



SPECIAL REPORT

REAL ESTATE LAW

Navigating
the Zone

Deciphering city's zoning laws takes time, patience and professional help

BY RANDY LANKFORD

With more than 30 development classifications, at least 10 overlay districts and a dozen special districts, dealing with the barriers that separate San Antonio's residents, retailers and manufacturers is getting confusing and time-consuming.

So time-consuming, in fact, that Tom Rohde, one of the principals at Rohde, Ottmers, Siegel Commercial & Investment Realtors in San Antonio, has given up. After spearheading more than 300 zoning cases for his clients, Rohde has turned the process over to consultants.

"Since the process changed under the new Unified Development Code (UDC) a few years ago, I don't handle them anymore," Rohde says. "It's gotten too bogged down with the process — numerous meetings with elected officials, neighborhood associations and activists. It really takes a professional zoning consultant now."

Making a zoning change in San Antonio is a two-step process. Zoning changes must first be approved by the city's 11-member zoning commission. Then they have to pass judgment by the city council. Any property that is denied a zoning change cannot be resubmitted for a year so it's important to get it right the first time. Between 2004 and 2007, the city's zoning commission received about 1,200 cases, an average of 300 filings per year.

"We try to help people understand what they're asking for," says Rod Sanchez, director of the Development Services Department for the city. "There's an application and fee based on the size of the property you want to change. We ask that you sit down with our case managers and share with them what it is you're trying to do. We advise applicants on what zoning classification they need."

Sanchez says a lot of business owners request an aggressive classification without knowing the pitfalls.

"A lot of people come in knowing they want to do some retail. But rather than asking for the lowest intensity retail classification, they request the highest, which is C-3," Sanchez says. "C-3 is a commercial district that allows car lots, auto repair, bars, nightclubs, so it's a very intense commercial district."

"That's going to be a hard sell to the zoning commission and the city council," Sanchez adds. "If you're just trying to open a small bakery or something like that, you don't need that C-3 classification. You're much more likely to get approval for a lower classification which is all you need."

History

Zoning, meant to protect the health, safety and welfare of the community, was

first developed in large cities like Chicago and New York early in the 20th century as a means of separating industrial facilities from residences.

Today, in addition to ensuring that new development is compatible with its surroundings in use, character and size, zoning is also used to manage traffic congestion, protect natural resources, integrate civic uses into neighborhoods and promote health and the general welfare.

San Antonio uses the Euclidean, or building block, form of zoning, named after the city of Euclid, Ohio. The technique got its moniker when zoning laws in Euclid were upheld by the U.S. Supreme Court in 1926. It is widely favored for its ease of implementation, relative effectiveness, long-established legal precedent and familiarity.

San Antonio's first zoning ordinances were adopted in 1938. The city established zones based on what was already in place, which meant single family residences were often next door to heavy industrial sites. Zoning in those days was also cumulative. The lowest level of zoning allowed only residential construction, the next level allowed residential and commercial and the highest zone allowed residential, commercial and industrial. While zoning today is more sophisticated, the city is still dealing with some of the challenges of its older neighborhoods.

In May 2001, the City of San Antonio adopted a new UDC that was 700 pages long and added a list of special zoning and use pattern categories that were more in line with its master plan. The UDC expanded the number of overlay districts — or areas that create special development and, usually, increased restrictions on top of existing base zoning. Today, developers can access an interactive map on the city's zoning web site. At the click of a button, several overlay maps are available to view.

Modern zoning

There are four basic types of zones in San Antonio: Single-family residential, multi-family residential, commercial and industrial. Those zones are then further divided by size and function.

Single-family residential zones, for example, range from R-3 (3,000 square-foot lots) all the way to RE (residential estates of more than 43,000 square feet). Multi-family zones are much more tightly packed. MF-25 permits up to 25 housing units per acre while MF-50 allows for twice the density with 50 units per acre. Zoning laws also proscribe what size and type of structure can be placed on that land. Parking a mobile home on an R-6 lot and calling it a residence is restricted by code; as are



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Tom Rohde, principal at Rohde, Ottmers, Siegel Commercial & Investment Realtors, found the zoning process too cumbersome, so he farmed out that portion of his business to local lawyers and consultants.

height and setbacks for multi-family units.

Retail zones range from businesses as small as a neighborhood daycare center which may be rated NC (neighborhood commercial) or C-1 (light commercial) depending on its size, all the way up to C-3 (general commercial).

Entertainment zones which include structure height, noise and light variances were established for Six Flags Fiesta Texas and SeaWorld.

Mixing it up

There are also mixed-use zones intended to encourage pedestrian use and a return to self-contained neighborhoods — a trend called "new urbanism."

"That's a little different," explains Emil Moncivais, director of San Antonio's Planning and Community Development Department. "That's where you try to do the zoning and the development of an area in the same stripe."

Mixed-use zoning allows for multi-story buildings to house light commercial businesses like coffee shops, bookstores and antique shops on the ground floor with offices and residences above.

"You wouldn't have any automobile usage (in mixed use developments)," Moncivais adds. "It would be more of an area where I could live, work in an office and some commercial development like restaurants, those things that are somewhat compatible in use. The idea of new urbanism is what's called 'smart code' — where you have a mix of uses and intensity in an area. By doing that, you're creating more of an interaction between the people and the community."

"Usually the controversy comes when someone next to an R-6 area wants to change commercial property to multi-family," says Moncivais. "People think multi-family housing brings crime and degradation of the neighborhood. That's the purpose of zoning, so you can have that kind of control."

The communication zone

The best way to avoid those types of con-

flicts, according to San Antonio attorney Bill Kaufman, name partner in Kaufman and Associates Inc., a downtown law firm that deals with the city and its agencies, is through open and early communications. Kaufman is a former assistant city attorney who represents clients before City of San Antonio, City Public Service Board, San Antonio Water System, Edwards Aquifer Authority and other area governmental entities.

Kaufman says good communications, like good fences, make good neighbors. He adds that most of the work in a zoning case is done before he ever files the paperwork.

"We'll do a little legwork before we'll even accept a case," Kaufman says. "I'll check the Internet to find out what the current zoning is on a location, what's around it to see if the request is appropriate. I'll ask the client what they want to do with the zoning, if they own it, if they have a contract and if it's over the (Edwards Aquifer).

If the zoning change appears reasonable, Kaufman then contacts the appropriate city council member and zoning commission member to get their input. Zoning officials may refer him to neighborhood associations or individuals who can provide more insight.

"The reason we do that," Kaufman says, "is because we believe we achieve goodwill if we meet with interested parties before there's a pending case. If the first the neighbors hear of a zoning change request is a letter from the city saying there are going to be hearings in two weeks, that naturally makes them suspicious. They assume the worst."

"We want the neighborhood to support our client, we want our client to be happy and we want the city council and the zoning commission to be comfortable. Sometimes we set up one or two meetings, sometimes it's 10," Kaufman says. "We did a zoning change for a landfill that took three years, and when it came up for approval there was hardly a word."

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