requirement of the Telecommunications Act
- District Court = NO, Appeals Court = YES
- Supreme Court = YES, but . . . .
LEGAL CHANGES

First Amendment Uses and Structures
Signs – Adult Uses – Religious Institutions

The problem:

• Unpopular applications tend to get delayed for further study or further negotiations

• Delaying the exercise of free speech and free exercise rights tends to have a “chilling effect” on the use of those rights

“Move to Continue...”
LEGAL CHANGES

First Amendment Uses and Structures

The courts’ emerging solution

• Zoning codes must have a time limit within which applications for adult uses and signs must be made

• If there is an administrative appeal of that decision, there must also be a time limit within which the appeal decision must be made

• Probably applies to religious institutions
First Amendment Uses and Structures

Regulations based on “secondary impacts” of adult uses getting closer scrutiny

- Most studies on increased litter, crime, loitering, etc. involve “adult entertainment” uses (i.e. areas around strip clubs and adult theaters)
- Few studies address “adult retail”, but secondary impacts may be much lower there
- Might want to distinguish between them in your zoning ordinance
LEGAL CHANGES

Marijuana

Colorado legalizes medical MJ in 2000 and recreational MJ in 2012

- Both required major efforts to create licensing and land use regulations and enforcement capacity at both state and local levels
- Much more complex than you think – the industry involves growing – testing – transportation – distribution – and retail operations
LEGAL CHANGES

Marijuana
The Very Basics

- Yes, your community can ban them – the right to possess does not include the right to grow, test, distribute, sell, or buy in a specific location.
- State license required, and state taxes due, but most regulation is by locals
- Local taxes authorized
- Most cities enforce primarily through licensing – not zoning – other than basic use and spacing requirements
- Need Colorado ID to buy in some cities
- No smoking in public – ever
LEGAL CHANGES

Marijuana

Rural Park County
- 500-1,000 straight line spacing from sensitive uses
- No sales of alcohol, tobacco, food, beverages
- Lots of building security – annual licensing
- Sale only to those with CO identification

Urban Denver
- 5 mixed use zone districts off-limits
- 1,000 straight line spacing from sensitive uses
- Limitations on advertising and operating hours
- $5,000 annual fee plus 5-15% taxation
QUESTIONS?

DON ELLIOTT, FAICP
DELLIOTT@CLARIONASSOCIATES.COM

KRISTIN CISOWSKI, LEED AP
KCISOWSKI@CLARIONASSOCIATES.COM

CLARION ASSOCIATES
DENVER & CHAPEL HILL
303-830-2890 X26