

Zoning Process Assistance

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Understanding the original intent of zoning regulations and showing how a project can achieve that intent whether or not it conforms to existing ordinances are the keys to success in zoning approval assistance.

Summary

ZONING PROCESS ASSISTANCE SERVICES

Why a Client May Need These Services

- ▶ To obtain a special exception, conditional use, or zoning variance

Knowledge and Skills Required

- ▶ Knowledge of zoning ordinances
- ▶ Knowledge of the zoning change process
- ▶ Understanding of community planning issues
- ▶ Familiarity with local politics and personalities
- ▶ Strong presentation skills

Representative Process Tasks

- ▶ Identify and research applicable zoning ordinances
- ▶ Schedule appearance before zoning board
- ▶ Develop and present options to the client
- ▶ Prepare presentation materials for selected option
- ▶ Present zoning request at public hearing
- ▶ Follow-up activities

Architects routinely guide clients through the building regulatory process as part of their design services for a particular project. Here we discuss zoning approval assistance as a separate service.

CLIENT NEEDS

Virtually all communities adopt zoning ordinances in an attempt to achieve a desirable pattern of growth to ensure public health and safety and maximize property values. Clients often need assistance in obtaining zoning approval or a zoning variance for a proposed project. Because the feasibility of a project depends on attaining the approvals, it is not unusual for a client to seek assistance with zoning approval as a stand-alone service. In other instances this service may be combined with preliminary site planning services or with assistance in obtaining other municipal approvals. Approval by a zoning review board is usually only one of many municipal approvals that will be required for the overall project. Others may include design review, environmental impact assessment, utility department approvals, fire and police department reviews, and coastal commission approvals. Sometimes these related approvals may be needed before a zoning approval or zoning variance is granted.

Architects have an ideal background for analyzing zoning regulations and advising clients about their options for a particular property. Architects also are well qualified to represent clients before the appropriate municipal body in order to obtain a zoning approval or variance.

Zoning ordinances divide municipalities into activity classification zones, such as commercial, industrial, residential, mixed use, planned development (industrial, commercial, or residential), and agricultural zones. Each of these major zones is further subdivided by allowable density—for example, rural residential, medium-density residential, and high-density residential. Each classification includes a list of permitted uses and bulk requirements. A property use that is similar but not equivalent to those listed for a particular zone requires a “special exception” or designation as a “conditional use,” while a property use distinct from those listed requires the current zoning designation to be changed. Bulk requirements describe site planning criteria such as minimum lot size and frontage, maximum building footprint and floor area, and setback dimensions from property lines and streets. The term *variance* refers to an adjustment of the bulk requirements for a particular project.

Inevitably there will be sites for which the literal application of these ordinances will not be beneficial to the community in the eyes of the applicant. On a large scale, a community’s plan for future growth may be best implemented by amending its ordinance to permit new uses in an area or to enlarge its commercial center.

More frequently the best use of a property may not align exactly with the bulk requirements set forth for that property. In these instances the municipality will require the applicant to obtain a zoning variance as part of the project approval process. After final approval, the client and architect can proceed with the project according to the conditions

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set forth by the board or the zoning department, and a building permit may be issued if the applicant demonstrates that all the conditions of the final approval are being met.

In order to receive a variance, typically the applicant must prove that the ordinance places an “undue hardship” on the property owner or that the property in question cannot “yield a reasonable return” to the owner without a variance. These are general terms. Because their interpretation varies widely among communities, it is wise for the architect to consider them as broadly as possible within the context of an ordinance’s purpose. Often a variance will result in a property that is of greater benefit to the community than a strict interpretation would have allowed. An example would be a building placed partially within the front setback in order to allow parking to be in the rear or to be developed jointly by several property owners. In any event, it is necessary to demonstrate at least one of two points:

- A design concept that complies with the ordinance is not possible without undue sacrifice, financial or otherwise, on the part of the property owner.
- Such a concept would prove highly undesirable to the community as a whole in comparison with the variant alternative.

SKILLS

Experience with zoning ordinances and the approval and variance processes provides the foundation for competence in this service. Doing homework also helps. Architects who are well versed in community planning issues, who understand the original intent of ordinances, and who are familiar with case studies from similar communities will have a better chance of winning approvals and variances.

It also must be acknowledged that proposed changes to existing zoning are part of the local government legislative process, and politics, personalities, and the community are inevitably involved. Knowledge of the ideas and proclivities of the decision makers is always helpful in preparing winning arguments.

Attractive, easily understandable presentation materials and good presentation skills are prerequisites for representing clients before planning agencies. Firms that do not have in-house graphics capabilities may wish to subcontract the preparation of presentation materials.

PROCESS

A sample project work plan for preparing a zoning variance would include

- Zoning ordinance research
- Scheduling
- Presentation of options
- Project documentation
- Public hearing
- Deed

Zoning ordinance research. The architect should become familiar with all applicable zoning ordinances at the beginning of the project in order to determine whether and how the project might proceed within the ordinances, as well as what options there are for variances.

For renovation projects, if the structure is to be used for a different function, there

Approval Process

In many cases the legislative governing body (county board, board of supervisors, etc.) is the only authority to grant approval or denial in cases of major rezoning. Often this task can be delegated to zoning review boards for minor modifications such as variances. Even the zoning administrator (i.e., county staff) can make the determination if it is minor enough. This last determination moves the project from a legislative process to an administrative process. In cases where the board grants final approval, though, other agencies can only recommend approval or denial. However, some of these recommendations can be quite strong. For example, a utility may recommend against approving a project, stating that the development, as proposed, could not accommodate water and sewer infrastructure without being a threat to public safety.

Application Requirements

Development application requirements are established by a local government, and they contained detailed requirements, including completing a form, submitting site plan drawings (which are to be of specified scales, must be shown on pages of specified dimensions, and should contain detailed information about the development itself and the site on which it is proposed), and notifying affected property owners. If the application requirements are not met to the satisfaction of the zoning administrator or designee, the application can be rejected outright.

are likely to be requirements that must be met for the new use. Even if the original use is continued, ordinances are likely to contain provisions that were not in effect at the time of original construction. Grandfathering is a type of automatic variance that exempts existing properties from conformance with zoning regulations that take effect after the property's use is established. It is important to examine the grandfathering clauses carefully for restrictions, such as requirements that the building continue to be used for its original purpose.

For new construction, research will reveal the density, uses, and bulk requirements permitted under existing ordinances. In some cases a parcel of land may have been determined to be "unbuildable" and the challenge will be to prove to the municipality that in fact the land can be used safely and beneficially.

The architect should research any issues that arise upon review of the ordinances. Where variances are being considered, the architect should be familiar with the outcome of similar situations in the community in question or in comparable communities. As part of the research phase, the architect may contact the staff of the zoning department to seek advice and gain clear knowledge about the zoning approval process, including testing out alternatives. It tends to be difficult to win zoning changes or variances without the backing of staff.

Scheduling. A review of the municipality's meeting schedule will provide the basis for a schedule. However, schedules can be difficult to determine in advance. The community may have a backlog of projects waiting to be considered before the zoning appeals board. Sometimes it is necessary to appear before a particular board two or three times before a decision is rendered. Because of this uncertainty, reimbursement on a time and materials basis may be preferable to a flat fee arrangement.

Presentation of options. The architect acquaints the client with the options, explaining how the project might proceed within the ordinance vs. the gains that could be achieved through variances that are being considered. The presentation should include an assessment of the likelihood of success in achieving the variance, the probable cost, and the likely time frame.

Project documentation. If the client decides to proceed with the request for variance, the next step is to prepare documentation for the proposed project.

The architect or owner will complete the application that the municipality requires for a request for variance to be considered. The architect will prepare a cover letter presenting the case for the variance, either demonstrating the hardship imposed by the ordinance, showing that the variance will provide a greater benefit to the community, or both. Usually the municipality requires submission of multiple copies of the package, and there is an application fee.

A detailed site plan is prepared showing all applicable zoning information and any deviations being proposed, as well as traffic flow and building bulk. All of the information on the site plan must be graphically very clear.

Schematic designs are prepared so that the community and plan reviewers and decision makers can assess the visual impact of the project.

Presentation materials also may include photographs and sketches necessary to depict the owner's case. Such materials would include a visual illustration of the hardship caused by the ordinance and/or illustration of the benefits (or at least the lack of harm) to the community that will result from granting the variance.

Public hearing. The public hearing before the zoning appeals board is usually scheduled a few weeks after the acceptance of the application package and fee. All the owners of property abutting the subject property will need to be notified of the public hearing. In some municipalities the applicant is responsible for this notification. The architect should determine whether the client has any notification responsibilities.

The purpose of the public hearing is for the board members to hear all sides of the case. The neighbors state their concerns or support for the proposed project. The owner or owner's agent states the case for the variance and may respond to concerns of the neighbors or board members.

As the owner's agent, the architect is responsible for presenting a strong case for the variance using a thorough understanding of issues related to hardship and community impact, sensitivity and responsiveness to the concerns of the community, a persuasive presentation style, and effective presentation materials.

Deed. If granted, the specific conditions of the variance must be written into the property deed. This is the responsibility of the owner (or it may be completed by an attorney or the architect).

Once the zoning variance has been granted, the project still must be considered for final legislative approval. Typically this approval requires complete site construction information but only schematic building design information. As noted above, final planning board approval usually requires completion of other municipal approvals and reviews (plan approval and traffic, fire, police, utility, and environmental approvals and reviews).

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B102–2007, Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect’s Services.

AIA Document B102–2007 is a standard form of agreement between owner and architect that contains terms and conditions and compensation details. B102–2007 does not include a scope of architect’s services, which must be inserted in Article 1 or attached as an exhibit. Special terms and conditions that modify the agreement may be included in Article 8.

The separation of the scope of services from the owner/architect agreement allows users the freedom to append alternative scopes of services.

AIA Document B102–2007 replaces and serves the same purpose as AIA Document B141–1997 Part 1.

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