

Basics of Land Use Law

ELI Summer School

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Basic Zoning

- “Zoning is local government regulation of the use of land . . . and of buildings and structures . . . in accordance with a general plan.”
 - *Rathkopf’s the Law of Zoning and Planning*

The Power to Zone

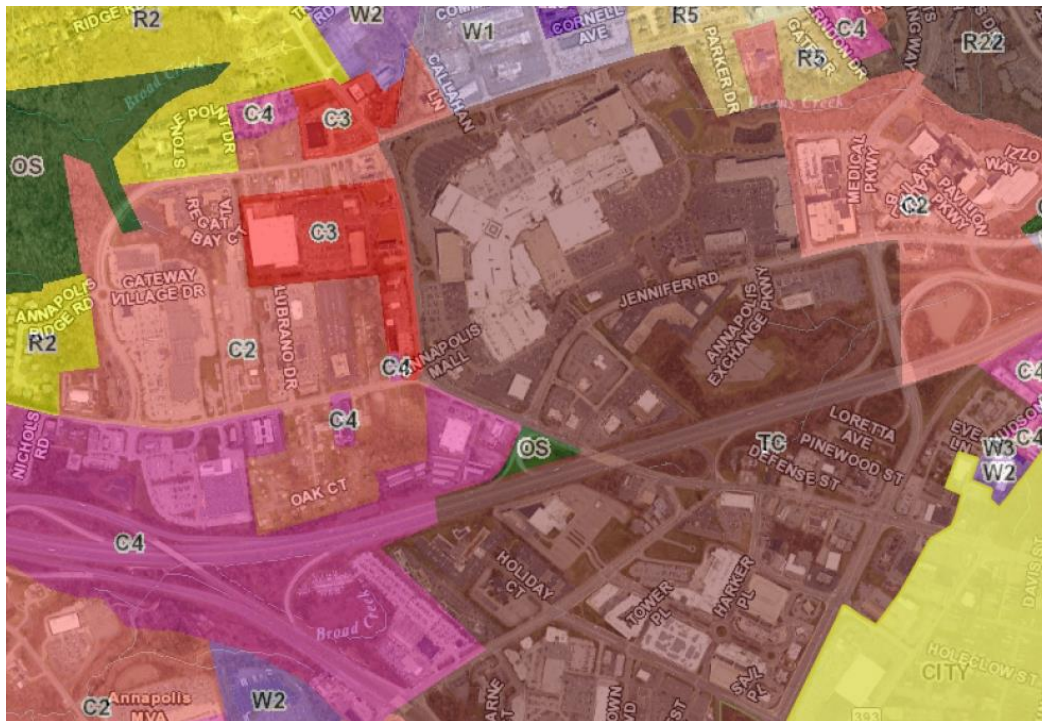
- Zoning is not regulated by the State of Maryland
 - Maryland Code Land Use Article grants counties and municipalities the power to zone
 - Land Use Article also sets restrictions
 - State or Federal law impacts local zoning
 - Critical Area, growth tiers, priority funding, express preemption (medical cannabis), ADA, FHA, RLUIPA

Local Zoning Regulations

- Actions by local government
 - Adopts official zoning maps
 - Enacts zoning regulations
 - Adopts comprehensive plan

Local Zoning Regulations

- Zoning districts (residential, commercial, industrial, conservation)



Local Zoning Regulations

- Regulations Will List Uses
 - Permitted (“by right”), conditional, special exception
 - If not permitted, the use is prohibited

Permitted, Conditional, Special Exception, and Business Complex Auxiliary Uses	C1	C2	C3	C4
Adult bookstores				C
Adult day care centers	P	P	P	P
Adult movie theaters				C
Alcoholic beverage uses as accessory to other uses	C	C	C	C
Amusement parks				SE
Animal hospitals and veterinary clinics				P
Appliance sales and service facilities			P	P
Arcades			P	P
Arcades located at least 1,000 feet from an existing dwelling with a maximum floor area of 3,000 square feet	P	A		

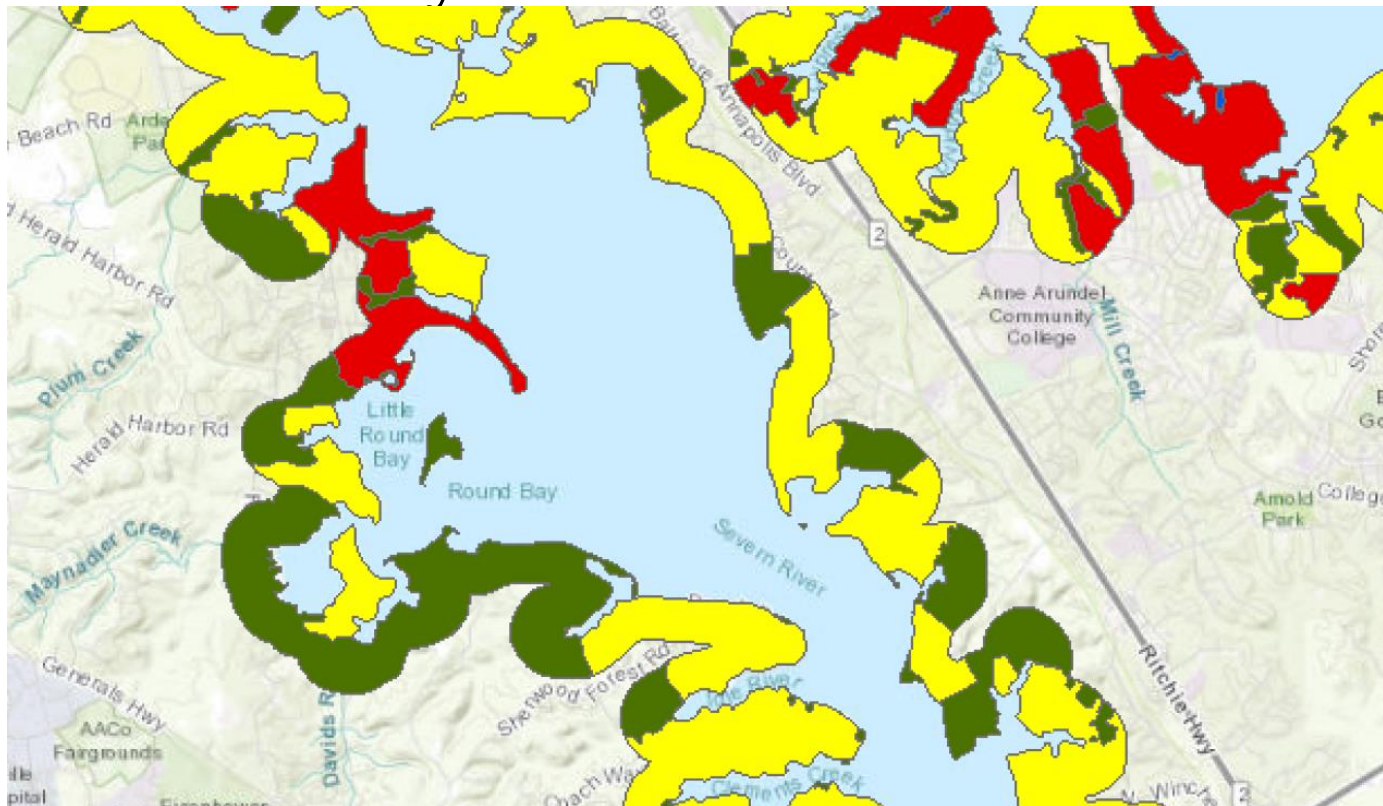
Local Zoning Regulations

- Each use is limited by bulk regulations

Minimum lot size	11,000 square feet
Maximum coverage by structures and parking	75% of gross area
Minimum setbacks for principal structures:	
Front lot line	20 feet
Side lot line	10 feet
Rear lot line	20 feet
All lot lines	60 feet from right-of-way line of a divided principal arterial road
Minimum setbacks for accessory structures:	
Side lot line	10 feet
Rear lot line	10 feet
Minimum lot depth	100 feet
Maximum floor area ratio	1.0

Local Zoning Regulations

- Overlay Zones



Local Zoning Regulations

- Variances
 - Frequency
 - Legal standard
 - Unique physical conditions of the property or exceptional circumstances
 - Minimum necessary to afford relief
 - Alter the essential character of the neighborhood
 - Impair use and development of adjacent property
 - Public welfare

Local Zoning Requirements

- Rezoning
 - Standard (change or mistake rule)
 - Relationship to comprehensive planning
 - Intersection with takings
- Nonconforming Uses
- Special Exceptions

Zoning Hearings

- Public Notice
- Public Participation
- Hearing Examiners
- Boards of Zoning Appeals

Zoning Decisions

- Standing Issues
- Standard of Review
- Practical Tips

Judicial Review – Standing

- Administrative Agency vs. Judicial Review Standing
 - Party vs. party & aggrieved
- Aggrievement standard
 - *Prima facie* aggrieved
 - Adjacent, adjoining or confronting property owner
 - Did they get statutory notice?
 - Almost *prima facie* aggrieved
 - Proximity to the subject property, visibility, intervening obstacles
- Organizational standing

Judicial Review – Standard of Review

- Fairly debatable, substantial evidence, and clearly erroneous
- Questions of fact vs. questions of law
 - Deference to the agency
- Impermissible change of mind

Judicial Review – Practical Tips

- Be aware of the intersection between statutory standards and case law (*Schultz v. Pritts*)
- Due process
- Flexible rules of evidence
- Lay Boards of Appeal
- Zoning by plebiscite
- Expert testimony

Comprehensive Planning

- How binding are the plans?
- How often are they reviewed?
 - Statutory mandates vs. business cycle
- How do they adapt to changing societal needs?
- Relationship to comprehensive rezoning

Current Trends

- Solar Development
- Medical Cannabis Facilities

Medical Cannabis Facilitates

- State Medical Marijuana Laws often include land use restrictions
 - Nevada – medical marijuana establishments cannot be located within 1,000 ft of a K-12 school or within 300ft of a community facility
 - Hawaii – restricts both production and distribution centers to areas where agricultural production is permitted, and the such centers cannot be within 750ft of schools, playgrounds, or public housing.
 - Many states also permit municipalities to enact their own zoning regulations.
- Common question/claim: Does the State Law legalizing Medical Marijuana preempt municipalities zoning laws that prohibit the distribution and production of medical marijuana
 - *County of Tulare v. Nunes*, 215 Cal. App. 4th 1188 (5th Dist. 2013)
 - *Cannabis Action Coalition v. City of Kent*, 183 Wash. 2d 219 (2015)
 - Does not preempt.

Private Firms & Land Use Law

- counseling, planning, structuring, and negotiating for private real estate transaction
- advising as to compliance with the applicable land use controls
- advocacy with respect to a private land use initiative requiring public agency action
- negotiating with or mediating among the stakeholders in a public land use decision
- negotiating and preparation of the documentation required in connection with all of these activities
- advocacy in litigation challenging a public land use decision