

TOWN OF NORTHFIELD, VERMONT
PLANNING COMMISSION
Minutes of September 3, 2024

The meeting was held at the Community Room of the Brown Public Library, and was also streamed via the Town Zoom account for the benefit of those unable to attend in person.

The meeting was called to order at 6:34 pm by Chair Royal DeLegge.

Roll Call: Present for the meeting were Commissioners Royal DeLegge, Julie Lappin, and Elroy Hill. Clerk Mitch Osiecki was also present. All participants were present at the Community Room.

Set/Adjust Agenda: None.

Public Participation: None.

Approval of Minutes:

Motion: Elroy Hill moved to approve minutes of April 3. Julie Lappin seconded.

Discussion: Julie noted that in discussing goals for upcoming meetings, a third item was raised – addressing the question of a minimum lot size in the Low-Density Residential district.

Vote to approve (subject to addition of the item about addressing the minimum lot size in the LDR zoning district): Motion passed, 3-0.

New Business

Discussion of options for adding development protections to the Town Forest.

Royal and Julie spent some time researching potential options. Royal presented a summary of their preferred option: a Town Forest Overlay district. Royal explained that an overlay district allows for the imposition of additional regulation (beyond those of the underlying zoning district) for an area clearly defined as an overlay district.

The creation of an overlay district would require two elements:

1. Clearly defining the boundary of the overlay district; and
2. Enumerating any additional development regulations for the overlay district.

Mitch noted that during discussions on this topic, there was raised the possibility of placing the Town Forest under a Conservation Easement. Towns are sometimes reluctant to pursue a Conservation Easement; it can be difficult to “undo” a Conservation Easement once it’s been approved.

Royal asked whether the boundary of the Town Forest is clearly known. Mitch will research.

The Planning Commission will continue the discussion of a Town Forest Overlay at its September meeting. We will invite members of the Conservation Commission, the Town Forest Stewardship Committee, and other interested parties to attend the September meeting.

These minutes will include as an appendix a document shared by Royal DeLegge the use

Other Business

Royal asked that future monthly agendas include an item for updates from the CVRPC.

Next Regular Meeting: October 1, 2024, at 6:30 pm.

Adjournment: Julie Lappin moved to adjourn; Elroy Hill seconded. **Motion passed, 3-0.**

Meeting adjourned at 6:48 pm.

Land-Use Controls: Comprehensive Plans, Zoning, and Property Restrictions

To prevent the haphazard development of land, land-use is restricted by public and private land-use controls, and by government ownership of land. For instance, parks and forest preserves are protected by government ownership.

The federal government has virtually no laws regulating land-use. Most land-use controls are within the province of the states, but their enactment and enforcement are delegated to the local governments. Hence, land-use controls vary widely across localities.

Land-use controls consist of government ordinances, codes, and permit requirements that restrict the private use of land and natural resources, to conform to public policies. There are several types of land-use regulations, including subdivision regulations, zoning, building codes, housing codes, curb-cut permit systems, historic preservation laws, and tree cutting laws.

The primary public land-use control is **zoning**, where properties of the same type, such as residential or commercial, are designated for particular geographic zones. The primary private land-use control is **deed restrictions**, limiting what can be done on the property by the owner. The primary purpose of land-use controls is to limit population density, noise, pollution, and to maintain the aesthetics of the neighborhood.

Because land-use law changes over time, such changes may place an undue burden on some property owners, so the law often allows grandfathering certain provisions, allowing land that originally conformed to the law to continue without modifications that would be required to conform to the new changes in the law. Hence, property may be classified as: legal and conforming, legal and nonconforming, and illegal. **Legal and conforming** means the property meets all current land-use requirements, while **legal and nonconforming** means it was legal under past land-use law, but continues to be legal only under grandfathered provisions.

Legality for Land-Use Controls

The preamble of the United States Constitution allows laws to be enacted for the general welfare, but the 14th amendment prevents states from depriving people of property or interfering with its use, without due process of law. The United States Constitution delegates the police power to the states, allowing them to issue regulations to protect public health, safety, and welfare. However, since land-use controls depend on population density, the mix of architectural structures, and the typography of the land, the states delegate most of their powers to regulate land-use to the municipalities, who enact ordinances that conform to state law. State and federal governments regulate land-use through broader legislation, such as environmental laws, coastal management, or scenic easements.

The 5th amendment of the U.S. Constitution also has a **takings clause** that states that private property cannot be taken for public use, without just compensation. Hence, if property is

condemned because the government wants to exercise **eminent domain**, then the owner must be compensated. Similarly, a landowner may bring an **inverse condemnation** action, seeking compensation for the devaluation of his land because of a public taking of adjacent land. For instance, a major highway built near residential units will likely devalue those properties.

The amount of compensation is usually determined by negotiation between the property owner and the government or the property owner can take the government to court, and let the court decide. Often, just compensation is determined by the **before-and-after method**, where the property value after the development of the adjacent land is compared to the property value before the taking.

Likewise, land-use controls cannot restrict property owners from enjoying their property or doing what they want with it unless it is justified by the police powers. For instance, zoning consists of local laws that regulate the use of privately owned real estate to promote orderly development and to provide different population densities in different areas and to protect environmental resources.

Zoning regulations cannot be unreasonable, arbitrary, or destructive. Zoning ordinances must also not violate the state constitution or other applicable provisions in state law. Generally, zoning ordinances:

- must be exercised in a reasonable manner
- be clear and specific
- be nondiscriminatory
- apply to all property in a similar manner
- promote public health, safety, or the general welfare under the state's police power

Comprehensive Plan

Before the details for land-use controls can be mapped out, there must be a **comprehensive plan** (aka **master plan**) that will satisfy objectives and prevent conflicts in future development, providing a blueprint for sustainable growth, while balancing social, economic, environmental, and aesthetic desires.

Land-use controls specify quantity and location of parcels for residents, business, agriculture, industry, utilities, community facilities, parks and recreations, traffic and transit facilities, as well as marking off floodplains and potential hazards. A major consideration is for housing, both present and future needs, while preventing or rehabilitating declining neighborhoods. A transportation infrastructure must also be provided: highways, public transit, parking, and possibly pedestrian and bicycle paths. To protect health and the environment, there must be a comprehensive plan for utilities, including water sources, sewage, storm drainage, flood management, waste treatment and disposal.

A comprehensive plan will also consider means of conserving resources, such as energy. For instance, the efficiency of transportation depends on decisions regarding the location of traffic signals, timing of the signals, 2- or 1-way traffic and which directions for the 1-way traffic.

Zoning

If the comprehensive plan is the general blueprint, then zoning is the details, local laws enacted according to the comprehensive plan, usually designating specific districts for particular types of structures or activities, such as residences and businesses.

A **zoning ordinance** generally defines:

- the purpose of the ordinance
- the zoning classifications of permitted uses for the different sections of land
- restrictions, such as setbacks and height limits
- procedure for allowing nonconforming uses
- procedure for granting variances, amendments, and hearing appeals
- penalties for violations

Zoning determines:

- permitted uses for each parcel of land
- lot sizes
- types of structures
- building heights
- setbacks, the minimum distance between structures on the property and streets or sidewalks
- density, either population density or the number of structures per unit area of land
- style and appearances of structures
- protection of natural resources.

The city planning department creates and maintains a **zoning map**, a diagram of the existing zoning classifications: single-family residential, multiunit, mixed-use, agricultural, commercial, industrial, etc.

The zones are most commonly designated by letters, such as *A* for agricultural, *R* for residential, and *C* for commercial. In addition, certain planned unit developments (PUD) may be zoned for mixed-use, comprising both residential and commercial sections. Zoned classifications may have further subdivisions. For instance, land zoned for residential may be subdivided further into single-family homes, semi-detached residences consisting of no more than 4 dwelling units, high-rise apartments, etc. So, *C-1* may designate businesses such as service stations and convenience stores; *R-2*, single-family housing; *R-4*, high density residential, as in apartments, etc.

There may also be **buffer zones**, consisting of playgrounds or parks that separate residential zones from other zones.

Other types of zoning may designate special qualities, such as **box zoning** that specifies building heights, setbacks, and percentage of open area to avoid overcrowding and **aesthetics zoning** that may specify buildings of a certain architectural style. **Incentive zoning** guides current

development for certain desirable characteristics, such as requiring a high-rise office building to house retail establishments on the street-level floor. **Spot zoning** classifies a parcel of land differently from surrounding property if the zone is not within the comprehensive zoning plan nor can be justified because of health, safety, or the general welfare.

Compliance with zoning ordinances is monitored through the issuance of **zoning permits**, where the property owner or developer cannot substantially alter the use the property without getting a zoning permit, which will not be issued unless the proposed development conforms to the zoning ordinance. Zoning permits are usually required before building permits can be issued.

Some properties that were developed before the enactment of zoning ordinances may not conform to the new regulations or the zoning requirements may cause an undue hardship on some property owners because of the nature or the topography of the land. In such cases, exceptions are made to the zoning ordinance to allow such **nonconforming uses**. A nonconforming use may continue until the current use is abandoned or the property is destroyed. The nonconforming use may continue indefinitely if it has been grandfathered into the zoning ordinance.

Subdivisions

Subdivision regulations are part of comprehensive plans that apply to large subdivisions of land set aside for residences, specifying such things as the proportion of open space, the pattern of access roads, and what will remain the property of the county or other municipality. Special density zoning standards for some subdivisions regulate the gross density for a particular area. The **gross density** = the average number of residential units in an area.

A **subdivider** buys undeveloped land and divides it into smaller units to sell to developers or individuals. A **developer** builds structures on the land, such as homes or businesses. The developer may also be the subdivider. Before the actual subdivision, the subdivider must submit a development plan that conforms to the municipality's comprehensive plan.

Different subdivisions may have different street patterns. For instance, the **gridiron pattern** has rectangular blocks with public streets running on all sides and smaller alleys in between. However, the streets can also have a **curvilinear** or **clustering pattern** where the homes are clustered in cul-de-sacs and limited use streets with more open spaces.

Additionally, procedures for submitting and processing subdivision plats are also stipulated. Subdivisions are divided into plats, which are further subdivided into blocks, consisting of several lots, which are sold individually.

A **plat** is a section of a subdivision that shows geographic boundaries of individual lots, blocks, sections, streets, public easements, monuments, engineering data, and restrictive covenants. A plan for the plat must be approved by the municipality before it can be recorded. The subdivider may also need to file an environmental impact report that also must be approved. The subdivider determines the location and size of the individual lots, taking advantage of natural drainage and land contours, and providing for utility easements, and water and sewer easements. A plat may

also have a homeowner's association and may publish and maintain the bylaws for the subdivision.

Building Codes and Certificates of Occupancy

Building codes specify construction standards for repairing or constructing buildings, such as the materials used, electrical wiring, fire prevention, sanitary equipment, etc. The property owner must request a **building permit** to alter, repair, or construct a structure. A municipal inspector must approve of the construction plans and will periodically inspect the construction. After the construction is completed to the satisfaction of the municipal inspector, then a **certificate of occupancy** (aka **occupancy permit**) will be issued to the developer or owner, certifying that the completed construction complies with public health and building codes, thus allowing the structure to be occupied by people. Note that a building permit does not consider any deed restrictions on the property, only with the construction of the addition or alteration. Some communities, such as historical districts, may also have **aesthetic ordinances** to maintain the appearance or character of a neighborhood. **Aesthetic building permits** are issued by a special board in charge of supervising the ascetic ordinances.

Changing Zoning: Zoning Boards, Variances, and Conditional Use Permits

Over time, zoning will change as the needs of the area change. For instance, businesses often go bankrupt or the land needs for a particular industry decline, due to changes in technology or competition. Consequently, many business structures become empty. So, many cities change the zoning for the structure so that they can be converted into residential units.

Additionally, developers must develop structures according to what is permitted by zoning. If another type of structure is desired for many properties, then the land must be rezoned. Generally, rezoning is usually permitted by a planning commission or zoning board after a public hearing. A **zoning board** (aka **zoning board of appeal**) considers any applications for changing zoning, such as petitions for conditional use, variances or exceptions.

A **conditional-use permit** (aka **special-use permit**) allows a conditional use of property within a particular zone, such as a church in a residential district. Conditional-use permits must comply with certain standards set by the municipality.

A **variance** is granted by the zoning authority to a property owner to allow for a specific violation of the zoning ordinance, usually because the zoning ordinance imposes a burden on the property owner because of the nature of the parcel of land. For instance, a variance may be granted to a property owner with a small lot, where it may not be possible to satisfy setback and open area to residential area requirements.

While a conditional use permit allows related land uses, variances permit prohibited land uses because the ordinance would have a burdensome effect on the property. For instance, a variance may be issued if the topography of the land makes it difficult to conform to the zoning ordinance. However, to be granted a variance, the landowner must demonstrate the need for the variance,

specifying how that property is harmed or burdened by the regulations. Requirements for a zoning variance generally include the following characteristics:

- the zoning places an undue burden on the land
- the adverse effect of the zoning ordinance must affect the individual seeking the variance particularly and without a similar effect on its neighbors
- the variance does not substantially alter the character of the neighborhood as zoned. This is the most important criterion.

Note that if zoning places an undue burden on a parcel of land, then there must be something particularly different about that parcel from the surrounding parcels; otherwise, the area itself would receive a different zone classification.

Obtaining a variance or change in zoning costs time and money, but success is more likely if the property is located near a zone for which the conversion would be classified as. So, a residential rezoning of commercial property will more likely be approved if the land is located near residentially zoned property.

Conditional use permits and variances are issued by zoning boards only after public hearings that are locally advertised, allowing neighbors to contest the request. A property owner may also seek an **amendment** to the zoning ordinance, where a modification of the zoning ordinance will apply to a particular parcel of land. Like conditional-use permits and variances, an amendment is only issued by the zoning board after a hearing.

Although decisions by zoning boards can be appealed to the courts, the courts generally defer to the zoning boards unless they abuse their power.

Zoning Laws and Land Use Regulations

If it were as easy as buying a piece of land and designing and building a beautiful building anywhere you wanted, you wouldn't be reading this blog.

However, before purchasing a plot of land and beginning the building process, you must determine if you can do so before bidding.

It all starts with the master plan. Most cities and municipalities follow a comprehensive land plan considering future land planning. In many cases, they've created an official map that outlines zoning, subdivision developments, street plans, public facilities, and other building regulations.

The city or municipality will be divided into residential, commercial, and industrial zones.

All these will affect what property you can buy and how you use that property.

But there's more.

You must consider the building you will place on the property and how you will use it, as well as additional restrictions unique to each municipality and area.

These restrictions may include:

- Specific requirements for the type of buildings allowed
- Location of utility lines
- Restrictions on accessory buildings
- Building setbacks from the streets
- Boundaries
- Size and height of the building
- Number of rooms
- Frontage of lots
- Minimum lot area
- Side yards
- Off-street parking
- Historical or cultural site preservation
- Ecological considerations

The list can be varied and extensive, so you must check all zoning regulations to ensure you can do what you want with the property before you buy. Learn more about the details that go into land use planning.

Types of Land Uses

There are several types of land use in urban areas, each with specific designations and rules. The top seven types of land uses include:

Residential

This type of land use regulates where people live. This is one of the more complex designations since there are different types of regulations regarding density and types of residences that are allowed to be built from low-density (houses), medium-density (townhouses), and high-density (apartment buildings). A separate category allows for mixed-use development with a residential, commercial, and recreational mix.

Transportation

Used to help people get from one destination to another. It's not just streets and railways but the buildings associated with those activities, such as airports, train stations, and subway stations.

Commercial

This is another designation with separate "sub-designations" as well. Commercial land use may be warehouses, office buildings, restaurants, shops, or other commerce-type buildings.

Agricultural

Where residential regulations may restrict the number and types of animals on the property, agricultural land allows for the growing and harvesting crops and livestock such as farms, ranches, and pastures.

Industrial

This type of land use includes factories, warehouses, and shipping yards. Industrial use may be limited by types of industry and environmental concerns.

Public Use

Hospitals, schools, municipal buildings, and churches are included in this category. These areas are set aside for general public use.

Recreational

This land is set aside for parks, golf courses, open spaces, athletic fields, playgrounds, and swimming pools.

View our portfolio for examples of each land use type and how Think Architecture designed each land plan and structure.

Types of Land Use Zoning

When city planners map the city plan, they characterize each land use zone, affecting urban development. There are four types of land planning and land use zoning:

Functional Zoning

The seven types of zones outlined above exemplify functional zoning. Each zone is defined according to its function – commercial, residential, industrial, etc. Each has rules and regulations about the types of buildings and activities that can be built.

Form-based Zoning

This is zoning based on physical characteristics or urban identity. Think of “downtown” areas.

Intensity Zoning

Defined by the level of permitted intensity. Reflect on the residential land use split between high, medium, and low-density housing. This is an example of intensity zoning, where a certain number of residential units are allowed per surface unit.

Incentive Zoning

Economically depressed areas are often part of revitalization or development plans. Developers are incentivized to build new buildings and areas through tax abatements or light rail infrastructure.

Planning & Zoning Approaches

Floating Zones

Basics — A floating zone is a zoning district that delineates conditions which must be met before that zoning district can be approved for an existing piece of land. Rather than being placed on the zoning map as traditional zones are, however, the floating zone is simply written as an amendment in the zoning ordinance. Thus, the zone "floats" until a development application is approved, when the zone is then added to the official zoning map. Floating zones can be used to plan for future land uses that are anticipated or desired in the community, but are not confirmed, such as affordable housing, shopping centers, and urban development projects. They can also be used for cluster zoning, planned-unit developments (PUDs), and urban development projects.

Historical and Legal Implications — *Rodgers v. Village of Tarrytown*, 302 N.Y. 115 (N.Y. 1951) was instrumental in establishing the legality of floating zones. The court found the rezoning was in accordance with a comprehensive plan and, as with the traditional zoning power, the town had the power to amend its basic zoning ordinance such that it reasonably promotes the general welfare. Further favorable decisions have established floating zones as a viable planning tool.

Discussion — Floating zones are helpful for communities where the direction of development and growth is uncertain or for communities that wish to achieve specific goals outlined in a comprehensive plan or other public documents. It provides flexibility for developers, who can use the zone to obtain density bonuses, height extensions, etc., in exchange for meeting other requirements or goals in the floating zone, such as affordable housing, public transit, etc. Critics, however, argue that floating zones undermine the ability of citizens to rely on the predictability of the zoning map and can favor private development over the public interest.

Overlay Zones

Basics — An overlay zone is a zoning district which is applied over one or more previously established zoning districts, establishing additional or stricter standards and criteria for covered properties in addition to those of the underlying zoning district. Communities often use overlay zones to protect special features such as historic buildings, wetlands, steep slopes, and waterfronts. Overlay zones can also be used to promote specific development projects, such as mixed-used developments, waterfront developments, housing along transit corridors, or affordable housing.

Historical and Legal Implications — As with traditional zoning, uses that can be justified as contributing to the health, safety, and welfare of the population are generally allowed to be regulated via overlay zoning. Common regulations include those for historic districts, natural resource protection, and economic development, though local governments are given broad authority to determine what regulation is in their community's best interest. As with zoning, however, communities must be careful not to violate the "uniformity clause" of the Standard State Zoning Enabling Act by ensuring that all similar properties are treated similarly. For

further court opinions on the legality of overlay zoning, see *Jachimek v. Superior Court*, 169 Ariz. 317 (Ariz. 1991) and *A- S- P Associates v. City of Raleigh*, 258 S.E.2d 444 (N.C. 1979).

Discussion — Overlay zones have the potential to be very effective governmental regulatory tools. Since they tailor regulations to specific properties and districts to meet specific community goals, they can be more politically feasible to implement and can help communities meet stated goals or address specific inequities. On the other hand, they can create inefficiencies and inequities by applying regulations and restrictions to some properties and not others. Moreover, additional regulations may increase time and expense both for developers and for the public bodies involved in the development approval process.

Incentive Zoning

Basics — Incentive zoning is a tool that allows a developer to develop in a way that ordinarily would not be permitted in exchange for a public benefit that would otherwise not be required. Often written into the zoning ordinance, incentive zoning allows the city to leverage variations in existing zoning standards and obtain public goods. For example, a developer may provide schools, parks, open space, plazas, low-income housing, or money, in exchange for greater flexibility in required building setbacks, floor heights, lot area, parking requirements, number of dwellings, and other minimum standards. The incentives vary by location, but governments usually calculate the incentives to balance the public advantage with the developer's costs and gains.

Historical and Legal Implications — Local governments have used incentive zoning to accomplish a wide range of goals, including historic preservation, economic development, and conservation. Chicago first used incentive zoning in 1957 to stimulate skyscraper construction in its downtown area and New York followed shortly after, in 1961, in an attempt to create more public spaces and conserve historical buildings. Even though it is a voluntary mechanism, there have been several legal challenges to incentive zoning. Legality varies by state, jurisdiction, and project. Generally, it is found to be legally acceptable if goals and definitions are laid out clearly in the ordinance. The benefits must offset the negative effects of the bonus and the incentives or standards cannot be ruled as a taking or an exaction. Also, some courts have found the incentives illegal if the benefit and the existing standard are not directly related. For cases on incentive zoning see generally, *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104 (U.S. 1978), *Gillmor v. Thomas*, 490 F.3d 791 (10th Cir. 2007), and *Holmdel Builders Assn v. Holmdel*, 121 N.J. 550 (N.J. 1990).

Discussion — Since incentive zoning is intended to produce specific public amenities and types of development, it can be an effective tool for communities wishing to accomplish goals in a specific neighborhood or outlined in the comprehensive plan. It also can help increase the number public goods available in the community. Communities with a high demand for land, well-established standards and demand for specific amenities may benefit the most from using incentive zoning. For communities considering incentive zoning, it is important to consider the hidden costs that might be associated with the project, including those that might be difficult to calculate in the long-term, such as infrastructure challenges, congestion, etc.

Performance Requirements

Basics — An alternative to the traditional, conventional zoning method, performance standards regulate development by setting the desired goals to be achieved by regulation rather than regulating how those community goals are met. Instead of restricting specific uses on a property, performance requirements allow any use that meets the set standard. For example: a city ordinance might specify that all residential swimming pools must be completely screened from the public, but not require which materials be used to do so. Performance standards attempt to address the same goals desired by traditional zoning ordinances, such as environmental protection, neighborhood character, traffic control, etc., but with a greater amount of flexibility.

Historical and Legal Implications — Performance standards first came about in the 1980s and many performance-standard ordinances were enacted in the 1980s and early 1990s. Though they have largely fallen out favor by many communities as a comprehensive zoning strategy, some individual performance standards are still incorporated into conventional zoning ordinances today.

Discussion — Proponents maintain that the standards are a rational way of codifying values and goals without being overly restrictive on how those goals are accomplished. Critics argue that the incredible flexibility of the standards makes administration of performance standard ordinances difficult, expensive, and ultimately too unpredictable for residents to rely on. Politically, performance standard ordinances can be difficult to adopt for this reason. The ability of performance standards to accomplish targeted goals, however, has led some communities to include some performance standards in their conventional zoning structure.

Unified Development Ordinances

Basics — A Unified Development Ordinance (UDO) is a local policy instrument that combines traditional zoning and subdivision regulations, along with other desired city regulations, such as design guidelines, sign regulations, and floodplain and stormwater management, into one document. By combining all of these regulations in a single document, a UDO is intended to streamline and coordinate the development process of permits and approvals for development projects by removing inconsistencies and eliminating outdated policies. The required permits, processes, and regulations for the development process are outlined in one place, making it easier for developers, the public, and public entities to understand the requirements. Along with the compiling of regulations and policies, UDOS use clear, consistent language and definitions, with many illustrations and tables, often in attractive, easy-to-read formats to further help stakeholders understand the regulations.

Historical and Legal Implications — UDOS became popular in the 1980s, in large part due to Michael B. Brough's publication "A Unified Model Ordinance." Since that time, they have become more widely endorsed and more frequently adopted across the country. UDOS have not had any major legal challenges to date. In fact, proponents maintain that UDOS actually lead to fewer legal challenges since they tend to reduce number of inconsistencies in municipal regulations.

Discussion — UDOs can be beneficial for communities looking for a more comprehensive approach to land use regulation and economic development. A UDO is a helpful tool in accommodating neo-traditional and mixed-use development and providing a thorough and comprehensive approach to meeting goals such as environmental protection, transit, and mixed-housing types. They are perhaps most useful for cities experiencing rapid growth, where the streamlining of varied or complex development or enhanced control over economic development is desired. On account of the consolidated and streamlined requirements, UDOs afford stakeholders in the development process more predictability with respect to the standards for development and permit approval, and can allow a reduction in process costs because of the increased efficiency. Creation of a UDO, however, can be a slow and expensive process. In order for UDOs to be effective, they must be backed up with carefully drafted standards and regulations, and often require broad policy determinations to be made. The process of gathering input, preparing, drafting, and adopting the final document requires a great deal of cooperation among stakeholders, time and money. Smaller, poorer, communities therefore might find the cost of UDOs to be prohibitive. On the other hand, larger cities, where the rate and diversity of development is greater, might require more sophisticated ordinances and a more complex growth management package than a UDO can provide.

Variations, special use, other discretionary permits, and overlay districts

Variations, special use permits, and other discretionary permits allow for exceptions or modifications to zoning and land use regulations. Here is a brief explanation of each:

- **Variations:** Variations are permits that allow property owners to deviate from the strict application of zoning regulations. For example, if a zoning regulation requires a particular setback from the street, a variance may allow a property owner to build closer to the street than is usually allowed.
- **Special Use Permits:** Special use permits (also known as conditional use permits) allow for a specific land use that is not typically allowed in a particular zoning district, subject to certain conditions. For example, a special use permit may enable a church to be built in a residential zoning district.
- **Other Discretionary Permits:** Other discretionary permits include things like planned unit developments (PUDs), which allow for more flexibility in land use regulations and can result in mixed-use developments. These permits are typically granted by a zoning board or other government agency and may be subject to certain conditions.
- **Zoning Overlay Districts:** Overlay districts superimpose an additional set of regulations over an existing zoning district, or multiple zoning districts.

An overlay district, sometimes known as an overlay zone, is a geographic zoning district layered on top of another existing zoning district, or districts, that implements additional regulations. Overlay districts are frequently used in zoning codes to protect sensitive environmental features, preserve historic buildings, prevent development on unstable or vulnerable land features, or promote specific types of development such as transit-oriented development. Like other zoning regulations, overlay districts can control building codes and urban design, permitted land use, density, and other factors.

The overlay district often fills a gap where traditional zoning does not address specific or complicated local conditions or multi-jurisdictional issues. For example, an overlay district protecting a river shed along a river that flows through several different zoning districts would protect land along the entire river with one set of rules that applies across districts. Overlay districts can streamline the implementation of additional regulations in all applicable areas without having to amend the codes for multiple districts and maintain consistency across multijurisdictional natural, historic, or infrastructural features.

Types of Overlay Districts

Common overlay district types and purposes include:

- Affordable housing
- Airport zones
- Flood plains, coastal zones, or river sheds
- Seismic hazards

- Agriculture or livestock
- Historic or cultural resources
- Sensitive habitats
- Transit-oriented development
- Pedestrian districts
- Sign districts
- Economic development or craft districts

In addition to environmental protection districts, historic overlay districts are one of the most common uses of the overlay district model. A historic zone will often impose strict regulations relating to the aesthetics of buildings in the neighborhood, making it difficult to make changes to the established look of the area.

The city of Los Angeles has ten different types of overlay district, including: Certified Coastal Use Plan, Community Design Overlay (CDO), Historical Protection Overlay Zone (HPOZs), and Commercial and Artcraft District (CAD). The latter of these allows artisans to live, work, and sell their work without the restrictions on commercial activities common in other residential districts. Cities like Oakley, California have implemented affordable housing districts to mandate more affordable housing in neighborhoods with high demand. As housing activists sounded the alarm about the proliferation of short-term rentals and their impact on the housing market, Steamboat, Colorado proposed an overlay zone to regulate the number of short-term rentals in various parts of the city. Highway overlay districts are an increasingly popular tool for promoting certain types of growth and uses along major transportation corridors. In Norfolk, Nebraska, the city council approved a highway corridor overlay district to guide development along two major highways in the city.

According to the Center for Land Use Education, creating an overlay district involves three basic steps: defining the purpose of the district, identifying the areas the district will contain, and developing the rules that will apply to the district. The process of creating and approving overlay districts usually mirrors the creation of any zoning district. Like other zoning districts, most overlay districts include the possibility for variances or waivers on a case-by-case basis.

Critiques of Overlay Districts

The use of overlay districts raises concerns among some experts, who caution that overlay districts can become overused as a policy tool when simpler zoning mechanisms would suffice. If a proposed overlay district only covers one other zoning district, for example, it may be easier to simply amend the regulations for the existing district. Otherwise, multiple layers of regulation can lead to longer permitting times and increased costs for developers, city agencies, and property owners.

Overlay districts are also accused of blocking new housing construction, hindering development and growth, keeping housing costs high, raising home maintenance and utility costs, and preventing cities from adjusting their built environment to meet current conditions. Because they frequently uphold the status quo and block affordable housing efforts, some critics fear that overlay districts too easily become a tool of exclusionary zoning, using historic or environmental

designations to reject development proposals and avoid state housing mandates. In one prominent example, the California town of Woodside attempted to designate the entire city as mountain lion habitat to skirt state housing laws. (It should be noted that the proposal, widely ridiculed in the press, was quickly retracted.)

However, zoning can and does function as an exclusionary tool with or without intent: many opponents of single-family zoning argue that the designation prevents the construction of multifamily buildings in desirable areas and forces low-income families farther from job centers and economic opportunities. Historic overlay districts, by essentially freezing a neighborhood in one specific form, can have a similar effect by limiting development in often highly desirable, central locations that could benefit from increased density. Historic designations can also hinder the modernization of homes, preventing homeowners from adding solar panels or other efficiency features that don't comply with the district's historical requirements.

Used wisely, overlay districts give planners a tool for implementing targeted regulations that accommodate local conditions, guide development, and protect natural and cultural resources. Taken too far, they can hinder development, keep housing costs high, and delay essential projects necessary for keeping up with the shifting needs of modern cities.

As an example, this is the link to the Salt Lake County Foothill and Canyons Overlay Zone designed to protect the area watershed: <https://www.saltlakecounty.gov/surveyor/mapping--gis/foothill--canyons-overlay-zone-maps/>