

A Brief History of American Zoning:

The rise and repercussions of conventional zoning

In 1912 tragedy struck New York City. The headquarters of the Equitable Life Assurance Society of the United States – an insurance company – burned down on a day so cold, water from the fire trucks froze before it could douse the flames. The entire structure was lost.

Needing a new home, the Equitable's principals made plans to construct a new, 42-story building near the burgeoning Financial District of Lower Manhattan. When completed in 1915, the new building was massive, containing more square footage of office space than any other building in the world. Its presence was unmistakable, and for the people living in adjacent buildings, it was unmistakable for all the wrong reasons.

The new Equitable Building cast a perpetual seven-acre shadow, leaving some tenants in the Singer and City Investing Buildings in permanent shade. At least three other buildings no taller than 21 stories were robbed of sunlight. Not a very equitable situation, people reasoned; and what might New York turn into if more buildings of the Equitable's height and bulk were built?

At the same time, in other parts of town, residents were dealing with another set of land use woes. Warehouses and factories were encroaching into residential areas and hemming ever closer to some of the more fashionable districts in town like the posh 5th Avenue. The impacts of these industrial establishments were noticed far beyond property boundaries as the noise, smells, sights and sounds ignored borders. Neighbors began to express concerns that the value of their homes and residences would decline because of the closeness of these noxious uses.

The City's officials realized something had to be done. And zoning was the answer.

While other American cities had experimented with separating incompatible uses, such as heavy industry from residential neighborhoods, New York became the first to adopt a comprehensive zoning ordinance in 1916.

Topping out at a whopping 12 pages, the ordinance dealt with the issue presented by the Equitable by requiring new skyscrapers to periodically step back the width and bulk of the building as it rises into the sky. As a result, light and air were better able to penetrate down to ground level. It addressed the issue of incompatible uses by establishing three districts – or zones – wherein certain uses were allowed and others prohibited.

Unknowingly, New York had effectively created the blueprint for early American zoning laws, and many municipalities throughout the States adopted zoning similar to New York's in the following years. In 1924, on the direction of then Secretary of Commerce Herbert Hoover, the first unified zoning guidelines were published, laying the basic foundation for zoning regulations. Today, Houston, Texas remains the last large American city without a comprehensive zoning ordinance.

Over time, the land use and development issues zoning ordinances address have expanded far beyond those originally recognized by New York. Many of today's zoning codes – often referred to as “conventional” zoning – share a regulatory system that essentially mandates the creation of

low-density, auto-dependent suburban neighborhoods. These regulatory elements and their affects can include:

- Large lot sizes: Requiring new lots to have a minimum square footage, prohibiting creation of smaller lots that would accommodate a wider variety of building types.
- Minimum house sizes: Requiring new houses to contain a minimum square footage, prohibiting creation of smaller homes.
- Highly prescriptive use separation: Requiring that a highly defined and specific set of land uses be segregated, prohibiting even a basic mix of uses like a corner store in a residential neighborhood.
- Deep setbacks: Requiring new structures to be set back a minimum number of feet from streets or sidewalks, prohibiting new structures from framing the public space.
- Minimum parking requirements: Requiring new structures to accommodate on-site parking, challenging developers ability to effectively utilize site space.
- Building design standards: Requiring certain architectural elements to be included in new buildings. Design standards have received relatively more attention in conventional zoning codes than other elements, and in some cases are quite good. Poorly drafted design standards can result in unattractive building facades and incongruous store fronts.

While alternatives to conventional zoning rules have emerged, it remains the prevailing form of land use and development control in many modern cities. Predictably, application of conventional zoning continues the prevailing pattern of suburban development. It hinders a developer's ability to bring the variety of products to the market that an increasingly diverse market desires.

:: The market's gatekeeper ::

In a 2007 article published in the University of Pittsburgh Law Review, Eliza Hall makes one of the more concise arguments identifying the real-world impacts of conventional zoning:

“[Conventional zoning] adversely impacts the economy in several ways: by distorting the real estate market; imposing massive infrastructure costs and associated tax increases; increasing the cost of housing and transportation; and reducing the ability of lower-income people—which includes, of course, not only those we normally think of as ‘the poor’ but also many artists and budding entrepreneurs—to find work or create self-employment. [Conventional] zoning distorts the real estate market in so many ways that it manages to simultaneously conflict with conservative, libertarian, and liberal values.”

We agree with Hall's concerns. Given the scope of this study, however, we will shine a brighter light on just one of Hall's remarks: That conventional zoning distorts the real estate market.

Highly prescriptive conventional zoning ordinances act as a market gatekeeper. Because they forbid sensibly combining non-conflicting, and indeed, harmonious uses – similar to the much more organic way towns were built before these zoning ordinances – they have all but dictated terms to the market: “Here ye shall build your homes, here be your business, and here be your offices, and what they shall look like”. Through the separation of land uses and highly prescriptive design standards, conventional zoning plays a heavy hand in shaping the market and therefore, what gets built and where.

Conventional zoning rules are increasingly misaligned with what consumers and business owners want. Today, most Americans prefer to be able to walk in their neighborhoods and communities, and to live near stores, restaurants and entertainment. People and businesses are drawn to places that have a mix of businesses and residences, much like traditional downtowns, but the ability of the private sector to create these places, or to reinvest in those that exist, is made difficult due to the highly prescriptive nature of conventional zoning. Zoning in such a way is market inflexible: It does not respond to changing demographics and consumer preferences.

Zoning codes are particularly inflexible when it comes to infill and redevelopment. They place the greatest burden on those projects that many communities are explicitly seeking to revitalize: downtowns, commercial districts and residential cores. Conventional zoning is often built around “suburban dimensions” – those that require large setbacks, minimum lot sizes, large landscaped areas – that work for suburban development on open land. But when a developer is required to work with similar standards in the smaller spaces and greater complexity associated with infill and redevelopment, they are challenged to succeed.

It makes sense, then, that developers, banks, and their financial backers often seek clear ground, outside city limits, for their investments. Opening a project in a downtown area can be like opening a can of worms, and local zoning authorities are often just as perplexed by their own zoning codes as developers are.

Understanding the significance and influence conventional zoning has on land use and the real estate development market, it is hard to claim that the way towns are being shaped is purely a reflection of consumer choice. The land use patterns emerging after WWII by many – most – U.S. cities and towns and the options they afford to developers are not the result of free-market decision making.

The outcome of all this has been noted often: The mix of uses that makes neighborhoods and communities more convenient, walkable, and efficient has been zoned out of existence in nearly every city and town in all 50 states.

To zone, or not to zone, is not the question, as there are plainly areas where zoning proves its worth. There was a time when some of these prescriptions made sense – there are certainly social, public health and economic benefits to ensuring that a new factory isn’t sited right next to a residential neighborhood. There are environmental benefits to preventing development that is in highly sensitive or hazardous areas. The problem is that, somewhere along the way, we went too far: we didn’t just separate incompatible uses, we separated all uses, which placed different community needs apart from one another. Over time, more rules have been added and zoning has become increasingly complex and cumbersome, and the rules have resulted in communities built for cars, not people.

From Community Builders – a non-profit organization from Bozeman, MT