

## Chapter 3

### The Objectives, Purposes, and Nature of Zoning

#### 3-100 Introduction

The purpose of zoning is “to promote the health, safety, morals, and general welfare of the community, to protect and conserve the value of buildings, and encourage the most appropriate use of the land.” *City of Richmond v. Board of Supervisors of Henrico County*, 199 Va. 679, 686, 101 S.E.2d 641, 646 (1958); *see also Southern Railway Co. v. City of Richmond*, 205 Va. 699, 707, 139 S.E.2d 82, 88 (1964) (“the purpose of zoning is in general two-fold: to preserve the existing character of an area by excluding prejudicial uses, and to provide for the development of the several areas in a manner consistent with the uses for which they are suited”).

Zoning regulations strive to achieve these purposes by regulating or restricting the use of property within the zoning area. *Blankenship v. City of Richmond*, 188 Va. 97, 105, 49 S.E.2d 321, 325 (1948); *see also Northern Virginia Community Hospital, L.L.C. v. Loudoun County Board of Supervisors*, 70 Va. Cir. 283 (2006) (in sustaining and overruling demurrers in an action challenging the board’s denial of various land use applications related to an acute-care hospital, the court said that “[z]oning is concerned, not only with the questions of needed services, but also with compatibility and orderly growth”).

#### 3-200 The objectives of zoning

Virginia Code § 15.2-2200 delineates the Commonwealth’s objectives to be accomplished through not only zoning regulations, but also other land use regulations:

- Improve the public health, safety, convenience, and welfare of its citizens.
- Plan for the future development of communities to the end that transportation systems be carefully planned.
- Develop new community centers with adequate highway, utility, health, educational, and recreational facilities.
- Recognize the need for mineral resources and the needs of agriculture, industry, and business in future growth.
- Provide residential areas with healthy surroundings for family life.
- Preserve agricultural and forestal land.
- Assure that the growth of the community is consonant with the efficient and economical use of public funds.

These objectives are one of the sources that provide a framework for a locality’s comprehensive plan and its zoning and subdivision regulations. However, they are not a source of a locality’s zoning (or subdivision) power. *See Board of Supervisors of Augusta County v. Countryside Investment Co.*, 258 Va. 497, 505, 522 S.E.2d 610, 614 (1999) (invalidating subdivision regulations that exceeded the authority under the State Subdivision Law and imposed standards which “effectively [allowed the county] to rezone property in a manner inconsistent with the uses permitted by the property’s zoning classification”). Virginia Code § 15.2-2200 “does not confer upon [a locality] the power to enact a [zoning or] subdivision ordinance which is more expansive than the enumerated” powers enabled elsewhere. *Countryside Investment, supra*. The zoning power must be found in specific enabling legislation. Those express enabled powers are discussed in chapter 4.

### **3-300 The purposes of zoning: how regulations are to achieve the objectives of zoning**

In order to achieve the objectives of zoning delineated in Virginia Code § 15.2-2200, Virginia Code § 15.2-2283 requires that zoning regulations be designed to give reasonable consideration to each of the following purposes:

- Provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime, and other dangers.
- Reduce or prevent congestion in the public streets.
- Facilitate the creation of a convenient, attractive, and harmonious community.
- Facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports, and other public requirements.
- Protect against the destruction of or encroachment upon historic areas.
- Protect against the overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic, or other dangers.
- Encourage economic development activities that provide desirable employment and enlarge the tax base.
- Provide for the preservation of agricultural and forestal lands and other lands of significance for the protection of the natural environment.
- Protect approach slopes and other safety areas of licensed airports, including United States government and military air facilities.
- Promote the creation and preservation of affordable housing suitable for meeting the current and future needs of the locality, as well as a reasonable proportion of the current and future needs of the planning district within which the locality is situated.
- Provide reasonable protection against encroachment upon military bases, military installations, and military airports and their adjacent safety areas, excluding armories operated by the Virginia National Guard.

Unlike Virginia Code § 15.2-2200, discussed in section 3-200, the purposes delineated in Virginia Code § 15.2-2283 are specific to zoning. Every regulation in a zoning ordinance and every zoning decision should strive to achieve at least one of these purposes. Note that many of these purposes are extensions of the justification for the exercise of the police power – the protection of the public health, safety, and welfare – embedded in the history of zoning discussed in chapter 2.

### **3-400 The relevant matters to consider when making a zoning decision**

Virginia Code § 15.2-2284 states that zoning ordinances and districts must be drawn and applied by reasonably considering the following:

- The existing use and character of property.
- The comprehensive plan.

- The suitability of the property for various uses.
- The trends of growth or change.
- The current and future requirements of the community as to land for various purposes as determined by population and economic studies and other studies.
- The transportation requirements of the community.
- The requirements for airports, housing, schools, parks, playgrounds, recreation areas, and other public services.
- The conservation of natural resources, the preservation of flood plains, the protection of life and property from impounding structure failures, the preservation of agricultural and forestal land, and the conservation of properties and their values.
- The encouragement of the most appropriate use of land throughout the locality.

Virginia Code § 15.2-2284 informs localities, the applicant, and the public of the issues that are relevant when considering a zoning decision. Every proposed zoning text amendment and zoning map amendment should be accompanied by an analysis of how the amendment satisfies one or more of the purposes of zoning listed in section 3-300 and be based on one or more of the considerations in this section. Many of these considerations will likely be incorporated into the locality's comprehensive plan.

The practical application of these factors is examined in detail in chapter 10.

### **3-500 The nature of the zoning power**

Zoning is an important function, if not the most important function, of local government. The exercise of the zoning power is legislative in nature. This means that, notwithstanding any scientific analyses and data that may support a particular position on a zoning matter, a decision may be made on something other than a purely scientific, or objective, basis. In the end, the exercise of the zoning power may be a political exercise, and there is nothing wrong with that provided that there is some evidence to support the decision.

#### **3-510 The exercise of the zoning power is legislative in nature**

As explained in section 8-210, zoning text amendments, zoning map amendments, special use permits, and certificates of appropriateness issued by the governing body are legislative acts. As explained in section 8-220, legislative acts are presumed to be reasonable and valid.

For a further discussion of legislative acts, and a comparison of legislative acts to other kinds of acts, see chapter 8.

#### **3-520 Zoning is an important function of local government**

The crucial role that zoning, and zoning decisions, may play in a community's local life is undeniable. A locality's exercise of its zoning authority is "one of the most essential powers of government, one that is the least limitable." *Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County*, 268 Va. 441, 446, 604 S.E.2d 7, 9 (2004).

"Land use planning and the adoption of land use restrictions constitute some of the most important functions performed by local government." *Bryant Woods Inn, Inc. v. Howard County*, 124 F.3d 597, 603 (4<sup>th</sup> Cir. 1997) (upholding the county's denial of a permit to allow the expansion of a nursing home). "Zoning . . . may indeed be the most essential function performed by local government, for it is one of the primary means by which we protect that

sometimes difficult to define concept of quality of life.” *Village of Belle Terre v. Boraas*, 416 U.S. 1, 13, 94 S. Ct. 1536, 1543 (1974) (Marshall dissenting). “We can conceive of few matters of public concern more substantial than zoning and land use laws.” *Pomponio v. Fauquier County Board of Supervisors*, 21 F.3d 1319, 1327 (4<sup>th</sup> Cir. 1994) (overruled in part on other grounds by *Quackenbush v. Allstate Insurance Co.*, 517 U.S. 706, 116 S. Ct. 1712 (1996)).

### **3-530 The locality’s governing body is the best suited to determine the proper uses of land**

A locality’s governing body is in the most advantageous position to determine the proper uses of land within its jurisdiction. *City of Norfolk v. Tiny House, Inc.*, 222 Va. 414, 423-424, 281 S.E.2d 836, 841 (1981) (holding that the ABC Commission’s exclusive authority to license and regulate the sale and purchase of alcoholic beverages in Virginia does not preclude a locality from utilizing valid zoning ordinances to regulate the location of an establishment selling such alcoholic beverages); *see also West Bros. Brick Co. v. City of Alexandria*, 169 Va. 271, 282, 192 S.E. 881, 885 (1937) (“The city council of Alexandria is better acquainted with the necessities of that city than we are”).

“Local governing bodies, because of their knowledge of local conditions and needs of their individual communities, are allowed wide discretion in the enactment . . . of zoning ordinances.” *Byrum v. Board of Supervisors of Orange County*, 217 Va. 37, 39, 225 S.E.2d 369, 371 (1976).

### **3-540 Zoning is a political function**

The political nature of zoning also has not escaped the courts’ observation. “Zoning is inescapably a political function. Indeed, it is the very essence of elected zoning officials’ responsibility to mediate between developers, residents, commercial interests, and those who oppose and support growth and development in the community.” *Sylvia Development Corp. v. Calvert County*, 48 F.3d 810, 828 (4<sup>th</sup> Cir. 1995) (affirming dismissal of developer’s action alleging substantive due process and other violations after its zoning application was denied). Moreover, it “is not pernicious *per se* for a zoning authority to be influenced by political pressure in the community.” *Sylvia Development, supra*.

One federal appellate court has explained:

Indeed, land-use decisions are a core function of local government. Few other municipal functions have such an important and direct impact on the daily lives of those who live or work in a community. The formulation and application of land-use policies, therefore, frequently involve heated political battles, which typically pit local residents opposed to development against developers and local merchants supporting it. Further, community input is inescapably an integral element of this system.

*Gardner v. City of Baltimore Mayor and City Council*, 969 F.2d 63, 67 (4<sup>th</sup> Cir. 1992) (affirming dismissal of developer’s action alleging substantive due process and other violations arising from the city’s application of its subdivision regulations).

### **3-600 Why good land use planning and zoning matters**

The objectives and purposes of zoning listed in sections 3-200 and 3-300 seek to create and maintain healthy, attractive, livable, and prosperous communities.

In 2008, Gallup and the John S. and James L. Knight Foundation conducted the Knight “Soul of the Community” survey in order to determine what made a community a desirable place to live, what drew people to “stake their future” in the community, and whether communities with more residents “attached” to their community were better off. The survey interviewed 43,000 people in 26 communities over a three-year period. The study found that the three main attributes that attached people to their communities were: (1) social offerings, such as entertainment venues and places to meet; (2) openness (how welcoming a place is); and (3) the area’s aesthetics (its

physical beauty and green spaces). The Knight Foundation’s summary of the survey stated that attachment of the populace to a community is important because it is positively linked to local economic growth.

### **3-610 The link between economic development and good land use planning and zoning**

The link between good land use planning and zoning and a community’s economic strength and success is evident in recurring themes from both the economic development and the land use planning perspective. From the economic development perspective, Christopher Lloyd, McGuireWoods Consulting (January 30, 2014) highlights three themes:

- Communities must have a vision for the future.
- Communities must develop a sense of place.
- Businesses want a place, not just a site.

From the land use planning perspective, the three themes identified above are discussed in Edward T. McMahon’s article *The Secrets of Successful Communities (PlannersWeb.com, July 29, 2013)*, which summarizes the key elements of successful communities, including:

- Successful communities involve a broad cross-section of residents in determining and planning the future.
- Successful communities capitalize on their distinctive assets – their architecture, history, natural surroundings, and home-grown businesses, rather than adopting a new or a generic identity.
- Successful communities use a variety of regulatory and non-regulatory incentives to influence their development. The non-regulatory incentives include open-space easement and purchase of development rights programs, density bonuses, and expedited permit review processes.
- Successful communities pick and choose among development projects because some projects will make a community a better place to live, work, and visit; other projects will not. They reject generic designs from developers and insist on designs that are sensitive to local character. McMahon cites a development consultant who stated that “when a chain store developer comes to town they generally have three designs ranging from Anywhere USA to Unique.” The unique design is sensitive to local character.
- Successful communities cooperate with neighboring localities to address regional issues like water quality, green space, and traffic.
- Successful communities pay attention to aesthetics by controlling signs, planting street trees, protecting scenic views and historic buildings, and encouraging new construction that fits in with the existing community. McMahon explains why aesthetics are important: “The image of a community is fundamentally important to its economic well-being. Every single day in America people make decisions about where to live, where to invest, where to vacation and where to retire based on what communities look like.”

McMahon also states that when “it comes to 21<sup>st</sup> century economic development, a key concept is community differentiation. If you can’t differentiate your community from any other, you have no competitive advantage.” *The Distinctive City, Urban Land Institute, April 2012*. He notes in the same article that “education, technology, connectivity and distinctiveness have all become more important.” On the matter of distinctiveness, McMahon quotes Joseph Cortright, an authority on economic development: “the unique characteristics of place may be the only truly source of competitive advantage for communities.” McMahon adds more recently: “Enlightened cities, towns, and counties are investing more in placemaking because they believe these features attract younger workers – especially the most sought-after segment, skilled Millennials.” Edward T. McMahon, *Becoming a Place People Want to Live, Virginia Town & City, May 2015*.

The following excerpts from various studies and commentaries sum up a range of reasons why good land use planning and zoning should matter to a locality interested in economic development:

- “Having a distinctive identity will help communities create a quality of life that is attractive for business retention and future residents and private investment. Community economic development efforts should help to create and preserve each community’s sense of uniqueness, attractiveness, history, and cultural and social diversity, and include public gathering places and a strong local sense of place.” *Local Government Commission (California), Principle 14.*
- “The best places to live, work and visit are those places that are willing to uphold their standards in the face of pressure to allow the lowest common denominator development” and “Too many communities delude themselves into thinking that it doesn’t really matter whether a project is good or bad . . . so long as it produces jobs and tax collection opportunities.” *All Development is not Created Equal, Edward T. McMahon (1998).*
- “Quality urban development . . . wants no part of an unstable, unplanned, uncontrolled environment as they know this is not a place to make a long-term investment.” *Planning America’s Communities: Paradise Found? Paradise Lost? Herbert Smith (1991)*
- “The states that do the most to protect their natural resources also wind up with the strongest economies and the best jobs.” *Institute for Southern States Study (1994).*
- Over a 15-year period, states with strong environmental standards experienced an average economic growth rate of 2.60%; states with moderate standards 2.29%; states with weak standards 2.15%. *Bank of America Study (1993).*

In a study published in 2006 on the effect of zoning on economic development in rural areas, the authors concluded that planning and zoning facilitated economic development rather than impeded it. The authors summarized the benefits of zoning to include: “(1) business and citizen preference for land use predictability; (2) assurance for business prospects and residents that their investment will be protected; (3) the ability to guide future development and prevent haphazard (e.g., patchwork), harmful, or unwanted development; and (4) the minimization of potential conflict between industry and residents.” *Does Rural Land-use Planning and Zoning Enhance Local Economic Development? Economic Development Journal, Fall 2006, Joy Wilkins, B. William Riall, Ph.D., Arthur C. Nelson, Ph.D., with Paul Counts and Benjamin Sussman.*

“In the end, economic development is, and always will be, about ‘place.’” Edward T. McMahon, *Responsible Tourism: How to Preserve the Goose that Lays the Golden Egg, Virginia Town & City, May 2015.*

### **3-620 The link between planning, zoning and tourism**

Tourism is also a beneficiary of good land use planning and zoning. The Virginia Tourism Corporation reports that in 2016, domestic tourism in Virginia generated \$23.7 billion in visitor spending, supported 229,300 jobs, and provided \$1.6 billion in state and local taxes to Virginia’s communities. In Albemarle County and the City of Charlottesville, the Virginia Tourism Corporation reports that in 2016 tourism generated \$600 million in direct visitor spending, supported over 5,850 jobs, and generated \$20.9 million in local tax revenue for the County and the City. Needless to say, tourism is a significant part of economic development.

In discussing the role that a community’s image plays in tourism, Edward T. McMahon, in his article *The Secrets of Successful Communities (PlannersWeb.com, July 29, 2013)*, writes: “The more any community in America comes to look just like every other community the less reason there is to visit. On the other hand, the more a community does to protect and enhance its uniqueness whether natural or architectural, the more people will want to visit. Tourism is about visiting places that are different, unusual, and unique. If everyplace was just like everyplace else, there would be no reason to go anyplace.” “This is the reason why local land use planning and urban design standards are so important.” Edward T. McMahon, *Responsible Tourism: How to Preserve the Goose that Lays the Golden Egg, Virginia Town & City, May 2015.*

Other writers have expressed a similar sentiment, which all go back to why good land use planning and zoning should matter to a community:

- “Tourism simply doesn’t go to a city that has lost its soul.” *Arthur Frommer, Travel Writer.*
- “The most central feature that needs protection is the natural beauty and setting of a place. Once lost, it can seldom be restored.” *Leisure Travel: Making it a Growth Market . . . Again, Stanley Plog.*

In summary, these excerpts advocate managed development and growth. They also caution localities to avoid losing their unique identity.