Entitlement Process: The Importance of Transparency and Certainty in Development Regulations

Lee D. Einsweiler, AICP
CODE STUDIO
Austin TX
Transparency and Certainty

- Doesn’t Exist!
  - Many Politician’s Feel an Obligation to be “Hand’s On” in their Decision-Making
  - Often Missing Political, Management and/or Technical (Planning) Leadership
- As Nancy Reagan Taught Us – Sometimes Ya Gotta “Just Say No!”
Typical Conflicts

- Zoning and Subdivision
  - Public Realm Improvements
- Planning and Public Works
  - The “Silo” Effect
- Short Term and Long Term
  - Phasing, Changing Uses Over Time, Intensification
Is Walkability Enough?
Urban? Suburban?

- PS – this is a town center!
A Common Problem

- Reliance on One-Time Negotiated Solutions
  - Planned Development
  - “Waivers and conditions”
  - Variances (especially ones without “hardship”)
A Common Problem

- If you’re not happy with the results of your Code . . .

REVISE THE CODE!
Customized Zoning

- Planned Development
  - Intended to be higher quality, innovative projects that don’t fit existing districts
  - NOT intended for circumventing requirements or reducing quality of development
- Developer Gets What They Need
- Neighborhood Has a Hand in Crafting the Solution
Customized Zoning

- How Could This Possibly be Bad?
  - Fairness and equity questions
  - Consistent treatment of applicants, situations
  - Difficulty in enforcement, tracking
  - Hard-won compromise not available for all
    - Street cross-sections
    - Parking reductions
Some Better Examples

- Denver
  - Main Street zoning
- Dallas
  - Cherokee multi-station agreement
  - Trinity River planned development
- Sarasota County
  - Redevelopment area planned development
Main Street Zoning

Placement

Height

Transparency

Screening
Planned Mixed Use Infill

<table>
<thead>
<tr>
<th>Lot Type</th>
<th>Lot Area (min / max in sf)</th>
<th>Lot Width (min / max)</th>
<th>Frontage Percentage (min / max)</th>
<th>Lot Coverage by all bldgs (max)</th>
<th>Street (min / max)</th>
<th>Side (min)</th>
<th>Rear 1 - 2 (min)</th>
<th>Waterfront (min)</th>
<th>Core</th>
<th>General or Edge</th>
<th>Core</th>
<th>General or Edge</th>
<th>Accessory Dwelling Unit (max bldg footprint in sf)</th>
<th>Height (min / max in stories; max in feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pedestal Building Lot</td>
<td>no min / no max</td>
<td>no min / no max</td>
<td>90% / 100%</td>
<td>100%</td>
<td>0 / 10</td>
<td>0</td>
<td>0</td>
<td>20 / 30</td>
<td>not</td>
<td>not permitted</td>
<td>not</td>
<td>not permitted</td>
<td>not permitted</td>
<td>2 / 10 / 110</td>
</tr>
<tr>
<td>Lined Building Lot</td>
<td>no min / no max</td>
<td>no min / no max</td>
<td>90% / 100%</td>
<td>100%</td>
<td>0 / 10</td>
<td>0</td>
<td>0</td>
<td>20 / 30</td>
<td>not</td>
<td>not permitted</td>
<td>not</td>
<td>not permitted</td>
<td>not permitted</td>
<td>2 / 3 / 65</td>
</tr>
<tr>
<td>Mixed-Use Building Lot</td>
<td>no min / no max</td>
<td>no min / no max</td>
<td>90% / 100%</td>
<td>100%</td>
<td>0 / 10</td>
<td>0</td>
<td>0</td>
<td>20 / 30</td>
<td>not</td>
<td>not permitted</td>
<td>not</td>
<td>not permitted</td>
<td>not permitted</td>
<td>2 / 3 / 65 / 55</td>
</tr>
<tr>
<td>Apartment Building Lot</td>
<td>4,000 / no max</td>
<td>40 / 300</td>
<td>80% / 100%</td>
<td>100%</td>
<td>0 / 10</td>
<td>0</td>
<td>0</td>
<td>20 / 30</td>
<td>not</td>
<td>not permitted</td>
<td>not</td>
<td>not permitted</td>
<td>2 / 3 / 65 / 45 / 45</td>
<td>2 / 4 / 55 / 45</td>
</tr>
<tr>
<td>Courtyard Building Lot</td>
<td>10,000 / no max</td>
<td>125 / 300</td>
<td>80% / 100%</td>
<td>100%</td>
<td>0 / 10</td>
<td>0</td>
<td>0</td>
<td>20 / 30</td>
<td>not</td>
<td>not permitted</td>
<td>not</td>
<td>not permitted</td>
<td>2 / 3 / 65 / 45 / 45</td>
<td>2 / 4 / 55 / 45</td>
</tr>
<tr>
<td>Live-Work Building Lot</td>
<td>1,800 / 7,200</td>
<td>16 / 60</td>
<td>80% / 100%</td>
<td>80%</td>
<td>0 / 10</td>
<td>0</td>
<td>15</td>
<td>20 / 30</td>
<td>not</td>
<td>not permitted</td>
<td>not</td>
<td>not permitted</td>
<td>2 / 3 / 45 / 45</td>
<td>2 / 3 / 625</td>
</tr>
<tr>
<td>Rowhouse Lot</td>
<td>1,800 / 3,840</td>
<td>16 / 32</td>
<td>80% / 100%</td>
<td>80%</td>
<td>0 / 10</td>
<td>0</td>
<td>15</td>
<td>20 / 30</td>
<td>not</td>
<td>not permitted</td>
<td>not</td>
<td>not permitted</td>
<td>2 / 3 / 45 / 45</td>
<td>2 / 3 / 625</td>
</tr>
<tr>
<td>Apartment House Lot</td>
<td>4,800 / 16,000</td>
<td>48 / 120</td>
<td>80% / 100%</td>
<td>80%</td>
<td>not permitted</td>
<td>0</td>
<td>10</td>
<td>20 / 30</td>
<td>2 / 5</td>
<td>55</td>
<td>not permitted</td>
<td>1 / 4; 45</td>
<td>625</td>
<td></td>
</tr>
<tr>
<td>Duplex Lot</td>
<td>5,000 / 16,800</td>
<td>35 / 90</td>
<td>80% / 90%</td>
<td>80%</td>
<td>10 / 25</td>
<td>5</td>
<td>15</td>
<td>20 / 30</td>
<td>not permitted</td>
<td>not permitted</td>
<td>not</td>
<td>not permitted</td>
<td>1 / 3; 45; 625</td>
<td>625</td>
</tr>
<tr>
<td>Cottage House Lot</td>
<td>2,400 / 4,800</td>
<td>24 / 40</td>
<td>80% / 90%</td>
<td>80%</td>
<td>5 / 25</td>
<td>3</td>
<td>10</td>
<td>20 / 30</td>
<td>not permitted</td>
<td>not permitted</td>
<td>not</td>
<td>not permitted</td>
<td>1 / 2; 35; 625</td>
<td>625</td>
</tr>
<tr>
<td>Sideyard House Lot</td>
<td>3,000 / 7,200</td>
<td>30 / 60</td>
<td>80% / 90%</td>
<td>50%</td>
<td>5 / 10</td>
<td>0 / 10</td>
<td>10</td>
<td>20 / 30</td>
<td>not permitted</td>
<td>not permitted</td>
<td>not</td>
<td>not permitted</td>
<td>1 / 3; 45; 600</td>
<td>800</td>
</tr>
<tr>
<td>House Lot</td>
<td>4,000 / 8,400</td>
<td>40 / 70</td>
<td>80% / 90%</td>
<td>50%</td>
<td>10 / 25</td>
<td>5</td>
<td>10</td>
<td>20 / 30</td>
<td>not permitted</td>
<td>not permitted</td>
<td>not</td>
<td>not permitted</td>
<td>1 / 3; 45; 600</td>
<td>800</td>
</tr>
<tr>
<td>Civic Building Lot</td>
<td>no min / no max</td>
<td>no min / no max</td>
<td>100%</td>
<td>100%</td>
<td>0 / 10</td>
<td>n/a</td>
<td>n/a</td>
<td>20 / 30</td>
<td>1 / 4; 55</td>
<td>55</td>
<td>n/a</td>
<td>n/a</td>
<td>not permitted</td>
<td>1 / 4; 55; 55; 625</td>
</tr>
<tr>
<td>Civic Space Lot</td>
<td>no min / no max</td>
<td>no min / no max</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>1 / 4; 55</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>not permitted</td>
<td>n/a</td>
</tr>
</tbody>
</table>
The Problem

- Balancing neighborhood interest in protection of perceived character with the need for reinvestment, intensification
Planning at 30,000 Feet
Planning at 20,000 Feet
Planning at 10,000 Feet
Code Approaches

- **USE SEPARATION**
  - Original Euclidean Codes

- **PERFORMANCE**
  - Impact mitigation

- **FORM**
  - Long-term view of mixed use

- **ARCHITECTURE**
  - Design guidelines, pattern books
Coded Outcome

ARTICLE II. URBAN STANDARDS

2.30.070 T6.1 URBAN CORE

A. Building Placement

B. Building Profile and Frontage

1. SETBACKS
   a. Primary Buildings shall be placed within the shaded area as shown in the diagram above (unless specified otherwise by a permitted Building Type).
      1. Street Build-to Line: 0' to 5' min.
      2. Side street build-to Line: 5' to 10' min.
      3. Side Yard Setback: 0' min.
      4. Rear Yard Setback: 5' min.

2. ARCHITECTURAL ENCROACHMENTS
   a. Balconies, bay windows, chimneys, cantilevered rooms, and eaves may encroach into required setbacks as identified below and as may be further limited by the California Building Code (CBC).
      1. Balconies: 6' max. into Street Build-to Line, Side Street Build-to Line and Rear Setback.
      2. Bay windows, chimneys, cantilevered rooms, and eaves: 3' max. into all Setback areas identified in Diagram A. Building Placement, above.

1. HEIGHT
   a. Maximum:
      1. Core Area: 4 stories for Primary Building (20% of building footprint may be 5 story).
      2. Fringe Area: 3 stories for Primary Building (25% of building footprint may be 4 story).
      3. Taper Area: 3 stories for Primary Building (25% of building footprint may be 4 story) + 25' setback for fourth story from Oak and California Streets. Taper area height limits apply to all T6.1 properties South of Hwy 101 (not shown in Maximum Height Diagram).
      4. Mission Area: 3 stories for Primary Building (10% of building footprint may be 4 story).
   b. Floor to Floor: 18' max. ground floor; 12' max. second floor and above.

2. FRONTAGE TYPES
   a. Shopfront
   b. Forecourt
   c. Stoop
   d. Porch (along Poli Street only)
   e. Lightcourt
   f. Dooryard (along Poli Street only)
### Form Standards

#### Building Envelope Standards: Shopfront Colonnade Sites

**Frontage Area**

- The portion of a parking entrance which, at least 10 feet from a principal building entrance, is to have a clear height of at least 10 feet. The portion of a parking entrance which, at least 10 feet from a principal building entrance, is to have a clear height of at least 10 feet.

**Ground Floor Height**

- The maximum floor area in the ground floor of the principal building is to be 10 feet. The maximum floor area in the ground floor of the principal building is to be 10 feet.

**Main Entrance**

- The maximum floor area in the main entrance area is to be 10 feet. The maximum floor area in the main entrance area is to be 10 feet.

**Roof Height**

- The maximum height of the roof is to be 10 feet. The maximum height of the roof is to be 10 feet.

**Set Backs**

- The maximum setback from the street line is to be 10 feet. The maximum setback from the street line is to be 10 feet.

**Parking Structures**

- The maximum height of the parking structure is to be 10 feet. The maximum height of the parking structure is to be 10 feet.

**Building Height**

- The maximum height of the building is to be 10 feet. The maximum height of the building is to be 10 feet.

**Facade Height**

- The maximum height of the facade is to be 10 feet. The maximum height of the facade is to be 10 feet.

**Roof Height**

- The maximum height of the roof is to be 10 feet. The maximum height of the roof is to be 10 feet.

**Set Backs**

- The maximum setback from the street line is to be 10 feet. The maximum setback from the street line is to be 10 feet.

**Parking Structures**

- The maximum height of the parking structure is to be 10 feet. The maximum height of the parking structure is to be 10 feet.

**Building Height**

- The maximum height of the building is to be 10 feet. The maximum height of the building is to be 10 feet.

**Facade Height**

- The maximum height of the facade is to be 10 feet. The maximum height of the facade is to be 10 feet.

**Roof Height**

- The maximum height of the roof is to be 10 feet. The maximum height of the roof is to be 10 feet.

**Set Backs**

- The maximum setback from the street line is to be 10 feet. The maximum setback from the street line is to be 10 feet.

**Parking Structures**

- The maximum height of the parking structure is to be 10 feet. The maximum height of the parking structure is to be 10 feet.

**Building Height**

- The maximum height of the building is to be 10 feet. The maximum height of the building is to be 10 feet.

**Facade Height**

- The maximum height of the facade is to be 10 feet. The maximum height of the facade is to be 10 feet.

**Roof Height**

- The maximum height of the roof is to be 10 feet. The maximum height of the roof is to be 10 feet.

**Set Backs**

- The maximum setback from the street line is to be 10 feet. The maximum setback from the street line is to be 10 feet.

**Parking Structures**

- The maximum height of the parking structure is to be 10 feet. The maximum height of the parking structure is to be 10 feet.

**Building Height**

- The maximum height of the building is to be 10 feet. The maximum height of the building is to be 10 feet.

**Facade Height**

- The maximum height of the facade is to be 10 feet. The maximum height of the facade is to be 10 feet.

**Roof Height**

- The maximum height of the roof is to be 10 feet. The maximum height of the roof is to be 10 feet.

**Set Backs**

- The maximum setback from the street line is to be 10 feet. The maximum setback from the street line is to be 10 feet.

**Parking Structures**

- The maximum height of the parking structure is to be 10 feet. The maximum height of the parking structure is to be 10 feet.

**Building Height**

- The maximum height of the building is to be 10 feet. The maximum height of the building is to be 10 feet.

**Facade Height**

- The maximum height of the facade is to be 10 feet. The maximum height of the facade is to be 10 feet.

**Roof Height**

- The maximum height of the roof is to be 10 feet. The maximum height of the roof is to be 10 feet.

**Set Backs**

- The maximum setback from the street line is to be 10 feet. The maximum setback from the street line is to be 10 feet.

**Parking Structures**

- The maximum height of the parking structure is to be 10 feet. The maximum height of the parking structure is to be 10 feet.

**Building Height**

- The maximum height of the building is to be 10 feet. The maximum height of the building is to be 10 feet.

**Facade Height**

- The maximum height of the facade is to be 10 feet. The maximum height of the facade is to be 10 feet.

**Roof Height**

- The maximum height of the roof is to be 10 feet. The maximum height of the roof is to be 10 feet.

**Set Backs**

- The maximum setback from the street line is to be 10 feet. The maximum setback from the street line is to be 10 feet.
Public Realm Improvements
Floor Area Ratio

- “Pat of Butter”
### Form versus Incentives

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Max. Base Height</th>
<th>Max. Public Benefit Height</th>
</tr>
</thead>
<tbody>
<tr>
<td>DC1</td>
<td>15</td>
<td>18</td>
</tr>
<tr>
<td>DC2</td>
<td>15</td>
<td>30</td>
</tr>
<tr>
<td>DC3</td>
<td>25</td>
<td>42</td>
</tr>
</tbody>
</table>

![Diagram showing height and building coverage for DC1, DC2, DC3](image)

*Figure 4.2*
Theory versus Reality

- Plans Often Cover Too Large an Area
- Plans (and even Codes) Sometimes Do Not Include Adequate Public Involvement
- Simple Planning Concepts Often Get Complex When Forced to Deal With:
  - Property rights
  - State and federal legislation
Theory versus Reality
Zoning “Value”

- Downzoning
  - Appearance versus reality

- Zoning can create value while protecting character
  - Historic districts
  - McMansion ordinances
Timing/Extent of Involvement

- Neighbors?
  - Up front during planning
- Policy-makers
  - Confirmation of planning
- Technical Staff
  - Throughout, including application approval following planning stage
Preparing New Zoning

- Need to Model Outcomes: in 3-D, if possible
  - Height, building placement, bulk planes
  - Financial pro forma
  - Parking

- One Reason All Sides Like Form-Based Codes is Their Detailed Planning of Results
  - With Codes That Match
Pro Forma Testing

<table>
<thead>
<tr>
<th>Physical Inputs</th>
<th>Physical Outputs</th>
<th>Useable FAR</th>
<th>Total Lot Area</th>
<th>Useable Building Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scenario Name</td>
<td>Parking Area Next To Building 25,090 Square Feet</td>
<td>0.67</td>
<td>0.37%</td>
<td>20,325 Square Feet</td>
</tr>
<tr>
<td>Gross Ton Ratio</td>
<td>Maximum Building Footprint 16,292 Square Feet</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enter Lot Area</td>
<td>Landscaping 2,175 Square Feet</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum Height</td>
<td>Total Lot Area 43,860 Square Feet</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underbuild</td>
<td>Total Lot Area 1.0 Acres</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage of Density Achieved Relative to Allowed Equal to 90%</td>
<td>Useable FAR 0.67</td>
<td>Useable Building Total 20,325 Square Feet</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Percent of Building Square Feet</th>
<th>Residential</th>
<th>Affordable Residential</th>
<th>Retail</th>
<th>Office</th>
<th>Industrial</th>
<th>Public</th>
<th>Other</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage of Building Percentage</td>
<td>80%</td>
<td>0%</td>
<td>20%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Average Square Feet Per Resident or Employee by Sector</td>
<td>1150 Square Feet</td>
<td>600 Square Feet</td>
<td>480 Square Feet</td>
<td>400 Square Feet</td>
<td>1000 Square Feet</td>
<td>350 Square Feet</td>
<td>400 Square Feet</td>
<td></td>
</tr>
</tbody>
</table>

ROI = 12.0%
Pro Forma Testing
Pro Forma Testing
Common Mistakes

- Expecting a Miracle . . .
  - Montgomery County TOD and mixed use zones established in the 70’s/80’s – 20+ years ago

- Planning Through Zoning
  - Zoning should IMPLEMENT plans, not make them

- Borrowing Code From Others
  - Good Code is PLACE-SPECIFIC
Contact Information

Lee D. Einsweiler, AICP
CODE STUDIO
(512) 478-2200
lee@code-studio.com