

Cultural Resources

PARTNERSHIP NOTES

Technical assistance in historic preservation planning, related planning/land use topics, and preservation strategies for Federal agencies, Indian tribes, States, and local governments

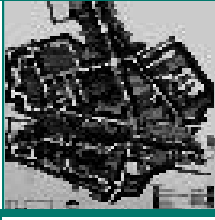
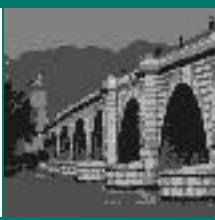
ZONING AND HISTORIC PRESERVATION

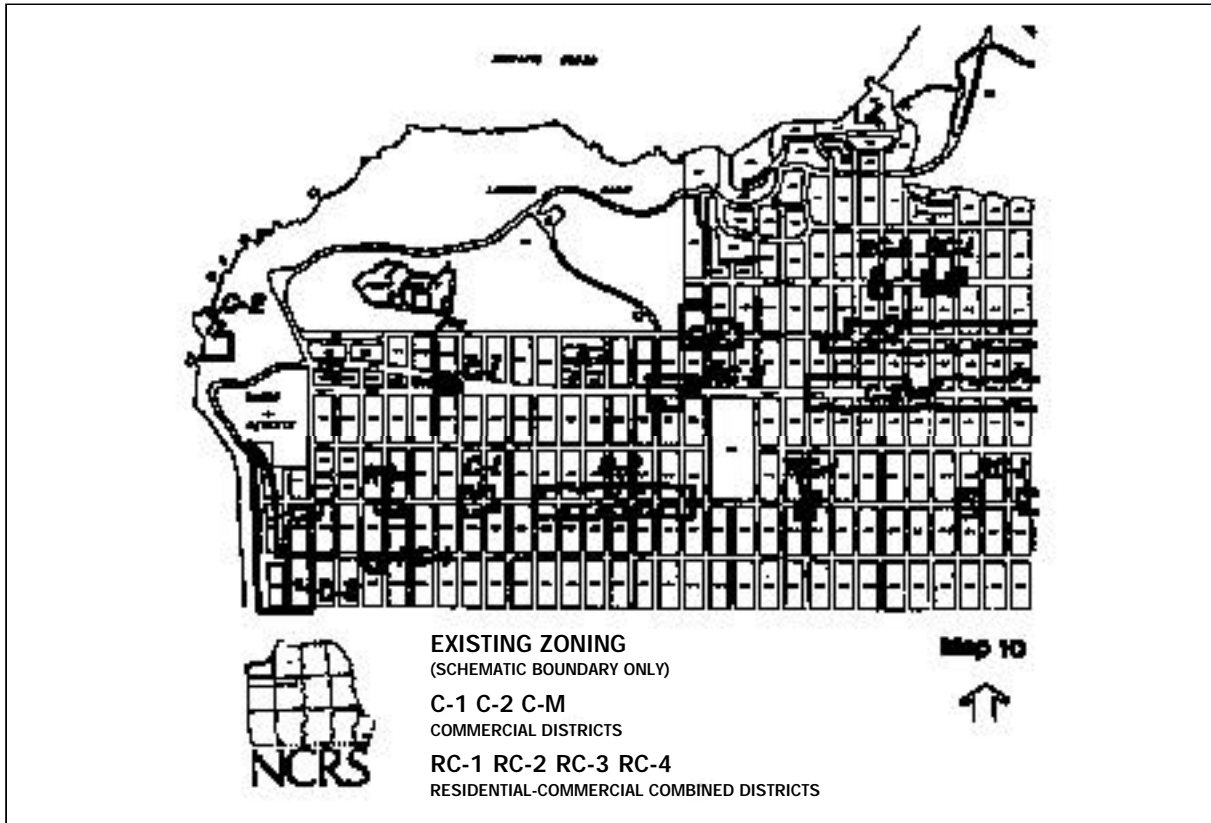
Stephen A. Morris

ZONING IS ONE OF MANY ORDINANCES AFFECTING the use of land in a local community. Others include building and fire codes, environmental regulations, subdivision ordinances, and the land-use policies expressed in a comprehensive or master plan. Of all these, however, zoning is the most far reaching and, perhaps, the best established. Historic properties and archeological sites occupy land area and, like other land uses, are subject to zoning regulations. When properly applied, zoning can be a powerful tool in protecting historic properties. Although zoning may be more effective in protecting historic buildings and historic districts than other kinds of historic resources, it is important to become knowledgeable about zoning in your community and to understand how it affects historic resources and archeological sites and how it might better protect these historic properties.

What is zoning?

Under state enabling legislation, a local government is authorized to divide the land area in its jurisdiction into districts, or *zones*, each with a set of regulations governing the development of private land. The districts are marked on a zoning map, which is an official government document. Generally, the text of the ordinance specifies the categories of uses allowed in each district (residential, commercial, industrial, agricultural, etc.), the density of development, the maximum size of the buildings, the size of the lot, the required spaces around the buildings, the number of off-street parking spaces, and other requirements for development, such as the building setback from the lot lines and the number of off-street parking spaces. Zoning districts are designated by classifications, such as "RS1" which might stand for Residential Single Family Low-Density, or "C2," which could be Commercial Medium-Density (generally letters





Commercial zones in a section of San Francisco. Source: Neighborhood Commercial Rezoning Study, San Francisco Department of City Planning, May 1984.

refer to uses while the numbers indicate density), as shown in the zoning map from San Francisco, above.

What kinds of local governments can adopt zoning?

State zoning enabling legislation generally specifies which local jurisdictions are authorized to adopt a zoning ordinance. In some states, both municipalities (cities and towns) and counties

can adopt zoning laws; in others, zoning is a function reserved for municipalities. The State of Texas, for example, restricts zoning to cities and towns of a certain size and requires counties to get special permission from the state legislature in order to adopt a zoning ordinance.

How long has zoning been in practice?

New York City adopted the nation's first comprehensive zon-

ing ordinance in 1916. The Standard State Zoning Enabling Act was drafted by the Department of Commerce in 1922 and had much to do with the widespread adoption of State enabling legislation and the acceptance of zoning by many of the larger cities and suburban communities around the country. The right of local governments to zone was affirmed by the Supreme Court's landmark decision in *Village of Euclid v. Ambler Realty Co.* in 1926, which upheld that, in prin-

ciple, zoning was a valid expression of the police power (i.e., the power of the government to regulate activity by private persons for the health, safety, morals, and general welfare of the public).

What about pre-existing uses or buildings?

Buildings or uses in existence prior to the establishment or amendment of the zoning ordinance, which are inconsistent with the new or amended zoning requirements, are called *non-conformities*. A lot that does not meet minimum size requirements can also be non-conforming. Non-conformities are sometimes given a set period within which they must be brought into conformity with the zoning ordinance; in some cases they are allowed to remain in existence indefinitely under the condition that they will not be expanded or improved.

How is a zoning ordinance adopted and administered?

The zoning ordinance and its supplemental map are adopted by the local governing body, such as the city or county council or town board, based on the recommendations of the planning commission, or a specially appointed zoning commission. The zoning commission makes its recommendations after studying existing

patterns of development and particular land use issues in a community. After the ordinance and map are finalized and adopted, an appointed zoning board of appeals or board of adjustment is established to decide when exceptions to the ordinance can be granted to particular property owners. A zoning administrator or officer administers the zoning ordinance on a day-to-day basis, granting zoning permits for proposed developments that comply with the terms of the ordinance.

How are changes made to a zoning ordinance?

Changes to the text of a zoning ordinance or a zoning map can be in the form of *zoning amendments* or *revisions*. A revision is considered to be more comprehensive than an amendment and usually results in a completely new ordinance. Both require following the legal process established by the state enabling legislation and must be approved by the local governing body. If state law requires that the zoning ordinance be consistent with the local comprehensive plan, policies in the plan must be considered. Often the planning commission reviews proposed amendments and makes recommendations to the town council. The term *rezoning* applies to both amendments and revisions and does not distinguish

between changes that apply to a small area or to the entire community.

What is a variance and under whose authority is it granted?

Given the unique characteristics of each parcel of land, zoning authorities recognized early on that although every property owner within a district would be bound to the same requirements, in certain cases exceptions would have to be made. One common type of exception is a *variance*, in which a property owner is exempted from all or a number of the provisions of the zoning ordinance. Variances require the property owner to prove to the zoning appeals board that, due to the particular physical surroundings, shape, or topographical condition of the property, compliance with the zoning regulations would result in undue hardship. Variances may cover any aspect of the zoning requirements, such as use, number of parking spaces, size of building, or setbacks (the required distance between buildings and lot lines).

What about special exceptions?

Special exceptions, also known as *special permits* or *conditional uses*, apply to uses that, although they don't conform to the zoning reg-

ulations, are considered to be desirable in a particular district under certain circumstances, such as a school in a residential zone. Unlike variances, special exceptions are listed in the text of the zoning ordinance along with those uses permitted as *a matter of right* or *by right* under the ordinance. The conditions required for the zoning board to grant a special exception are also set forth in the ordinance, although sometimes the board negotiates particular conditions to be placed on a proposed development with a property owner.

What is historic zoning or historic district overlay zoning?

Where historic district design review is established through the zoning ordinance, it is often referred to as *historic zoning* or *historic district overlay zoning*. An *overlay zone* is an additional layer of regulations for a particular area, which is laid atop the underlying or base zoning regulations. There are many different kinds of overlay zones including those that establish additional controls on development in areas subject to airport noise or those that promote downtown retail development. The base zoning provisions, which relate to use and density, continue to be administered by the zoning authorities. A

design review board or historic preservation commission administers the regulations contained in the historic overlay zone.

Should historic zoning or design review regulations and base zoning be coordinated?

Regardless of whether or not design review in historic districts is called historic zoning or is implemented through an independent process, it is essential that preservation regulations, such as historic district design review, and zoning be coordinated. Where there is no coordination, the preservation regulations that seek to preserve and protect the integrity of historic neighborhoods may be working at cross-purposes with the zoning ordinance, the goal of which could well be to attract high-density new development.

How can preservation regulations and zoning be coordinated?

Coordination can take place in a variety of ways. One way is to arrange for regular meetings between members of the zoning board and the preservation commission or to have a member of the zoning board also serve on the preservation commission. Interaction between the staff of both groups is also important. A

number of zoning ordinances provide a degree of coordination by allowing the historic district commission or design review board to review and make recommendations on all use permits, variances, rezoning requests, and zoning text amendment applications within the historic district.

Where preservation and zoning are separate, an ideal solution is to include a clause in each ordinance stating that where there are conflicts, the preservation ordinance takes precedence. Alternatively, the zoning ordinance might have a provision stating that there is a presumption against developments, rezonings, and variances that harm individual landmarks or historic districts. In addition, successful preservation commissions build in the opportunity to comment on any zoning issues that may affect historic properties and have the authority to recommend a suspension of certain zoning requirements that hamper preservation.

What are the typical problems that result from a lack of coordination between preservation regulations and zoning rules?

Zoning incompatible with current use. The most typical problems arise because the cur-

rent and historical uses in an area do not match the current zoning designation. Often a historic residential neighborhood may be zoned for retail, office, or industrial uses. The pressure to convert to one of these uses can result in the demolition or inappropriate remodeling of historic residences. Additionally, but often not considered, the demolition or inappropriate remodeling of the buildings to more profitable uses could damage or destroy important archeological remains that may exist on the property.

Density. A related conflict between zoning and preservation is density. In many cases, the current and traditional uses in a historic district may conform with the uses permitted under the zoning regulations, but the density of the property's actual use may be lower than the zoning allows. This is frequently the case in older commercial districts where historic commercial buildings are an average of two or three stories in height but the zoning allows much taller buildings. This also happens when farm acreage is zoned, for example, at a density of three houses per acre. The greater economic return generated by larger commercial buildings or more intense residential development creates pressure to demolish the existing

buildings, or to build incompatible additions to smaller historic buildings. Residential areas zoned for densities much higher than those represented by the existing buildings frequently suffer from disinvestment, since owners of the existing houses may be reluctant to maintain them without any assurance that a large apartment building will not be built on a neighboring property.

Allowable density may be the critical factor in archeological site protection. Higher density means greater square footage of floor space (either horizontally, vertically, or both) or a greater number of housing units permitted per acre. If in certain zoning categories, the zoning ordinance allows a density that essentially fills up the entire property, there will be no opportunity for protecting an archeological site in place. The site protection goal conflicts with the allowable density. On the other hand, the lower the permitted density in a particular zoning category, the greater the opportunity to find ways to protect archeological sites in place.

Lot sizes. Minimum lot sizes can also be a source of problems. For example, the 1950s zoning in one Virginia town encouraged redevelopment of older, so-called "obsolete," residential neighbor-

hoods close to the downtown. The zoning enlarged the minimum lot size beyond the traditional size (small urban lots) in order to redevelop the district in a manner similar to a large lot suburban neighborhood. Redevelopment did not take place as planned, and years later the area became desirable as a historic residential neighborhood. Property owners, however, were prevented from building compatible in-fill houses on traditionally sized vacant lots by the 1950s zoning, which required large lots. The inability to develop the vacant lots hampered the revitalization of the neighborhood.

The converse situation can also work against preservation. In historic areas where houses were traditionally built on large lots, current zoning or subdivision regulations may allow new dwellings to be wedged between historic houses on newly subdivided lots much smaller than those of the surrounding houses.

Off-street parking. Finally, preservation regulations and zoning often appear to be working at cross-purposes in regard to off-street parking requirements. Typically, modern zoning requires a greater number of off-street spaces than can be easily accommodated on a small historic lot. As a result, the property owner rehabilitating a historic building

or constructing a compatible infill building in a historic district often faces the dilemma of either demolishing an adjacent historic building to provide enough space for the required parking or abandoning the project altogether. Neither of these results is a favorable preservation outcome.

Each of the problems discussed above can be resolved by changing the existing zoning. However, prior to considering solutions to individual problems, it is advisable to take a comprehensive look at zoning and preservation conflicts throughout a community.

What steps should a community take to study the effect of zoning on the protection of historic properties in the area?

A logical place to begin studying the relationship between zoning and preservation in a community is to compile a single map showing both the boundaries of historic districts (or potential historic districts) and individual landmarks and the boundaries of the various zoning districts that affect the same area. This type of map clearly illustrates what zoning designations apply in areas of historic interest. At this point the text of the zoning ordinance

should be analyzed to determine the requirements for each zoning district and whether or not they support or conflict with the preservation and revitalization of the historic properties or areas.

The following questions provide a starting point for an analysis of this sort:

- Are historic residential neighborhoods with single-family houses zoned for single-family residential or other compatible uses?
- Do lot sizes and the building setback requirements from the front lot line match historic patterns?
- Do separate zoning districts with widely divergent regulations (one for high-density commercial use, one for single-family residential use, for example) divide a single historic neighborhood?
- Does the zoning for areas immediately surrounding a historic district provide an adequate buffer against development that would have a negative impact on the historic area?
- Do commercial zones allow much taller and larger buildings than currently exist in the historic district?
- Do commercial zones permit automobile-oriented commercial uses, such as

drive-through facilities, service facilities, or large parking lots, that conflict with the traditional street-front and pedestrian orientation of historic commercial buildings?

- Does the zoning require so many off-street parking spaces that it hampers the rehabilitation of historic buildings or the construction of new in-fill buildings?

If an analysis of zoning designations in historic districts reveals situations of the kind mentioned above, the next step is to examine the zoning ordinance to determine what, if any, existing zoning classifications might be more appropriate, or if it is necessary to amend the zoning in other ways.

What kinds of amendments should be considered to make the zoning in historic districts more responsive to preservation concerns?

Amendments might involve shifting the boundaries between adjacent zones or substituting one classification for another, such as changing from an inappropriate low-density residential designation to a more appropriate medium-density residential one.

The existing zoning ordinance, however, may not include classifications that are entirely appropriate for historic districts. In such cases, a particular requirement may have to be changed. If, for instance, the required minimum lot size in a particular single-family residential zone is too large and discourages in-fill construction and rehabilitation, changing this regulation to allow smaller lot sizes may be required. Or, if parking requirements are such that it is difficult to rehabilitate buildings in historic areas, then the number of required parking spaces should be reduced.

Another option would be to draft an entirely new zoning classification with requirements tailored to the specific needs of a historic district. Zoning classifications that apply only to particular areas of a community are known as *special purpose districts* or *special use districts*. Cities have enacted these not only for historic districts but also for other areas of the city with specialized uses or needs such as ethnic neighborhoods or areas with large institutions (hospitals, universities, etc.). Seattle has two districts of this kind: the Pioneer Square Preservation District, which was established to protect the historical and architectural character of that commercial historic district; and the International Special Review District,

which aims to maintain the International District core as an Asian cultural, retail, and residential center by encouraging such uses as small scale food processing and craft work with an Asian emphasis.

What is downzoning?

If the current zoning permits development at densities far higher than existing buildings, rezoning might involve what is known as *downzoning*, or reducing the permitted height and bulk of buildings. Downzoning can be controversial since affected property owners may perceive it as diminishing the value of their property. If this issue can be resolved, downzoning may be the single most effective protection measure that can be achieved through zoning in historic commercial areas, particularly in downtown business districts, because it substantially removes the pressure for high density development from the district.

What other measures are available to make zoning compatible with historic preservation?

A number of cities have amended their zoning ordinances to include special exceptions that allow historic properties to be used in ways not permitted as a matter of right in a particular

zone. For example, in Denver, offices or art galleries are permitted by special exception in residential zones if they are housed in historic buildings. This measure has made the large mansions in the city's Capitol Hill district more economically competitive with new residential buildings. Similarly, the District of Columbia created a special exception to allow nonprofit organizations to use residential landmark buildings for certain nonresidential use under specified circumstances (the building must contain a gross floor area of 10,000 square feet or greater, for example). Some cities, such as Richmond, Virginia, provide for the waiver of certain zoning requirements, such as height and area regulations and off-street parking and loading requirements for buildings in historic districts, when it can be demonstrated that the waiver is necessary in order to achieve the purposes outlined in the city's preservation ordinance.

Transfer of development rights or TDR is another zoning technique that has been used to promote preservation in a few cities and counties. Basically, the TDR technique separates the rights to develop a parcel of land from other rights associated with the parcel. The development rights of agricultural land, low density historic buildings, or the air space above a historic building,

for example, are transferred to sold for use in another location where higher density development is permitted or encouraged. Subsequent development on the land from which these rights have been transferred can be limited to very low density or precluded altogether, depending upon the community's regulations. The cost and expertise required to administer a full-scale TDR program have presented difficulties, especially for smaller communities which lack full-time planning staff.

Bonus or incentive zoning has also been used to encourage historic preservation in communities around the country. The bonus refers to the additional density (beyond what would otherwise be permitted) granted to developers in exchange for providing specified public amenities, such as open space or affordable housing. Philadelphia's plan for Center City proposed that density bonuses be granted for the preservation of locally designated historic structures and that the city's zoning code be revised to include standards to define the requirements.

Conditional zoning is another technique that can benefit the preservation of historic resources and archeological sites. The local government may grant a landowner's request for rezoning

only if certain conditions are met, such as the dedication of land for a community park, the provision of a playground, or street improvements to accommodate traffic associated with the new development. Sometimes called *proffers*, these conditions are negotiated and agreed upon by local government staff and the property owner. Once approved by the local governing body, these conditions become legally binding as part of the property's zoning.

This technique has been successfully used in Fairfax County, Virginia, where archeological sites have been surveyed, excavated, set aside in open space, and donated to the county park system, and historic buildings have been incorporated into development project designs as residences and community centers. This technique is also used effectively in Massachusetts. For example, in Sharon, Massachusetts proffers helped protect the Stoughtonham Furnace Site, listed on the National Register of Historic Places for its historically significant remains of an iron foundry where cannons were made during the Revolutionary War. The developer of a large residential development donated the site to the town for conservation land and donated a preservation restriction (or easement) to the Massachusetts Historical Commission.

Despite the potential benefits of this technique, there are some drawbacks. The success of such an approach depends upon local government staff and/or commissioners being knowledgeable about historic preservation and archeological protection issues, being able to participate in the rezoning review process, understanding the business objectives of development, and having skills in effective negotiation. Where knowledgeable and skilled staff are lacking, historic resource preservation may never receive consideration unless citizens raise the issue during public hearings.

Some practical suggestions

Preservationists should demonstrate a sincere, constructive, and continuing interest in local zoning issues by attending scheduled meetings and public hearings of the zoning commission or board of zoning adjustment (whether or not a "preservation case" is on the agenda). It is not necessary (and sometimes counterproductive) to give formal testimony on every topic. However, thoughtful queries by the public at a hearing will often raise questions that board members themselves would not have considered, and ideas from the public can help the board develop the conditions

and requirements to be included in its decisions. Preservationists can also frame their questions and observations to make clear connections between historic preservation and zoning issues—connections board members might not otherwise see.

Secondly, having demonstrated their commitment, credibility, and interest in local zoning, preservationists should take the next step and offer historic preservation training or presentations for local zoning (and other land use) boards. The training has to be attractive, appealing, and user-friendly and should be promoted as a way to enhance the board members' ability to do their work more effectively and efficiently, not as a "favor" or as lobbying from a special-interest group. Arranging for co-sponsorship of the sessions by the state or regional planning agency, the State Historic Preservation Office, local non-profit or service clubs, and business organizations demonstrates that preservation concerns are varied and widely shared public policy issues and not special-interest concerns.



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Sources of Information

For those interested in learning more about zoning and pursuing the connections between zoning and historic preservation the following publications may be useful. Publications of the American Planning Association are available from APA's Planners Book Service, 122 S. Michigan Avenue, Suite 1600, Chicago, Illinois 60603; or check out a wider selection of planning, zoning, and related publications on APA's Web site at <www.planning.org>.

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Series editor: Susan L. Henry Renaud, Coordinator, Historic Preservation Planning Program
U.S. Department of the Interior, 1849 C Street, NW, Room NC330, Washington, DC 20240



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