Tonight’s Agenda

- Zoning basics
- Town role in county zoning decisions
- Responsibilities involved in town zoning administration
Zoning

Counties
• Required to administer shoreland, wetland and floodplain zoning
• May adopt general zoning in unincorporated areas with town approval

Towns
• May adopt general zoning with county approval

Cities/Villages
• May adopt general zoning
• May adopt extra-territorial zoning extending 1.5-3 miles beyond boundaries
• May be required to administer shoreland, wetland or floodplain zoning
Zoning operates on 2 scales:

- **Landscape** – divides the community into compatible and incompatible districts
- **Site** – describes allowable uses and other requirements
**Zoning Ordinance – Map**

**R2 - Single Family Detached Homes (FAR: 0.5)**
- Development limited exclusively to single-family detached houses.
- Typically up to 11 houses per acre.
- Open space ratio (OSR): 150.0

**M1 - Light Industrial (FAR: 1.0-12.0)**
- Woodworking shops, auto storage and repair shops, etc.
- Often a buffer to adjacent residential or commercial districts.
- Offices and most retail uses are also permitted.

**M3 - Heavy Industrial (FAR: 2.0)**
- Power plants, solid waste transfer facilities and recycling plants, and fuel supply depots.
- Heavy industries that generate noise, traffic or pollutants, usu. located near the waterfront and buffered from residential areas.

**C2 - C1 with Residential (FAR: 1.0 - 2.0)**
- Permits slightly wider range of uses than C1: funeral homes and repair services.
- In mixed residential/commercial buildings, commercial uses are limited to one or two floors and must always be located below the residential use.
Overlay Zones

Overlay Zone:
• Special district that applies on top of base zoning district
• Must follow requirements from each district
• Examples – shoreland, wellhead protection, airport overlay, historic preservation, etc.

## R1-R3 Lower-Density Residence Districts

<table>
<thead>
<tr>
<th></th>
<th>R1-1</th>
<th>R1-2</th>
<th>R1-2A</th>
<th>R2</th>
<th>R2A</th>
<th>R2X</th>
<th>R3A</th>
<th>R3X</th>
<th>R3-1</th>
<th>R3-2</th>
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<tr>
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<td>✓</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Semi-detached residences</td>
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<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
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<tr>
<td>All residences</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
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<tr>
<td>Residential FAR (max)</td>
<td>0.5</td>
<td>0.5</td>
<td>0.5</td>
<td>0.5</td>
<td>0.85</td>
<td>0.5</td>
<td>0.5</td>
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<tr>
<td>with attic allowance</td>
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<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>−</td>
<td>✓</td>
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<tr>
<td>Community facility FAR (max)</td>
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<td>0.5</td>
<td>0.5</td>
<td>0.5</td>
<td>0.5</td>
<td>1.0</td>
<td>1.0</td>
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<tr>
<td>Lot width (min)</td>
<td>100 ft</td>
<td>60 ft</td>
<td>60 ft</td>
<td>40 ft</td>
<td>40 ft</td>
<td>30 ft</td>
<td>25 ft</td>
<td>35 ft</td>
<td>40 ft</td>
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<td>Other</td>
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<td>−</td>
<td>−</td>
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<td>−</td>
<td>18 ft</td>
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<tr>
<td>Lot area (min)</td>
<td>9,500 sf</td>
<td>5,700 sf</td>
<td>5,700 sf</td>
<td>3,800 sf</td>
<td>3,800 sf</td>
<td>2,850 sf</td>
<td>2,375 sf</td>
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<td>Lot coverage (max)</td>
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<td>30%</td>
<td>−</td>
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<td>−</td>
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<td>Front yard depth (min)</td>
<td>20 ft</td>
<td>20 ft</td>
<td>20 ft</td>
<td>15 ft</td>
<td>15 ft</td>
<td>15 ft</td>
<td>15 ft</td>
<td>10 ft</td>
<td>10 ft</td>
<td>15 ft</td>
</tr>
</tbody>
</table>
Figure 4-6 – Location and measurement of setbacks

Figure 4-7 – Types of signs

STANDARD D BUFFER YARD
50 FEET minimum width
8 Canopy trees
5 Understory trees
10 Evergreen trees
25 Evergreen shrubs
15 Deciduous shrubs
1. **Permitted Use** – use is listed and **allowed by right** in all parts of a zoning district (granted by zoning administrator)

2. **Conditional Use / Special Exception** – use is listed for a district and **may be allowed** if suited to the location (decided by plan commission, zoning board or governing body)

3. **Unlisted or Prohibited Use** – use is **not listed** for the district or **expressly prohibited**
1. Variance – allowed “violation” of an ordinance standard (decided by zoning board)

2. Appeal – contested decision or interpretation of the zoning ordinance (decided by zoning board or circuit court)

3. Map or Text Amendment – change to the zoning ordinance (adopted by governing body with advisory recommendation from plan commission)
<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Decision-maker</th>
<th>Type of decision</th>
<th>Decision standards</th>
<th>Town input</th>
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<tr>
<td>Zoning Amendment</td>
<td>GB, PC rec’d</td>
<td>Legislative</td>
<td>Constitution, Case Law</td>
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<td>Permitted Use</td>
<td>Zoning Staff</td>
<td>Administrative</td>
<td>Ordinance</td>
<td>No</td>
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<tr>
<td>Conditional Use</td>
<td>PC, BOA, GB</td>
<td>Quasi-judicial</td>
<td>Ordinance</td>
<td>Maybe</td>
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<tr>
<td>Variance</td>
<td>Zoning Board</td>
<td>Quasi-judicial</td>
<td>Statutes, Case Law</td>
<td>Maybe</td>
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<tr>
<td>Admin Appeal</td>
<td>Zoning Board</td>
<td>Quasi-judicial</td>
<td>Ordinance, Record</td>
<td>No</td>
</tr>
</tbody>
</table>
### Rules for Decision-Making

**Legislative**
- policies, plans, ordinances, amendments
- Constitutional and reasonable.
- Public participation encouraged.

**Quasi-judicial**
- variances
- conditional uses
- plat review
- Pre-determined standards apply.
- Conditions may be applied.
- Procedural due process.
  (notice, public hearing, record, impartial decision-maker)

**Administrative**
- permits
- Apply ordinance as written.
- No additional conditions.
Proposal: Build red garage

Administrative  Quasi-judicial  Legislative

Permit Application

- Meets Permitted Use Criteria? (ZA)
- Meets Conditional Use Criteria? (BOA, PC or GB)
- Meets Dimensional Criteria? (ZA)
- Meets Variance Criteria? (BOA)

- Appeals (BOA* or CC)
- Ordinance Amendment? (GB with PC rec'd)

Key:
ZA - zoning administrator
PC - plan commission
BOA - zoning board of appeals
GB - governing body
CC - circuit court
* BOA does not review its own decisions
Proposal: Build white garage

Permit Application

- Meets Permitted Use Criteria? (ZA)
  - Meets Dimensional Criteria? (ZA)
  - Meets Conditional Use Criteria? (BOA, PC or TB)
- Meets Variance Criteria? (BOA)
- Ordinance Amendment? (TB with PC rec’d)

Legal Counsel

Appeals (BOA* or CC)
A town recommendation is required as part of the application for a rezone (map amendment) or a conditional use permit. This recommendation is necessary whether a town has adopted a comprehensive plan or has not. Pierce County will seek to further each Town’s planning goals when considering the establishment of conditionally permitted uses and when considering approval of a request for a rezone or map amendment.
Petition for ordinance amendment

Notice of public hearing & notice to affected towns

Public hearing on map and/or text amendment
P&Z committee recommendation to county board

Protests of affected landowners

Governing body approves/modifies/denies amendment

Amendment goes into effect & is published

Appeal to Circuit Court

**Stage 1**
Towns have 10 days from public hearing to object to changes outside shoreland/floodplain areas. If town disapproves, P&Z must revise proposal or recommend denial.

**Stage 2**
If majority of affected towns disapprove within 40 days of county vote, amendment does not take effect.
Administering town zoning requires:

• Trained professionals and local officials
  - Town must find 7 people to serve on BOA
  - Hire or train zoning administrator, support staff & attorney

• Town must pay for
  - Ordinance drafting & amendments
  - Ordinance administration and enforcement
  - Board of appeals
  - Attorney to represent town if zoning decisions are appealed
  - Training
  - Public notices
Zoning Staff

Zoning Administrator and Support Staff

- Grant simple zoning permits
- Help public understand rationale for zoning and navigate the application process
- May prepare staff reports/recommendations
- Schedule hearings, prepare public notice, and take minutes at hearings
Approaches to zoning administration:

- Small towns: clerk doubles as zoning administrator
- Medium towns: part-time zoning administrator shared with several other towns
- Large towns: full-time zoning administrator who may also do building inspection, roads, etc.

- May also contract with private consultant
• Trained zoning administrator
  – Typical education: college degree in land use, geography, public administration or natural resources
  – Experience and tact limit lawsuits
  – Full-time administrators get $30-80K + benefits
Legal Counsel

- Draft ordinances and amendments
- Counsel PC or GB on zoning matters
- Separate attorney to counsel BOA
- Typically paid $100+ per hour
Zoning Board of Adjustment/Appeals

1. Hear and decide variances
2. Hear and decide administrative appeals
3. May decide conditional use permits
• Appointing the zoning board
  – 5 members + 2 alternates
  – Members serve staggered 3-year terms
  – Vacancies are filled for the remainder of a term
  – We recommend that town board members do not serve on the BOA
  – Typically paid $25-80 per meeting plus mileage
  – Annual training strongly recommended to learn about and stay current on state statutes and court decisions.
Conditional Use / Special Exception

- Must be listed for the zoning district
- Decision criteria also listed in the ordinance
- Discretionary decision – may be granted or denied
- Conditions may be attached
Conditional Use / Special Exception

- Permit generally assigned to property, not owner
- Conditions cannot be changed unless permit is revoked or expires
  - Permit may be revoked due to non-compliance
  - Expiration date appropriate for temporary uses such as gravel pit
- In the case of a zoning change, property becomes nonconforming and conditions cannot be enforced
  (Hussein v. Germantown BOA, 2011 WI Court of Appeals)
Variance

An allowed “violation” of an ordinance standard

Use variances “permit a landowner to put property to an otherwise prohibited use.”

Area variances “provide an increment of relief (normally small) from a physical dimensional restriction such as a building height, setback, and so forth.”

Ziervogel v. Washington County Board of Adjustment, 2004 WI Supreme Ct.
The applicant has burden of proof to show that all three statutory tests are met:

1. unnecessary hardship*
2. due to conditions unique to the property
3. no harm to public interests

See Zoning Board Handbook, Chapter 15: Variances
Unnecessary Hardship

• For **use variances** = no reasonable use of property without a variance
• For **area variances** = when compliance with the ordinance would:
  – unreasonably prevent the owner from using the property for a permitted purpose, or

    *Is the hardship merely a personal inconvenience?*
  – be unnecessarily burdensome **in view of ordinance purposes**

    *Is the hardship necessary to achieve ordinance purposes?*
Unnecessary Hardship

• Loss of profit or financial difficulty do not constitute hardship
• Hardship cannot be self-created or created by a prior owner
• A zoning board may consider an error of local government staff when deciding whether to grant a variance
Variances

- A variance runs with the property.
- A variance does not create a nonconforming structure.
- Lack of objections from neighbors does not justify a variance.
- Nor do nearby ordinance violations.
Administrative Appeals

• Legal process to resolve disputes regarding:
  – Ordinance interpretation (e.g., text, maps, jurisdiction, measurements, etc.)
  – Reasonableness of zoning decision (e.g., zoning permit, conditional use permit)
Administrative Appeals

• When zoning boards hear appeals, they have the authority to:
  – Review the decision based on the record at hand OR
  – Hold a de novo hearing (take new evidence)
  – Substitute their judgment for the zoning committee or zoning administrator’s judgment

Osterhues v. Board of Adjustment for Washburn County, 2005 WI Supreme Ct.
Appeal Routes

- Court of Appeals
- Wisconsin Supreme Court
- Circuit Court
- Court of Appeals
- Zoning Board of Adjustment / Appeals
- Plan Commission / Zoning Committee
- Zoning Administrator
- Governing Body
Application forms should prompt:

- Contact information
- Property description
- Current conditions
- Maps, photos, scale drawings
- Compliance with ordinance standards
Recommended Resource

- Sample guides, checklists and forms
Tools for Making Decisions

Decision forms should prompt:

- Facts of the case
- Compliance with ordinance standards
- Recommendation or decision
- Related conditions or limitations
Recommended Resource

• Sample decision forms

Application/Petition # ____________

Plan Commission Decision Form

I. Findings of Fact

Name, address and phone number of applicant: ________________________________
________________________________________________________________________

The applicant requests:

☐ Preliminary / final plat approval
☐ Conditional use / special exception
☐ Zoning map / text amendment
☐ Comprehensive plan map / text amendment
☐ Other: ____________________________

Brief description of property and surrounding conditions: ______________________
________________________________________________________________________
________________________________________________________________________

Brief description of proposal: ________________________________________________
________________________________________________________________________
________________________________________________________________________
1. Findings of Fact

• General findings
  – Property description
  – Description of abutting properties and neighborhood
  – Description of the applicant’s proposal
  – Keep a list of witnesses, documents and exhibits relied upon in making the decision
1. Findings of Fact

• Decision-makers must determine:
  – What are the facts? What evidence is credible?
  – Which facts relate to and support your decision?
  – How do those facts reasonably lead to the conditions of approval, if applicable?
2. Conclusions of Law

- This is where you lay out your conclusions, which may differ from testimony provided by the applicant, public, staff, etc.
  - Refer to standards found in state statutes, case law, and local ordinances
  - Do more than just refer to the standards
  - Describe how each legal standard was/not met based on evidence presented
3. Order and Determination

• State whether you grant or deny the request
  – Specify applicable time limits, conditions and other limitations
  – Include a notice of appeal rights with the written decision supplied to the applicant
Conditions of approval must reasonably relate to the project and standards. There are 2 tests:

1) **Essential nexus** – address expected harmful project impacts
2) **Rough proportionality** – be proportional to the extent of those impacts
A checklist for good decisions

✓ **Subject matter jurisdiction**
  Did the commission/board decide a matter that it is empowered by statute or ordinance to act on?

✓ **Proper procedures**
  Did the commission/board follow proper procedures (notice, hearing, record of decision, open meeting law)?

✓ **Proper standards**
  Did the commission/board apply proper standards in making the decision (e.g. 3-step test for a variance)?

✓ **Rational basis for the decision**
  Could a reasonable person have reached this conclusion?

✓ **Evidence in the record**
  Do facts in the record of the proceedings support the decision?
A checklist for good decisions

- Local zoning decisions can be appealed to higher courts.
- If state statutes and case law are followed, decisions will generally be upheld.
- A solid legal record minimizes legal costs and zoning board reconsideration.
Enforcing the Code

Sample Process, Town of Grand Chute:

1. Town records complaint.
2. Code Enforcement Officer investigates complaint.
3. Owner notified of violation, responsibility to correct violation, and date to complete.
   (Attempt to contact, then provide written "Notice of Violation")
4. Enforcement officer revisits site to check on compliance.
5. If not corrected, violation forwarded to Police Department.
6. Police Officer issues citations and fines until violation is corrected.
7. Town Attorney may also prosecute, resulting in trial before County Circuit Court.
How do you identify violations?

- **Complaint** - neighbor or interested citizen complains
- **Direct Observation** - ZA notices building or development not permitted (i.e. new porch or garage built without permit)
- **Site Visit** - ZA discovers zoning violation during site visit to property
- **Landowner** - Landowner discovers violation prior to sale of property. Some title companies require as-built surveys and review and verification by ZA. May affect title to property.
Be Proactive

• Encourage residents to report questionable activities and maintenance issues
Documenting Evidence

- Capture audio, video or photo evidence - date and describe
- Document what’s allowed - ask for proof of licensing, permits, title, etc.
- Document your process - attempted contacts, written communication, etc.
Town or County Zoning?

Positives

• Knowledge of local conditions
• Local control over standards and decision-making
• Local staff & resources

Challenges

• Complex rules
• Expensive to administer
• Requires staff, legal counsel, zoning board, plan commission
• Subject to political pressure
• Hard to say “no” to neighbors
• Open to lawsuits challenging your decisions
• Requires county approval
What is a good code?

• Legally sound
• Consistent with the plan
• Result of public involvement
• Identifies desired development
• Users understand it
• Local officials can apply it
“Remember, a law is really only useful when enforced, but a law will only be enforced if it’s useful.”
Recommended Resources

www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/PlanCommissions.aspx

Zoning Board Handbook, 2006
www.uwsp.edu/cnr-ap/clue/Pages/publications-resources/Zoning.aspx
Thank You!

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