
LAND USE LAW – DAILY PRACTICE



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Many Different Types of People and Businesses Encounter Land Use and Zoning Issues

- Bakeries
- Churches
- Non-profit or service organizations
- Warehouse facilities
- Affordable housing developers
- Commercial developers
- Gas stations
- Cemeteries

The Power to Zone

- Land use and zoning authority is derived from the “police powers” given to counties and municipalities under Maryland laws
- “Police power”: The power to establish laws in furtherance of the public health, safety, and welfare
- Federal and State law impact local zoning
 - Preemption (medical cannabis), ADA (Americans with Disabilities Act), FHA (Fair Housing Act), RLUIPA (Religious Land Use and Institutionalized Persons Act)

Powers That Are Granted

- In Maryland, the specific powers granted depend on what type of County you are in (e.g., charter form of government with County Council/County Executive, or County Commissioners with no Executive)
- And, whether a specific county or municipality has taken advantage of their authority under State law to adopt certain legislation
- Some municipalities have land use and zoning authority, others don't – need to evaluate on a city-by-city basis
- *Practice tip: Always confirm whether a site is in a municipality, in addition to a county and, if so, confirm if the municipality has its own zoning authority*

Types of Powers

- Land use/planning
- Zoning
- Subdivision
- Adequate public facilities (APF)
- Affordable housing
- Historic preservation
- Planning for streets and roads
- Planning for water and sewer

Planning vs. Zoning

What Is Planning?

- County and city planners create policies to encourage development that will serve the needs of the public in the future
- Broad
- Long-term
- Guides land use
- Typically, is advisory and does not have the force of law (however, for “discretionary approvals” a required finding may be substantial conformance with the master plan)

What Is Zoning?

- “Zoning is local government regulation of the use of land . . . and of buildings and structures . . . in accordance with a general plan.”

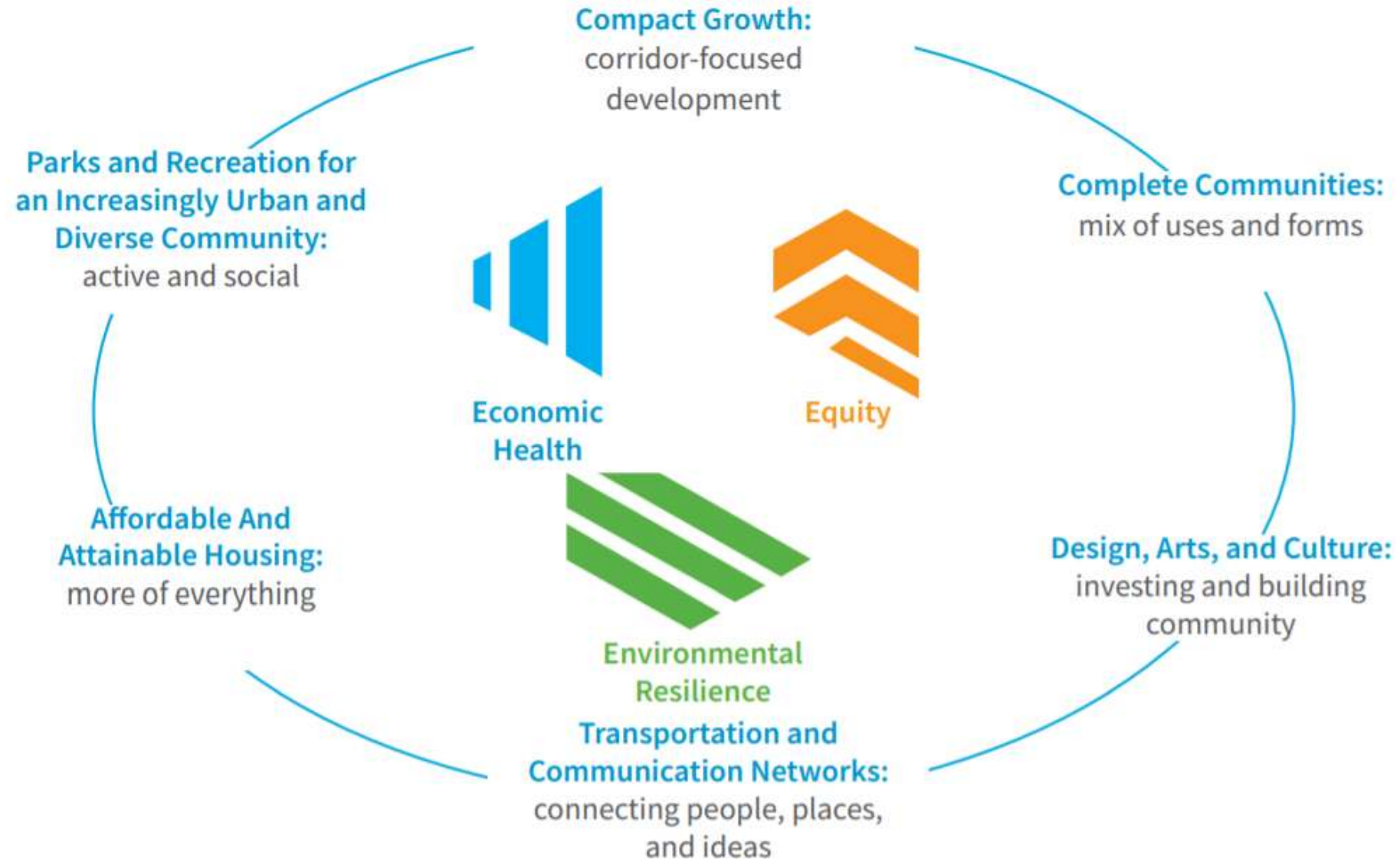
Rathkopf's the Law of Zoning and Planning

- Property-specific
- Identified on the official zoning map
- Included in the County/City Code text
- Binding, not merely advisory

Types of Land Use/Planning Actions

- General plan
- Master plan
- Sector plans
- Functional plans (e.g., transportation, environmental, bicycle, parks, historic preservation)
- *Practice tip:*
 - *Pay attention to those functional plans – a Bicycle Master Plan can mean many, many tens of thousands of dollars in frontage improvements if a property redevelops*

Trends in Planning



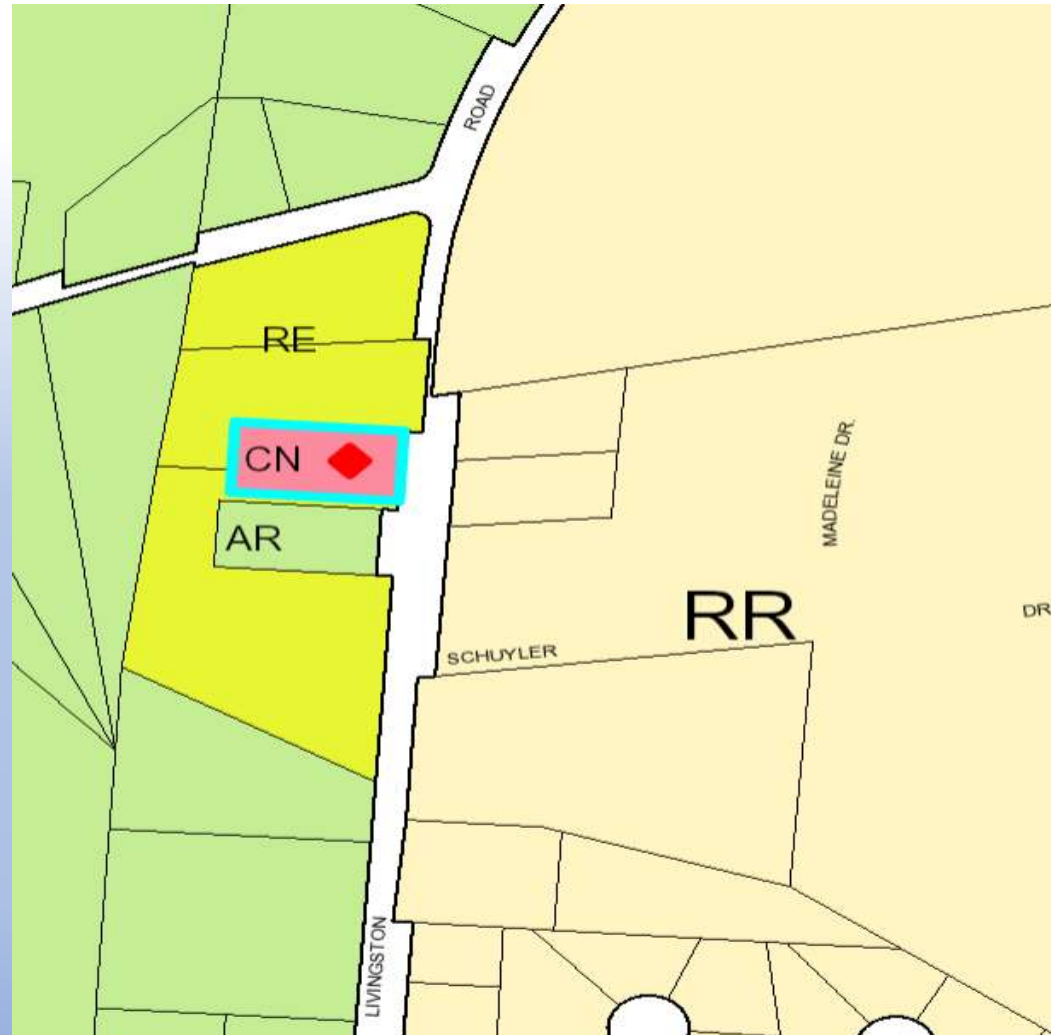
Types of Zoning Actions

- Zoning/rezoning
 - Comprehensive
 - Floating
 - Satisfy the “purpose clause”
 - Piecemeal
 - “Change or mistake rule”
- Special exception/conditional use
- Variance

Sample Montgomery County, Maryland Zoning Map



Sample Prince George's County, Maryland Zoning Map



Bulk Regulations

B. R-10 Zone, Standard Method Development Standards

	Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone	Duplex - Side	Duplex - Over	Townhouse	Apartment
1. Site					
Site Area (min)					
Site	2,000 SF	2,000 SF	2,000 SF	n/a	n/a
Site per unit	n/a	n/a	n/a	1,000 SF	1,000 SF
Open Space (min)					
Common open space (% of site) (See Section 6.3.5)	n/a	n/a	n/a	30%	40%
Site Coverage (max)					
Site coverage	n/a	n/a	n/a	20%	12%
Specification for Open Space and Site Coverage					
In a development with townhouse or apartment building types, open space and site coverage are calculated based on the area of the site minus any area for detached house and duplex lots.					
2. Lot and Density					
Lot (min)					
Lot area	2,000 SF	1,000 SF	2,000 SF	800 SF	20,000 SF
Lot width at front building line	25'	12.5'	25'	n/a	100'
Lot width at front lot line	10'	10'	10'	n/a	n/a
Frontage on street or open space	Required				
Density (max)					
Density (units/acre)	43.50	43.50	43.50	43.50	43.50
Coverage (max)					
Lot	90%	90%	90%	n/a	n/a

Overlay Zones



Special Exception/Conditional Use

- Definition: A grant of a specific use that would not be appropriate generally or without restriction and must be based upon certain findings
- Examples (generally speaking): Hospitals, larger assisted living facilities, home occupations, larger day care centers, golf courses, most commercial uses in residential zones

Special Exception/Conditional Use, continued...

- May only be approved if certain findings are made by a “Hearing Examiner”
 - Satisfies requirements of the zone
 - Complies with the master plan, other applicable plans (e.g., functional)
 - Will not adversely affect the character of the neighborhood
 - Is compatible with the neighborhood
 - Will be served by adequate public facilities

Variances

- Definition: A modification of density, bulk, or area requirements
- Examples: Front/side/rear setbacks, lot coverage, height
- Legal standard
 - Unusual or extraordinary situations or conditions exist
 - Not the result of actions by the applicant
 - Minimum necessary to overcome the practical difficulties
 - Does not impair the master plan
 - Not adverse to the use and enjoyment of abutting or confronting properties
- *Practice tip: “Economic difficulty” is not a justification. It is very difficult to satisfy these standards, so success on a variance often depends on how strict or lenient a given jurisdiction is.*

Rezoning

- Change or mistake rule
 - A substantial change in the character of the neighborhood since the original zoning or comprehensive rezoning, or that a mistake was made by the District Council when it applied the existing zoning
- Floating zone
 - Zones that “float” and can land if certain compatibility, character, and master plan conformance findings can be made
- *Practice tip: Try to avoid these types of “piecemeal” rezonings where the applicant carries the burden. Monitor the jurisdiction’s master and sector plan updates instead!*

Subdivision

- The division or assemblage of a lot, tract or parcel of land into one or more lots, plots, sites, tracts, parcels or other divisions for the purpose, whether immediate or future, of sale or building development
- Resubdivision
- In general, you cannot build a building across lot lines
- *Practice tip: In my practice, I have seen increasingly clients who have purchased a lot or lots that were improperly subdivided by predecessors. This creates great headaches for all. When doing due diligence on a site, check for proper subdivision!*

Standard Method vs. Optional Method Development

- In some zones, there are two methods of development
- “Standard method” is more by-right
- But in order to achieve maximum permitted density and height under zoning, you may need to go through some additional review processes – “optional method”
 - “Discretionary” approvals
 - Certain findings must be made
 - This is where “substantial conformance” with a master, sector, or functional plan comes in, and makes the “planning” function more binding

“Discretionary” Approvals

- Concept/Sketch/Project/Site Plans
 - Satisfies applicable previous approvals
 - Erosion, sediment control, stormwater management, and forest conservation requirements
 - Safe, well-integrated parking, circulation patterns, building massing, open spaces and site amenities
 - Substantially conforms with recommendations of the master plan and any applicable design guidelines
 - Served by adequate public facilities including schools, police/fire protection, water, sanitary sewer, public roads, and storm drainage
 - Compatible with existing/approved adjacent development

A Little Bit on Judicial Review

- Try not to get there in the first place
- Working with the community and neighbors
 - Educate yourself on local nomenclature, trends, news, etc.
 - Outreach early and often
 - More information is better than less
 - Transparency and communication throughout
 - Sometimes it's better to give in on something that will please the community than continue to fight – sometimes you have to have hard conversations with your clients about “the bigger picture”
 - Unless you're already in court, don't show up to a community meeting as a team of dark suits!

Private Law Firms and Land Use Law

- 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 these activities
- More like a quarterback or a project manager than a lawyer sometimes!