




Fundamentals of Zoning

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VENABLE LLP



“Zoning is *local government regulation* of the *use of land*...and of *buildings and structures*...in accordance with a *general plan*.”

- RATHKOPF'S THE LAW OF ZONING AND PLANNING

Local Government Regulation

Zoning not regulated by the State of Maryland

Local Governments have power over zoning

23 Counties and Municipalities

Need to check jurisdiction and local rules

Local Government Regulation

State law can impact use and development of property

Growth tiers (limits large lots with septic systems)

Environmental regulations (SWM, Chesapeake Bay Critical Area, etc.)

Medical cannabis (local governments cannot prohibit use)

Local Government Regulation

Federal law can impact use and development of property

RLUIPA (Protection for Religious Uses)

Fair Housing (prevent discrimination)

American with Disabilities Act

Local Government Regulation

Actions by Local Government:

- Adopt official zoning maps

- Enact zoning regulations

- Adopt comprehensive plan

- Review for compliance with regulations

Zoning Regulates Use

Euclidean zoning – separates incompatible uses to protect general welfare

Each property has a zoning classification

Uses based on zoning classification

Trend towards increased flexibility to create more mix/integration

Zoning Regulates Use

Regulations will list uses

“By Right” Permitted Uses

Special Exception/Conditional Uses

If not permitted, prohibited...

Zoning Regulates Use



Zoning Regulates Use

Intent: To foster a greater variety of housing types meeting the needs of different housing market requirements; to allow more preservation of natural features and induce the reservation of better open space; to provide greater certainty about dwelling types and densities within existing communities with the goal of conserving and maintaining these areas.

Typical Uses Permitted by Right:

DR 1, DR 2, DR 3.5: Single family, semi-detached, and duplex allowed in each zone.

DR 5.5: single family, semi-detached, and duplex allowed; single family attached and multifamily with compatibility finding.

DR 10.5, DR 16: single family, semi-detached, duplex, single family attached and multifamily allowed in each zone.

Other: Churches, hospitals, family child care, assisted living (Class A).

Typical Uses Permitted by Special Ex-

ception: Convalescent homes, community buildings, Class B (up to 40 children) group child care, assisted living facilities (Class B, new or modified building), professional offices in the home (max. 25% of floor area).

Permitted Density:

DR-1:	1 dwelling unit/acre
DR-2:	2 dwelling units/acre
DR-3.5:	3.5 dwelling units/acre
DR-5.5:	5.5 dwelling units/acre
DR-10.5:	10.5 dwelling units/acre
DR-16:	16 density* units/acre

***Density Units (DU):**

Efficiency	0.50 DU
One bedroom.....	0.75 DU
Two bedroom	1.00 DU
Three or more bedrooms	1.50 DU
Assisted living facility bedroom	0.25 DU

Additional Regulations Affecting Development in DR Zones:

- A minimum lot width and lot area is required for subdivisions of five lots or less, based on the property's zoning designation.
- Panhandle Lots: Under certain conditions, three to five lots may be arranged to share a single private driveway.
- Alternate Housing Types: Higher density single family detached housing types may be allowed under certain situations. These housing types include Zero Lot Line, Zipper Lot, and Traditional with rear garages/parking.
- Residential Transition Area buffers are required between lower and higher density unit types.

Regulates Buildings and Structures

Zoning classification will establish bulk and area requirements.

Examples:

- Maximum residential density or commercial square footage

- Minimum lot size, maximum lot coverage

- Total building area (floor/area ratio)

- Orientation of structures

Regulates Buildings and Structures

Other examples:

Building setbacks (front, side, rear)

Required yard area

Residential Transition Area

Building dimension (length of structures, height)

Regulates Buildings and Structures

Comparison of Density Residential Zones Housing Types and Setbacks

	Single Family Detached, Semi-Detached, Duplex		Alternative Site Design Single Family Detached		Single Family Attached (Group Houses, Townhouses)	Multi-Family
	DR 1, DR 2	DR 3.5, 5.5, 10.5, 16	Zero and Zipper Lots	Neo-Traditional	DR 3.5, 5.5, 10.5, 16	DR 3.5, 5.5, 10.5, 16
Minimum front building to public street right-of- way or property line	25 feet	25 feet	25 feet	10 feet	25 feet for units with front- loaded garages, 13 feet for units fronting perpendicular parking, 10 or 15 feet for units fronting parallel parking	25 feet to public right- of-way, 40 feet to tract boundary, 60 feet between building fronts
Minimum rear setback	30 feet	30 feet	20 feet	50 feet	30 feet, 60 feet between condominium units	40 feet, 60 feet between building rears
Minimum building side to building side	30 feet	16 feet when less than 20 feet high, otherwise 20 feet	16 feet	12 feet	20 or 25 feet	1 foot for each foot in building height to the soffit, but not less than 30 feet
Minimum side setback to public street or tract boundary	25 feet	15 feet	15 feet	10 feet	25 feet, 30 feet to tract boundary	30 feet to tract boundary
Maximum building height	50 feet	50 feet, 60 feet in DR 16	50 feet, 60 feet in DR 16	50 feet, 60 feet in DR 16	50 feet, 60 feet in DR 16	50 feet, 60 feet in DR 16

Regulates Buildings and Structures

Other types of regulations:

- Parking requirements

- Signage

- Open space

- Percentage of affordable housing

Options if cannot meet regulations

Other ways of permitting uses in some jurisdictions:

Planned Unit Developments

Floating Zones

Require additional burden of proof and process

Options if cannot meet regulations

Rezone the property

Comprehensive Rezoning (occurs at set time)

Example: Baltimore County: 4 year cycle

Piecemeal zoning amendment

Need to prove change or mistake

Options if cannot meet regulations

Variance:

“an authorization for that which is prohibited by the zoning ordinance” *Cromwell v. Ward*

Difficult burden to meet - advise caution before pursuing

Special Exception/Conditional Uses

Uses presumed to be valid and “in the interest of the general welfare”

But, understood to have potential negative impacts.

Requires proof that use - at this particular location - would not have greater adverse impacts than expected.

Public Hearing

Zoning relief (variance or special exception) usually requires a public hearing.

Posting of property with request

Present evidence and testimony at public hearing

Hearing examiner makes a decision

Potential appeal to higher level

General (Comprehensive) Plan

State mandates local governments adopt comprehensive plan or master plan

Plan must be updated every ten years

Zoning decisions should be “consistent” with comprehensive plan

Idea that interests of entire community should be considered

Other Considerations

Adequate Public Facilities:

- Water and sewer

- Transportation

- Schools

Aesthetic and Design Standards

Deed Restrictions/Private Agreements

Changes in Zoning Law

Nonconforming uses

Use was in effect prior to law change and continued uninterrupted

Vesting

Achieving status protected from changes in zoning or law

Development and Permitting

Most local governments have separate rules for:

- Subdividing property

- Approval of development

Also, need to apply for and obtain building permits

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Fundamentals of Land Development

April 4, 2017

Lou Baker
Baker Development
CEO

Jeff Barba
Emerald Builders
COO

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Agenda

- Prospecting
- Project Valuation/Agree on terms
- Pro Forma
- Due Diligence/Internal Approval

...and lessons learned along the way

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Prospecting

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Where to buy?

- Population
- Employment/Median Income
- Top Performing Submarkets
- Pricing – New and Resale
- Permit Activity
- Inventory/Months-of-Supply/Future
- Sales Performance
- Closings

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What's for sale?

- Networking
- Brokers/Real Estate Listings
- Engineers
- Land Owners
- Developers
- Subscription Services (Metrostudy, Zonda, etc.)
- County and State Databases
- Land Mapping

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Project Valuation/Agree on Terms

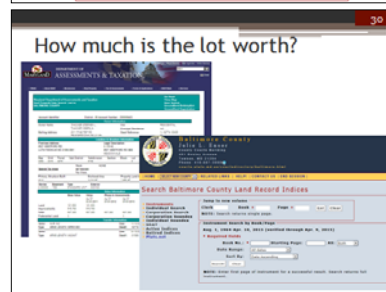
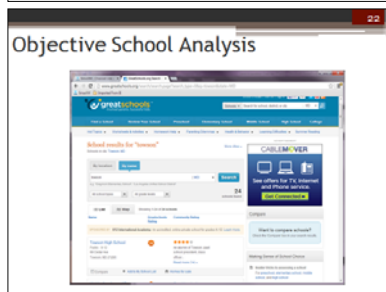
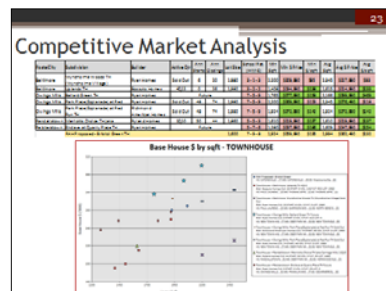
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Assess the site

- Location
 - Proximity to job centers
 - Proximity to metropolitan areas
 - Proximity to retail amenities and recreation
- Schools
- New home pricing and pace
- Resale value
- Type of site (in-fill vs raw land)
- Engineering Assessment (layout, lot dimensions, amenities, etc.)
- Red flags/hindrances?
- Architectural requirements (County, site, etc.)
- County Impact Fees and Taxes
- Lot comps
- Risk Profile
- **Would you live there? (Gut Check)**

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Examples of tools to assess the site



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Can we agree on terms?

- **Type of deal**
 - Finished lots vs. self-development
- **Lot Price**
 - Fixed price, escalation, profit share, etc.
- **Deposit**
 - Letter of Credit vs Cash
 - Secured vs Unsecured
 - When is released?
- **Takedown structure**
 - Variable, Scheduled, Bulk
- **Closing requirements?**
 - Record plat, preliminary approval, base paving, permits, etc.

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And will the deal work?

- Is the builder/developer selling in the area, how much inventory available?
- Builder fit – Homebuyer profile (affordable, 1st time move, 2nd time move up, etc.)
- Un-negotiables (deposit, etc.)
- Risk profile
- Return on Investment
 - Length of time (absorption, development timeline)
 - Peak investment
 - Profit
 - Deposit
- Threshold Requirements

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Developer's Pro Forma

Howard County Property 11 lots	Per Lot	Total
Finished lot sales price	290,000	3,190,000
<u>Costs:</u>		
Legal, Title	2,727	30,000
Entitlements	9,091	100,000
Transfer and recordation on purchase	1,401	15,411
Loan origination fee	2,750	30,250
Letter of Credit/bonding fees	2,700	29,700
Land development – hard costs	90,000	990,000
Density Exchange Options		
Wells		
Entry feature, Landscape, Property taxes	7,000	77,000
Interest	9,634	105,974
Transfer and recordation on sale	2,900	31,900
<u>Profit Target</u>	<u>50,000</u>	<u>550,000</u>
Total Costs plus profit	178,202	1,960,222
Total Offer	111,798	1,229,778

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Developer's Challenges

- Approval Hurdles
 - Cost
 - Time
 - Municipalities
 - CZMP
 - URDL
 - Senate Bill 236 – Tiers
 - Community Opposition
- Capital
 - Significant barrier to entry
 - Some banks still not in the game
 - Equity requirements in the 20-30% range
 - Hard money is expensive

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Developer's Challenges

- The “Numbers”
 - Seller Expectations of Land Value
 - Flat finished lot values
 - Builder Renegotiation/Walkaway Risk
 - Increasing development costs
 - Land Development Risk
 - Williams Field rock issues
 - Laurel Hill tunnel
 - Longer entitlement timeframes
 - County fees
 - Cost and availability of bonds and letters of credit
- Soils and Environmental
 - Ellicott City site
- Entitlements
 - Sparks site

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Equity Requirements

• Total Revenues	\$3,190,000
• Less: Pre-tax Income	<u>(550,000)</u>
• Total Costs	2,640,000
• Loan Amount:	
▫ Revenues	3,190,000
▫ Discount Rate	* <u>70%</u>
▫ Discounted Revenues	2,233,000
▫ Loan %	* <u>75%</u>
▫ Loan Amount	1,674,750
• Total Costs	2,640,000
• Less: Loan Amount	<u>(1,674,750)</u>
• Less: Deposit (8% of revs)	<u>(255,200)</u>
• Equity Needed	710,050

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Returns on Investment and Equity

- **Pre-tax income** **\$550,000**
- **Total Costs** **2,640,000**
- **Return on Investment** **18.8%**

- **Pre-tax Income** **\$550,000**
- **Total Equity** **710,050**
- **Return on Equity** **66.5%**

- **Stress Test:**
 - **10% Cost Overrun:**
 - **ROI reduces to 16.9%; Increases equity needed by \$264,000; Reduces ROE to 45.7%**
 - **\$20,000 lot price reduction by builder on last 6 lots**
 - **ROI reduces to 14.3 %; ROE reduces to 49.1%**
 - **10% Cost Overrun and \$20,000 reduction**
 - **ROI reduces to 12.8%; ROE reduces to 33.1%**

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Builder's Pro Forma

1. Plan lineup
2. Takedown Structure (Bulk vs Option)
3. Indirect Cost (onsite construction costs)
4. Direct Cost (base house and options)
5. Sales Commission (internal and external)
6. Revenue (base \$, options \$, lot premium, incentives and closing costs)
7. Deferred Marketing (model)
8. Sales & Other Marketing Expenses
9. Fees (building permit and impact fees)
10. Warranty
11. Contingency
12. Sales, Starts and Closings Timing
13. Due Diligence Expenses
14. Closing Costs (lot)
15. Profit Participation
16. On-lot development costs

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Input the data...

1. Plan lineup: 20' ft wide townhouse
2. Takedown Structure: rolling option (9 per qtr)
3. Indirect Cost: \$8k per lot
4. Direct Cost: \$56.23 per sqft
5. Sales Commission: 3% internal plus a co-op
6. Revenue: \$500k base, \$65k options, \$8k premium, and \$27k incentives
7. Deferred Marketing: \$3k per lot
8. Sales & Other Marketing: \$600 per lot
9. Fees: \$12k per lot
10. Warranty: \$1.4k per lot
11. Contingency: \$1k per lot
12. Sales, Starts & Closings: 2.8 per month (hold 3 specs on avg)
13. Due Diligence Expenses: \$45k total
14. Closing Costs (lot): \$292k total
15. Profit Participation: \$10k per lot
16. On-lot development costs: \$9k per lot


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...to build the pro forma cash flow

1	Cash Deposits	Lots Purchased	Starts	Sales	Closings	Deferred Marketing	Pre Close Due Diligence, Entitle & Eng Expenses	Taxes	Fees	Offsites	Onsites	Profit Participation
Jun 2015												
Jul 2015												
Aug 2015												
Sep 2015												
Oct 2015												
Nov 2015												
Dec 2015												
Jan 2016							22,500					
Feb 2016	1,817,560						22,500					
Mar 2016												
Apr 2016												
May 2016												
Jun 2016												
Jul 2016												
Aug 2016	0							0			0	
Sep 2016	0							0			0	
Oct 2016	0							0			0	
Nov 2016	0							0			0	
Dec 2016	0							0			0	
Jan 2017	(161,050)	7	7			57,500		25,790			0	
Feb 2017	0					57,500		0			0	
Mar 2017	0			1		92,000		0			0	
Apr 2017	0			2				0			0	
May 2017	0			3	0			0			0	
Jun 2017	(138,043)	6	6	3	1			22,105			9,000	
Jul 2017				3	2			0			18,000	
Aug 2017	(184,057)	8	8	3	2			29,474			18,000	
Sep 2017	0			3				0			0	
Oct 2017	0			3	4			0			36,000	
Nov 2017	(184,057)	8	8	3	2			29,474			18,000	
Dec 2017	0			3	4			0			36,000	
Jan 2018	(184,057)	8	8	3	3			29,474			27,000	
Feb 2018	0			3	1			0			9,000	
Mar 2018	0			3	4			0			36,000	
Apr 2018	(207,064)	9	9	3	4			33,158			36,000	
May 2018	0			3	4			0			36,000	

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Pro Forma Output

Project Overview (\$000)																																																																							
Tanyard Cove - Villa Only																																																																							
Maryland																																																																							
<div> <div>  </div> <div> <p>PROJECT DESCRIPTION</p> <p>Division Name: Maryland Sub. Division #</p> <p>Deal Status: Tanyard Cove - Villa Only Number of Lots Purchased: 26</p> <p>Seller Name: Elmhurst Dev/CSX Realty IV Easement Status @ COE Final Plat</p> <p>Product Type/Series: 60' x 100' SFD & 32' x 110' Villa Acres</p> <p>Lot Size: Average Home Size: 2,611 Sq Ft</p> <p>Location: City: Glen Burnie County: Anne Arundel</p> <p>Submarket: Glen Burnie State: Maryland</p> </div> </div>																																																																							
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Closings	26																																																																						
Total Housing Revenue	\$11,283	\$445.5	100.0%																																																																				
Land and Development	3,978	153.0	34.3%																																																																				
Profit Participation	0	0.0	0.0%																																																																				
Hard Cost	5,782	222.4	49.9%																																																																				
Interest in COE	106	4.1	0.9%																																																																				
Purch Lot Cost % of Sales	31.5%																																																																						
Dev. Cost % of Sales	2.8%																																																																						
Finished Lot Cost % of Sales	34.34%																																																																						
Average Lot Premiums	\$7.5																																																																						
Average Upgrade Revenue	\$58.0																																																																						
Base Cost / Sq. Ft (\$)	\$53.1																																																																						
Option Cost %	65.0%																																																																						
Design Center Cost %	60.0%																																																																						
Discom/Incentives % of Sales	4.5%																																																																						
Warranty % of Sales	0.2%																																																																						

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A review of the overall process (from the perspective of RAH):

- Identify Prospect
- Pro Forma/Agree on Terms
- LOI
- Miniterm Approval
- Contract
- Due Diligence
- Transmemo Approval
- Post Deposit
- Transmemo update approval for initial closing
- Short Form approval of any closing thereafter

Any Questions?

Thank you!