

Chapter 1

Introduction to Zoning

Zoning is one of the most common methods of land use control used by local governments. Zoning refers to the use of the public regulatory power, or **police power**, to specify how land may be used and developed. The intent of zoning is to balance individual property rights with the rights of the general public to a healthy, safe and orderly living environment.

State statutes provide authority and procedures for Wisconsin counties, towns, cities and villages to adopt general zoning (also known as comprehensive zoning) in order to protect public health, safety, morals, and general well-being.¹ Local governments in Wisconsin decide for themselves whether or not to have general zoning.² The majority of communities have chosen to have general zoning as one tool to achieve community goals such as:

- Public health, safety and welfare,
- Natural resource protection,
- Protection of investments, and
- Aesthetics.

Police Power - The right of government to restrict an individual's conduct or use of property in order to protect public health, safety, and welfare.

¹ Counties – Wis. Stat. § 59.69; Towns – Wis. Stat. §§ 60.61 and 60.62; Villages – Wis. Stat. § 61.35; Cities – Wis. Stat. § 62.23(7).

² Some other types of zoning are required by the state as described under *Additional Forms of Zoning*.

Elements of a Zoning Ordinance

A zoning ordinance consists of two legally adopted elements: the zoning map and the text of the zoning ordinance.

General zoning works by dividing the community into districts or ‘zones’ designated for different uses, such as residential, commercial, industrial or agricultural use. Zoning districts are mapped based on land suitability, avoidance of conflict with nearby uses, protection of environmental features, economic factors such as efficient provision of public services and infrastructure, and other locally determined land use objectives articulated in a community plan. Each zone contains a different set of land use rules that is articulated in the text of the zoning ordinance. These rules specify: 1) the use of the land, 2) the density of structural development, and 3) the dimensions of structures and setbacks. In addition, the text of the zoning ordinance describes the purpose of each zoning district and related administrative and enforcement procedures.

To achieve specific objectives, some communities adopt overlay zones that apply restrictions to certain areas identified on a map in addition to the restrictions in the underlying base zoning districts. Figure 1 illustrates a zoning map that includes general zoning and shoreland overlay zoning.

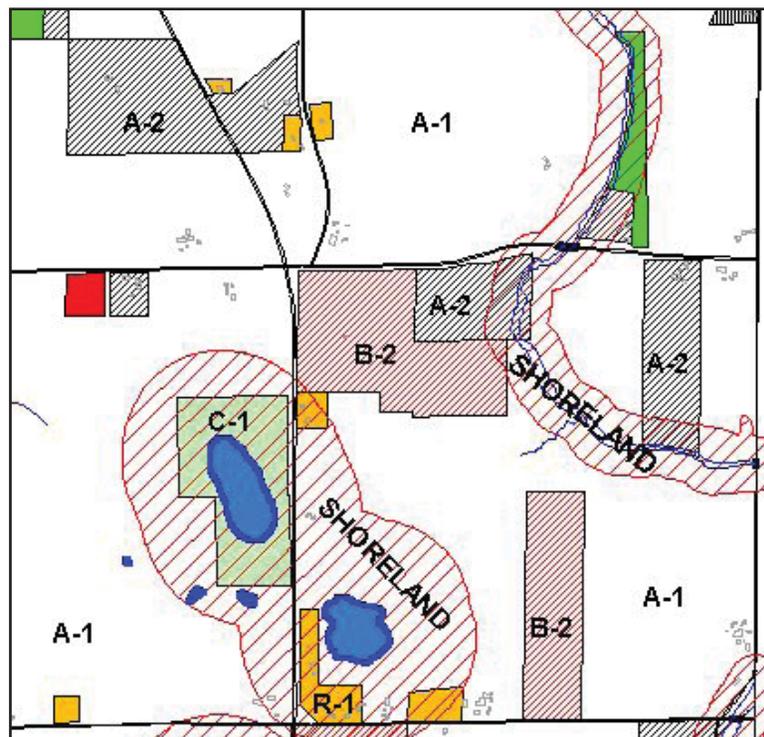


Figure 1: Zoning map showing general zoning with shoreland overlay. (Map courtesy of Kevin Struck)

Allowable Uses for each District

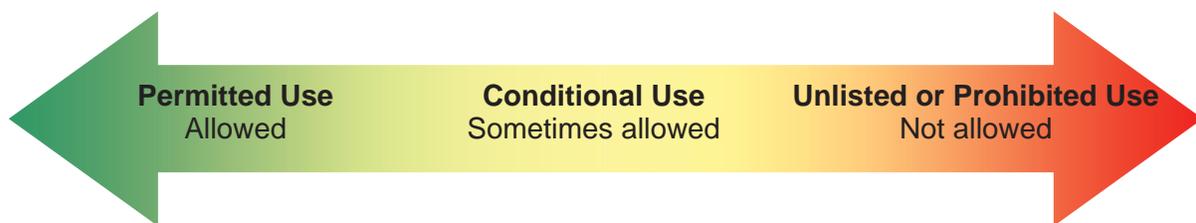
Generally, two categories of allowable uses are listed for each zoning district: permitted uses and conditional uses. **Permitted uses** are allowed as a matter of right in all locations in a zoning district and may be authorized by the zoning administrator or building inspector with a simple permit. Authorization is non-discretionary provided the project complies with general standards for the zoning district, any overlay district or design standards, and related building or construction codes. **Conditional uses** are listed in the zoning ordinance for each district but are subject to an additional layer of scrutiny.³ Conditional uses are authorized on a discretionary basis, meaning they are only authorized if found to be compatible with neighboring land uses, if they can be tailored to meet the limitations of the site, and if they do not violate the objectives of the zoning ordinance. Conditions may be attached to the approval of a conditional use permit. Uses that are not listed in the zoning ordinance for a particular district or that are expressly prohibited are not allowed in the district, except on rare occasions by use variances.

Permitted Use - A use listed in the zoning ordinance that is allowed 'by right' at all locations in a zoning district.

Conditional Use - A use listed in the zoning ordinance that may be allowed if found to be compatible with neighboring uses, limitations of the site, and the purposes of the ordinance. Conditions may also be attached upon approval.

Unlisted or Prohibited Use - A use that is not allowed in a district because it is not expressly listed or is specifically prohibited by the zoning ordinance.

Figure 2: Uses are divided into three categories for each zoning district.



³ In this chapter we use 'conditional uses' to mean both conditional uses and special exceptions. These two terms are discussed in detail in Chapters 2 and 14.

Variance - Allows a property to be used in a manner that is not permitted by the zoning ordinance.

Administrative appeal - A process to resolve disputes regarding ordinance interpretation or the reasonableness of a zoning decision.

Relief from Strict Adherence to the Zoning Code

Recognizing the fact that zoning ordinances cannot be written to address every circumstance, zoning ordinances must specify procedures for seeking relief from strict adherence to the zoning code. A **zoning variance** authorizes a landowner to establish or maintain a use that is prohibited in the zoning ordinance. Requests for variances are not always granted. An **administrative appeal** is a process used to resolve disputes regarding ordinance interpretation or the reasonableness of a zoning decision. If applicants or neighboring landowners are unhappy with the decision of a zoning administrator, they may appeal that decision to the zoning board of adjustment or appeals.

Map and Text Amendments

Both the zoning map and the text of the zoning ordinance may be updated and amended over time. Ordinance amendments may be initiated at the request of a landowner or by the governing body. The governing body creates, updates, and amends all zoning ordinances, typically with recommendations from the planning committee/commission.

Additional Forms of Zoning

Though local communities may decide whether or not to adopt general zoning, state statutes require communities to administer certain types of zoning as described below:

- Shoreland zoning provides development standards near waterways to protect water quality, aquatic and wildlife habitat, shore cover and natural scenic beauty. Wisconsin statutes require counties to exercise shoreland zoning.⁴
- Shoreland-wetland zoning generally prohibits or severely restricts development in wetlands near waterways. It has the same objectives as shoreland zoning and is required of counties, cities and villages that have received wetland maps from the state.⁵

⁴ Wis. Stat. § 59.692; Wis. Admin. Code ch. NR 115.

⁵ Counties - Wis. Admin. Code ch. NR 115; Villages - Wis. Stat. § 61.351; Cities - Wis. Stat. § 62.231.

- Floodplain zoning provides location and development standards to protect human life, health and property from flooding. It is required of communities that have been issued maps designating flood prone areas.⁶

In addition, communities may opt to implement additional forms of zoning to protect specific community resources. Examples include exclusive agricultural zoning, stormwater management zoning, extraterritorial zoning, and overlay zoning.

Zoning and the Comprehensive Plan

A comprehensive plan is a tool used by communities to study how various aspects of a community are working and to articulate how the community desires to develop in the future. A comprehensive plan is prepared by a planning commission or committee and is adopted by the governing body. The plan sets forth broad goals, objectives, policies and recommendations that may be implemented using a variety of tools. Zoning is one of many possible tools used to implement a plan. In Wisconsin, local land use actions and regulations such as zoning and land division regulations must be consistent with a locally adopted comprehensive plan by January 1, 2010.⁷ If the zoning ordinance or related zoning decisions are not consistent with the plan, resulting actions may be subject to legal challenge.

Community or comprehensive planning is distinct from zoning in two important ways. First, planning is policy-oriented, whereas zoning is regulatory. Second, a planning process is designed to foster public input;. In other words, the plan should be a reflection of the community's desires. Zoning decisions, on the other hand, should be based on the decision criteria outlined in local ordinances, state statutes and case law as well as the individual facts of the case at hand. Decisions of a zoning administrator or the zoning board should not be unduly influenced by public opinion.

⁶ Wis. Stat. § 87.30(1).

⁷ According to Wis. Stat. § 66.1001(3) beginning on January 1, 2010, if a local governmental unit engages in official mapping, subdivision regulation, state-mandated shoreland or shoreland-wetland zoning, or county, city, village or town zoning, these actions must be consistent with the local governmental unit's comprehensive plan. See also: *Step Now Citizens Group v. Town of Utica Planning & Zoning Comm.*, 2003 WI App 109, 264 Wis. 2d 662, 663 N.W.2d 833.