ZONING

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A compact but complete handbook of Zoning covering the story of the spread of this movement, the reasons for zoning, the experiences of the various zoned cities, the correct principles and best practice, the legal pitfalls and a selected list of references. The author was Chairman of the first of all the Zoning Commissions (New York City)

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I. CHAOTIC CONDITIONS IN UNZONED CITIES

Ten years ago in every large city of our country a landowner could put up a building to any height, in any place, of any size, and use it to any purpose, regardless of how much it hurt his neighbors. A few cities had passed ordinances limiting the height of skyscrapers, but these limits were subject to easy change and not part of a comprehensive plan. A few cities limited the height of apartment houses and did not allow them to cover the entire lot. In many cities regulations looking toward zoning were practiced or attempted, but they were usually for chosen sections or to meet local emergencies. Building laws, apart from those applying to fire limits, treated all parts of the city alike whether inside or suburban, whether business centers or residential outskirts. By and large the upbuilding of a city was left to the whim or personal profit of the individual builder and he could do what he wanted to with his own land, even if it hurt the city or the neighborhood.

Skyscrapers would be built to unnecessary height, their cornices projecting into the street and shutting out light and air. The lower floors needed artificial light in the daytime. Business centers instead of being rationally spread out were intensively congested. Transit and street facilities were overwhelmed. In some of the larger cities a landowner in the business district was almost compelled to put up a skyscraper because if he put up a low building, his next neighbor would put up a higher one that would take advantage of his light and air. The first skyscraper that went up in a block would enjoy high rents because of its outlook, but when other buildings went up equally high, its rents would fall. The skyscraper would usually be built to cover the entire lot, with its windows opening on other people's land. Some eligible lots were hedged in by skyscrapers so that no profitable buildings could be erected upon them and their rightful value was stolen by their skyscraper neighbors. The individual landowner could not be blamed because if he did not take advantage of his neighbor, his neighbor would take advantage of him. Many owners recognized that skyscrapers were less desirable and often less profitable than lower buildings, that the giving up of valuable space to gangs of elevators for different stories lessened the rentable area and that the cost of construction per cubic foot of a skyscraper was vastly greater than of a building of moderate height. Nevertheless the owner, realizing that a fairly low building in the intensive district would be pocketed by skyscrapers, would build a skyscraper himself. If he left any of his lot uncovered, or set back the upper part of his building, his neighbor would take entire advantage of it instead of leaving corresponding openings. The result was that the lack of regulation stimulated each owner to build in the most hurtful manner.

In residential localities high apartments would build out to the street line and their windows would open on the grounds of private residences. A vacant unrestricted lot in a high-class residential district had a high exploitation value. After such a locality was exploited by a dozen apartment houses, the owners of the private residences would begin to move away. The locality would become depressed

and the apartment houses themselves would sometimes find themselves in a blighted district.

Bright business streets would be invaded by factories. When the factory use began to predominate, customers would leave the localities, rents of stores would drop, and some of the most eligible business centers of cities became partly deserted. Fortunes were lost because business would move away from the locality where it would naturally remain if not forced out. Public stables and more latterly public garages would enter the best business and residential districts. A garage costing $25,000 might cause a loss of $100,000 in the surrounding values. Garages did not seek the industrial localities but would crowd into the business and residential districts that they would hurt the most.

Although it was evident that a growing city would more and more need its vacant suburbs for residential purposes, sporadic factories were free to enter these open places. Sometimes nuisance factories would go out half a mile from the city in an open area in order that they might be free from complaints of smoke and fumes. When the city built out toward the factory, the residences would keep at a distance. The factory might occupy an acre and almost ruin a hundred acres. Pressure of taxes and interest charges on the owners of this blighted district would cause them to sell at last for cheap and poorly-built houses without the introduction of proper street improvements.

Although retail stores ought to go on business streets, sometimes a druggist or grocer would try to short-circuit the trade by leaving the business street and moving to a residential corner. He might project his plate-glass front to the street line, cutting off the frontages of the houses in the block that had been built with a uniform set-back. If the first comer was successful in his business, others were attracted, and soon the residential section was shot through with the unnecessary business buildings. This hurt the car-line street where the business ought to be, and it hurt the residential district where the business ought not to be.

In the great cities especially this danger of invasion of hurtful uses drove well-to-do families out of the city, where in suburban villages they could to a greater extent obtain protected surroundings. Citizens whose financial ability and public enterprise made them most helpful within the city limits were the very ones that would often be tempted to remove their families outside of the city. Thousands of the best business men would earn their livelihood in the big city, but would give their money and energy to the creating of healthful living conditions in a suburban town. This helped to create a city of factories and tenement houses instead of a city of homes with needed open places.

A man who built a $40,000 home in most of our large cities was considered highly speculative because in a few years he might have an apartment house on one side and a factory on the other. No kind of building was immune from harm. Business districts were invaded by factories, apartment house districts by sweat shops, junk shops and garages, private house districts by apartment houses, and vacant suburban areas by the sporadic chemical or metal factory. There was a succession of invasive uses for which the buildings already erected were not adapted. Sometimes a blighted district ensued. In any case buildings could not be used for their normal life for the purposes for which they were

designed. Waste on a large scale was inevitable. Sometimes buildings that had a normal life of eighty years were torn down within fifteen years and replaced by a different kind.

Not only were private owners injured but the city itself became less attractive to industrial enterprises, business men and home owners. Chaotic conditions caused workers to travel daily too far from home. The cost of rapid transit lines over and under ground was increased. Street widths and sizes of blocks could not be predetermined. Expensive street improvements, consisting entirely of alterations, became successively necessary. For these reasons the city was not as economically sound as it would be if through community action it could have kept its house in order.

II. PROTECTIVE EFFORTS BEFORE THE SPREAD OF ZONING

But one will say, "Could not all of these injurious effects have been prevented by private restrictions in deeds?" The history of private restrictions has been far from satisfactory. They have operated fairly well in residential developments but have almost never been resorted to for the regulation of skyscrapers, to prevent the invasion of industry in business localities or to stabilize large land areas, different parts of which can properly be put to different uses. When localities are built up without contractual restrictions it is always too late to impose them because private owners can never agree after their buildings are once erected. Efforts are frequently made but a small minority can usually upset the best laid plan. Even in private residential developments the beneficial effect of private restrictions is apt to be short-lived. Usually these restrictions are for a period of twenty or twenty-five years. In that time three-fourths of the lots are built upon with a uniform class of residences. As the time expires, owners begin to keep their lots, especially vacant corner lots, out of improvement so that on the lapse of the restrictions they may erect apartment houses and thus exploit the private home surroundings. Sometimes during this period home owners will allow their houses to run down so that they will be almost valueless when the restrictions expire, and they can then use their land without great loss for apartment houses or business places. Home owners in such localities must be alert to go to court at the slightest violation of the restrictions, otherwise the courts will hold that the restrictions have become inoperative through laches. Often the restrictions are badly drawn and show lack of foresight. Then litigations are sure to ensue. In any case such restrictions have little effect on the upbuilding of a city that is to continue a center of population for centuries. If the restrictions are perpetual, they are still more troublesome. After the lapse of a long time they are difficult to alter because some owners deriving their title from a common source will not sign releases. The courts are prone to say that the restrictions have expired by lapsing on account of a change in the character of the neighborhood. Perpetual restrictions have proven more harmful than those for a fixed period. Contractual restrictions have been of great service in all cities and they will continue to be. They cannot, however, be looked upon as affording sufficient or long-time protection from an all-city point of view. They are incapable of adaptation to the changing needs of the city. They sometimes stand in the way of normal and natural improvements.

Some cities have given large powers

to official boards or department heads to prohibit offensive uses of buildings or to cause them to be placed in suitable localities. At the best this is a substitution of the rule of man for the rule of law and is apt to result in playing favorites. The method is not legally sound except as to uses of a nuisance character, and many cities are sure to be disappointed before long in finding that the courts will not uphold an enlargement of the unregulated freedom of officials in prohibiting certain buildings in one place and allowing them in another. A landowner who offers his plan to a building department for a building not objectionable as a nuisance can in such a city practically always obtain a mandamus order against the building superintendent commanding him to file the plan and issue the permit. Sometimes cities seek to apply specific regulations to parts of their area, leaving other areas without such regulation. This is equally apt to meet the disapproval of the courts, for all property situated substantially similarly should be treated alike. Public garages afford a good example of the kind of building left to officials to locate on application. While a public garage partakes of a nuisance character and is generally recognized as coming within such control, nevertheless it almost always happens that there is a tendency to employ influence in the obtaining of permits. Garages are a public necessity. Every city should have numerous spots where public garages can be built without the permit being a matter of favor. It is well settled that nuisances can be segregated. Slaughter houses can be compelled to go into assigned localities. The trouble is that the power to segregate slaughter houses and the very limited power of public officials to locate garages and other quasi-nuisances has very little effect in bringing about the orderly upbuilding of the entire city. And even this field which might be left to the discretion of officials is apt to become a matter of favor or punishment.

Uniform building laws do not bring about the orderly condition desired. They do not recognize that heights of buildings which may be permitted in the intensively used parts of the city should not prevail in the suburbs. They do not recognize that stores which may be built on car-line streets should not be built promiscuously among homes. They do not recognize that a lot can be more appropriately built upon to the extent of 90 per cent in the business districts than in the suburbs. In other words they apply uniformly over the entire city. The usefulness of zoning regulations consists in their being different for different districts. Regulations commonly classed as fire limits are a simple form of zoning which has been employed for a long time by many cities.

III. WHAT IS ZONING AND HOW DOES IT PROTECT?

A zone is a belt. Medieval walled towns in Europe were somewhat circular in form. When they outgrew their walls, especially in the case of large cities, the location of the walls would be made into public parks or circular boulevards, and outside of the former walls the land would be laid out in belts, sometimes restricted to different classes of residences. These were called belts or zones. The term zoning, therefore, does not apply strictly in our cities where the different districts assume all sorts of forms, although in general there is a recognition of intensive use in the center of the city surrounded by belts of greater distribution as one goes toward the edge of a city. The crea-

tion of different districts, accompanied by the application of different regulations, was five years ago called districting, but this word was so apt to be confused with political districts that public favor caught and used the word zoning, until now the zoning of a city is commonly understood to be the creation of different districts for different purposes, and for different kinds of buildings.

In many European cities zoning in a more or less perfect form has been practiced. Those countries as a rule do not have written constitutions. The law pronounced by the supreme power is final. No court can set it aside. Building departments in cities could be instructed to accept some plans and refuse others in different districts. Sometimes a uniform architectural style was obtained by this rather arbitrary control of building departments. In Bremen a medieval appearance has been given even to new buildings because the building department would refuse plans unless of a certain design. In some cities industry was segregated in localities where the prevailing winds would take the smoke away from the city. Sometimes these regulations are arbitrary or based on aesthetics. The ease with which they could be enforced probably prevented the adoption of a comprehensive plan with the details thoroughly worked out. However that may be, our cities have found a comprehensive zoning plan adapted to states whose government depends on a written constitution, and where the courts can set aside legislative acts as unconstitutional.

For a long time people supposed that zoning was impossible in our cities as contrary to our written constitutions. This impression was wrong. The courts had said nothing to warrant this impression. On the contrary the courts had repeatedly put themselves in line with sensible zoning and against arbitrary zoning.

The chaotic conditions described in the early part of this article were due to the inability of the individual to protect himself. The power of the community was the only safeguard and the community had not discovered how to exercise its power. Some landowners did not consider that they really owned their land unless they were free to do anything and everything with it that was possible. Others would gladly treat their neighbors fairly if they had any assurance that their neighbors would do the same. The truth is that no man can make the best use of his own unless his neighbors are required to make such use of their own as not to injure others. The landowner who is free to put up a skyscraper covering 100 per cent of his land, and opening his windows on his neighbor's land, may think that his 10 per cent net earnings are a justification of the righteousness of unhampered use of his own property, but when his neighbors put up similar buildings and his rent goes down until it pays barely 2 per cent on his investment, he realizes that fair regulation which would have divided the light and air between him and his neighbors and allowed him to earn a steady 7 per cent or 8 per cent on his investment would be best for him in the long run.

But some will say, "If we are not allowed to do as we choose with our own property, the public ought to pay us our damages." It is a fact, however, that fair regulations compelling the division of light and air are a benefit to both owners. One owner gives up something of his absolute ownership and use and in return he receives something from his neighbor.

The people of every state have the

inherent right to pass laws for the public safety, health, morals and general welfare. Call it community power or police power — the meaning is the same. It is commonly called the police power, which is something of a misnomer because it has nothing to do with the police. If we think of police power as community power, we will have it about right. It is that power which the state employs for fire protection, for sanitary regulations and for preventing the spread of epidemics. One does not assert that the public must pay him something when the health department says that he must be vaccinated, and yet he is giving up something of his absolute freedom. His compensation is that he, along with all of his neighbors, is protected against the spread of smallpox. Fireproof requirements, plumbing rules, tenement house laws, strength of construction requirements, all come within the police power. They are exercised without compensation being made to the private owner subjected to regulation. The courts rigorously uphold these laws and ordinances, scrutinizing them, however, to see that they are related to health, safety, morals and the general welfare of the community. If they are employed merely on a whim, or for aesthetics or some sentimental object, the courts will not support them. The popular notion, and to some extent the official, has prevailed, that if different regulations are enforced in different parts of the city, it cannot be done under the police power but must be done under eminent domain, and compensation must be made. They forget that the health and safety of the community may require different regulations in different parts of the city because the needs of different parts of the city are different. The police power can as well be employed for zoning as for uniform sanitary and fire protection laws. It must, however, similarly be confined within the limits recognized by the courts. That is, zoning must be done with relation to the public health, safety, morals and general welfare. If it is done arbitrarily or by whim or for aesthetics or for purely sentimental purposes or with unjust discrimination, the courts will not uphold it.

Although the police power, as recognized by the courts of our country, adapts itself admirably to the zoning of cities, yet many cities seem to think that they are safer in employing eminent domain. The exercise of eminent domain requires that property or rights over property shall be taken for a public use and that just compensation shall be made. In the very nature of the case it is not applicable to zoning because zoning should cover the entire city, not merely a part. It is for the benefit of all private owners, and is not any more a taking for public use than vaccination is a taking for public use. The expense of appraisal would be calamitous and the spreading of assessments on other property according to benefit would be impossible. Moreover, a vital city is growing and changing. It cannot be run into a fixed mould where it will stay forever. Police power zoning can be altered to fit the changing needs of a growing city, but zoning by condemnation would ossify a city. Some cities after making a mistake in zoning and receiving a setback from the courts, think they must have a constitutional amendment permitting z o n i n g. Constitutional amendments regarding the police power should be avoided unless they are absolutely necessary. The police power residing in the state legislature should be ample for zoning if zoning is done wisely.

The first comprehensive zoning in the United States was done in Boston. A building height of 80 feet was allowed on some main thoroughfares and a limit of 125 feet was imposed on new buildings on all other streets. This ordinance was attacked in the courts for unconstitutionality, but was upheld by the highest court of Massachusetts and was affirmed by the supreme court of the United States. Los Angeles followed with a zoning plan which divided the city into residential and non-residential districts. Under this ordinance, which was retroactive in form, the city authorities ousted a brick yard around which a residential district had grown up. The owner of the brick yard attacked the ordinance on the ground of unconstitutionality but the ordinance was upheld both by the highest court of California and by the United States Supreme Court. Other cities have as a rule considered that it is unduly harsh to make a zoning law retroactive, considering that existing uses and buildings should be allowed to continue subject to certain rules which tend gradually to make them conform to the requirements of the district. New York was the first city to work out a comprehensive zoning plan. The first step after four years of preparatory study was to obtain the passage of a legislative enactment granting the police power of the state to the city for the purpose of dividing the city into districts according to height, bulk and use of buildings with power to make appropriate regulations for each district and with a provision that the regulations might differ in the different districts. The ordinance which the city adopted under this law is supplemented by three maps of the entire city. One map shows a set of districts laid out according to heights allowable; another shows a different set of districts outlined according to the area of the lot that new buildings therein may occupy; the last map shows districts outlined according to allowable uses of land and new buildings. Other cities followed rapidly.

How does zoning protect in actual practice? In general it stabilizes buildings and values. Most of all it conserves the future. Zoning does not prohibit existing stores in residential localities or existing apartment houses in private home localities or existing factories in business localities. It regulates new buildings and changes of uses. Although it is possible that under the Los Angeles case zoning could go further and oust inappropriate buildings, yet it is considered unwise to do this and successful zoning endeavors to protect investments rather than destroy existing property. When one considers that the cities of our country will in all likelihood continue as centers of population for centuries, one realizes that the harm already done by indiscriminate building is of small account if the future of the city can be protected.

The zoning ordinances and maps differ somewhat in the different cities that have adopted zoning. The interested city official or citizens' organization should obtain copies of the various ordinances and maps which every city will gladly furnish at a nominal cost. The reader must assume that the zoning plan described in this chapter will vary in its details in different cities. New York, for instance, allows buildings on certain broad streets in the skyscraper district to go up 250 feet on the street line before they begin to set back. Smaller cities do not allow such heights, and New York would not have done so if existing buildings of great height had not made it impossible to adopt a more sensible limit.

Limitations for new buildings vary in the different districts, a higher building being allowable in the intensively used parts of the city than in the outskirts. Usually the allowable height has a relation to the width of the street. New York has 2½, 2, 1½, 1¼ and 1 times height districts. This means that a new building in the 2 times district can be built to a height on the street line of 2 times the width of the street. After reaching such a height it must begin to set back at the rate of 1 foot for every 4 feet of additional height. If a street is broader than 100 feet, the building is not allowed any additional height, and if a street is narrower than 50 feet the building need not be correspondingly lower than one erected on a 50 foot street. Towers are allowed of an unlimited height, and steeples, chimneys and other structures defined in the ordinance are excepted from the height regulations. Towers, in the opinion of many, afford a variety in the appearance of a city and bring an interest which the city would otherwise lack. Some experienced engineers maintain that allowable heights should not be related to street widths. The setbacks required after the building has gone to the allowable height on the street line are for the purpose of affording access of light and air to the street itself. Provisions of a similar nature apply to the rear of such buildings.

Height regulations therefore not only limit height of new buildings but insure a fair division of light and air among lot owners. The erection of unnecessarily high skyscrapers is no longer a sign of city progress but rather a sign of city ignorance. Buildings of moderate height broaden out a business center. Values are equalized instead of being absorbed by a few. Office business can be conducted in the daylight instead of under artificial light. There is greater convenience and economy in every way. One would say that economic reasons would sooner or later prevent people from building skyscrapers. But every little while a person or business comes along who wants to advertise itself by a monument even if the earning power of the building is very small. The usual trouble with these monuments is that they hurt their neighbors.

Not less important in the height regulations are the provisions for division of light and air between lot owners. As a building goes higher its side courts must be larger. Details for yards and inner and outer courts should be examined in existing ordinances. The setbacks help to create pyramidal structures which leave light and air for their neighbors.

Height regulations alone, however, are not enough and they do very little to prevent congestion where land values are low. Just as lower heights may be required in the outlying districts, so it is practicable to prevent building on the entire lot in the outlying districts. Then, too, industrial buildings and warehouses along water-courses and railroads sometimes are lighted from above or need no light at all. Such buildings can properly occupy the entire lot. These considerations make it necessary to employ another set of regulations commonly called area regulations. They supplement the height regulations. Districts of the one sort need not be coterminous with districts of the other sort and in New York they are not. These area districts in New York are A, B, C, D and E. The A districts are warehouse and industrial districts, usually along watercourses or railroads or land which for one reason or another is best adapted to storage and industry. Here new buildings can

cover 100 per cent of the lot. The other extreme is the E district adapted to private detached residences, where the new buildings may cover not over 30 per cent of the lot. B districts are adapted to the large office, business, and high apartment house localities. C districts are adapted to non-elevator apartment houses, and D districts to one and two-family private residences in blocks. The E zones of New York, or zones corresponding to them in other cities that have adopted zoning, have been considered one of the most important results of the new movement because they perpetuate the highly restricted residential developments. In New York it is not practical to put up any residential building on 30 per cent of the lot except a one-family private residence. Most of such restricted areas have been placed in E zones on the petition of the property owners. They are so popular that many new E zones have been created. It was at first feared by some that land in these E zones would be less valuable because the building area was so highly restricted, but it turned out that the protective features were so great that the supply of land in these areas could hardly meet the demand. In some cases where restrictions expired or were about to expire the E zone requirements have made the locality better than it was before. Owners of vacant corner lots, that had been held out of use so that apartment houses might be built, have in almost every case improved them with high-class one-family residences. In such districts owners of houses instead of letting them become dilapidated when the private restrictions were about to lapse have improved their homes, adding private garages, sun parlors and substituting copper for tin. These E districts are preventing well-to-do citizens from leaving the city to settle with their families in outlying villages because they offer an opportunity for villa homes protected against all injurious buildings for an unlimited time. In them people can have the advantages of open surroundings and still be near their business, all city conveniences, and have the benefit of low car-fares.

One may ask why they are called E districts instead of private residential districts. The reason is that the method of creating districts graduating from 100 per cent to 30 per cent is a plain employment of the police power with a recognition of health and safety considerations, and the courts will protect a plan which is based on such a foundation. In New York at least it presupposes that an apartment house covering not over 30 per cent of the lot would be substantially as safe and healthful as a one-family house, although as a matter of practice landowners in E districts will not erect apartment houses. The courts will recognize the common sense of bringing light and air in greater abundance to suburban districts where children are growing up. There is a temptation in cities where land is less expensive to create one family house districts as use districts. This has sometimes been done under the apprehension that a 30 per cent restriction would not prevent the two-family or apartment house. Each city must judge for itself whether it will adopt the safe course of creating E districts depending on the 30 per cent limitation preventing hurtful buildings or whether it will follow the more hazardous course of considering private detached residences a separate use. The reason that it is hazardous is because the court is likely to inquire what dangers to health and safety exist in two-family houses, each built on a small fraction of the lot,

which do not exist in one-family houses similarly built. Each city in framing its zoning ordinance and maps must keep in mind that it is done under the police power and that the requirements must have a relation to public health, safety, morals and the general welfare. The courts of some states of the far West are undoubtedly willing to recognize a greater scope of the police power than those of some of the more conservative Eastern states.

Private restrictions can continue along with zoning regulations. It is undoubtedly desirable to supplement zoning regulations with private restrictions in the opening of new developments for residences. Inasmuch as private restrictions are contractual and zoning is done under the police power, the one group has no relation to or effect upon the other. Private restrictions cannot be copied in zoning. They rest on different bases and are enforced in different ways. Private restrictions are the result of private bargains. Zoning is a public requirement imposed directly or indirectly by the state.

Zoning to regulate height and area would be only a partial remedy. If the protection of zoning stopped at this point, factories, garages, stores and residences could be built anywhere, and there would be no protection against constant injury. Consequently a third class of regulations is necessary concerning the use of land and buildings and different districts must be created to separate these uses. The use districts need not correspond with the height or area districts and commonly do not. In New York the use districts are,—unrestricted, in which residences and business as well as factories can go; business districts, in which residences, as well as business can go; and residence districts, in which business and industry are excluded. Newark, New Jersey, has four use districts,—heavy industry, light industry, business and residence; and excludes new residences from the heavy industry districts which are mainly in or near the salt meadows. Some cities, particularly on the Pacific coast, have created numerous use districts, including districts for private residences, districts for apartment houses and districts for public buildings. In the opinion of the author use districts should be few in order that they may be upheld in our more conservative states. Until we have further light on the subject from the courts, the districts should be, with the possible exception of peculiar circumstances, heavy industry, light industry, business and residence.

Heavy industry districts are intended for industries of a nuisance character and works requiring a large spread of yards and buildings. If these districts can be decided upon before or simultaneously with laying out streets, the blocks should be made larger than for ordinary residence or business. They will usually be near railroads and water-courses. Some well-known advisors consider that residences should not be permitted in heavy industry zones. It will be noticed that this is a departure from the general rule. In New York new stores or residences may be built in industrial zones. The argument for the exclusion of residences is that the surroundings are unhealthful and residences in such locations are almost sure to become neglected and unsanitary. The author, however, is of the opinion that, if the land is sufficiently high for drainage and cellars, it is a hardship to the owner to be deprived of using his land for residences. The residences do not hurt the neighboring factories, and the grounds of prohibition cannot be based on the maxim that one should so use his own

as not to injure another. Sometimes heavy industrial districts must be laid out far in advance of use and it would seem to be a hardship to require an owner to pay taxes and perhaps hold his land without the slightest income awaiting the coming of a heavy industry use. Then, too, a piece of land in a heavy industry zone might be too small for a factory and yet be surrounded by large factories. Surely it is a hardship to prevent the owner from making use of it for that purpose which as a last resort a man can always adopt, *i.e.*, for small homes. Where land like the Newark salt meadows is too low for drainage or cellars, the case is somewhat different. Zoning, however, must not be arbitrary. Regulation becomes arbitrary when it prohibits every possible use of land and compels the owner to hold it in idleness.

Light industry zones and business zones are self-explanatory. Public garages or garages for more than three vehicles should be permitted in these two zones only on special permit of a board of appeals. In New York they are classed among heavy industry. A public garage may be as hurtful in a light industry district as in a business district. In New York the board of appeals can allow a new garage for more than five vehicles in a business district only when there is already one such garage in the street between two intersecting streets. It has been found that light industry cannot be entirely excluded from business districts. Department stores, millinery shops and jewelry stores need to devote a part of their space to light manufacture and this should be permitted in some way. In New York it is provided for by allowing one-quarter of the store space to be used for light industry. Main thoroughfares and car-line streets almost always tend to become business streets. It is well to consider this in zoning localities not yet built up. If small retail stores and shops are compelled to go to certain localities, they should be compelled to go to the main thoroughfares and car-line streets. How often it has happened that main thoroughfares have been built up with splendid homes which have later proved to be out of place. Zoning seeks to set aside streets for a long period of fixed usefulness. This object is best attained by giving privacy to private homes. If five or six stores have come into a block of residences fronting on a street-car line or a main thoroughfare, it is likely that the street should be put in a business district. It has begun to show its normal destiny and zoning it as a residence district will usually not save the residential values but on the other hand will hold back the development of normal business values.

Residence districts should allow dwellings, clubs, churches, schools, libraries, hospitals, railroad passenger stations, farm buildings, greenhouses and their usual accessories. A private garage as an accessory to a home constructed for not more than three vehicles should be allowed in a residence district. Some have asserted that hospitals and sanitariums should not be allowed in residence districts as they may sometimes be offensive. The question, however, arises as to where they should be placed. Surely not in industrial or business districts. Bill-board permits are not issued in residence districts in New York. The zoning ordinance has proved to be the first effective control of this subject, recognizing that although bill-boards may be proper in some districts, they should not be scattered among homes, schools and churches. It should here be said that there is a natural tendency for cities of medi-

um size whose nearby areas are not congested to favor the control of different kinds of residential units by creating one-family house districts, two-family house districts and multi-family house districts. This tendency has recently been so great that the author hesitates to condemn it. Where city officials are convinced that an area limitation will not produce one or two family houses they probably must take the risk of the courts' approval of districting by naming the number of families. Where, however, conditions are such that division of light and air can be provided for by area regulations as has been done in New York, the author is of the opinion that the recognized police power will more nearly justify the zoning.

Before adopting any specific method of regulation the enabling act should be scrutinized to see that the city has the necessary power.

Zoning is not usually retroactive. That is, the height, area and use regulations prevent city building departments from issuing permits to new buildings which do not conform to the zoning requirements. But after a zoning plan is adopted old factories will be found in residence and business districts, and stores will be found in residence districts. What shall be done with these non-conforming buildings? It would be a great hardship to the owners to compel them to alter them at once to conform with the requirements of the district. The zoning ordinance therefore must provide for the gradual elimination of such buildings in a way that will fairly preserve the investment of the owner. The owner can reasonably say that he should be allowed to use his building for the purpose for which it was constructed. On the other hand when he comes to alter or enlarge his building, the community can reasonably say that, although he has the privilege to continue his old building, he has no privilege to alter it or enlarge it in a way contrary to the requirements of the district. In New York an owner of a store or light industry building which does not conform to the district may change it to any other use of the same grade provided he does not enlarge it at all or reconstruct it. If, however, it is a heavy industry non-conforming building, it cannot be changed to any other use even of the same grade if any structural alteration is made. It will be seen that these rules as time goes on tend to make the buildings conform with the requirements of the district.

The question also arises with these non-conforming buildings whether, if a part of the building only is used for a non-conforming use, such non-conforming use can extend throughout the building. The rule in New York is that a non-conforming use cannot be enlarged at the expense of a residence use. But the better rule would undoubtedly be that a non-conforming use should not be enlarged at the expense of a conforming use. Each city will need to adapt its rule of non-conforming uses to its own peculiar requirements. The ordinance of St. Louis has given a board of appeals the discretion to allow alterations in use, reconstruction and enlargement of such buildings. It would seem, however, that this important subject ought to be governed by law rather than by the judgment of a board. The rules of non-conforming uses can be and should be rigid. They may be difficult to state but this fact does not justify their being left entirely to the discretion of a board.

Another subject related to existing non-conforming buildings and uses is

the prevention after the zoning ordinance is adopted of the intrusion of non-conforming uses into conforming buildings. For instance in a residence district a home owner may try to carry on a sweat shop or a restaurant or a junk yard. How shall he be prevented? Evidently this is beyond the power of control by permit. The wrongful intrusion must be prevented. The ordinance should make such act unlawful and make provision for ousting the unlawful use. In New York this duty is placed on the fire department. The fire department can send notice to the offending owner directing him to quit the unlawful use. If the owner does not do so, the facts are turned over to the corporation counsel who can bring the offender before the magistrate's court for fine or imprisonment.

The New York enabling act does not give the city the right of injunctive relief which it should have done.

IV. HOW TO OBTAIN A ZONING PLAN FOR A CITY OR VILLAGE

The state legislature is the repository of the police power. The fact that the legislature creates a municipal corporation undoubtedly endows such corporation with certain necessary functions under the police power. If this was not so, the city could not transact its business. Before, however, a city proceeds to adopt a zoning plan, it is wise to obtain a specific donation of this power from the state legislature. This can be accomplished by a legislative act applicable to all cities of a state, or by amending the charter of the city. An existing home rule act or general provision should be carefully scrutinized before it is depended upon, in order to make sure that the city possesses the police power so far as height, bulk and use of buildings are concerned, together with the right to impose different regulations on different districts. The enabling acts of several states now allow villages to zone. The decisions of the courts do not draw the line clearly between the inherent police power of a city merely because the legislature has allowed it to be a city and the larger donation of police power requisite for a zoning plan. Cities have adopted fire limits which are a simple form of zoning and have done this without any specific grant of power from the legislature. New York kept on the safe side by having its charter amended by the legislature in this respect and also to provide that the board of estimate after a zoning plan was once adopted could not alter it except by a unanimous vote in certain cases, and to provide for a board of appeals to be created by the local authorities with power to pass on borderline and exceptional cases of buildings.

Should the zoning plan be prepared by a city planning commission or a zoning commission? Should such a commission be composed of officials or citizens? Should the council or a commission be empowered to enact the ordinance? Each city will decide these questions, keeping its own peculiar needs in mind. The plan should be prepared by a commission, a majority of whose members should be citizens serving without pay. Certain officials qualified by their experience and proved judgment may be added. No official should be added for the purpose of educating him or swinging him over as an advocate of zoning. The commission should be unhampered in making suggestions and it has much greater freedom if its makeup is not so largely official that its doings are taken to represent the intention of the administration. A zoning commission has enough to think about without being compelled to consider whether

its composition will reflect on the administration or not. If the work goes on wisely with frequent conferences with property owners of all classes and with frequent hearings, there is no danger but that the excrescences and theoretical trimmings will be rubbed off. After the plan is worked out after many hearings and conferences, it should be reported to the council who should have the power to hold further hearings, refer it back to the commission if desired and ultimately to enact it. The adoption and amendment of a zoning plan belong to the council as much as the street layout. Moreover the natural growth and changes in the city will require intelligent amendment of the zoning plan year by year and it is probably impossible to expect that citizens serving without pay can keep in touch with the needs of the city so well as officials assisted by the constant advice of the city departments. It is of doubtful wisdom to put actual legislative power in a city planning or zoning commission.

In most cases it is best for a zoning commission to prepare the plan. There is a difference between the planning of public streets and places and the working out of a zoning plan. The former has to do with land and buildings owned or to be owned by the city. Zoning has to do with the regulation of private property. The two fields are therefore quite distinct. More rapid progress is made by creating a zoning commission. Its work is fundamental. It should be carried on intensively with the recognition, however, that it is part of the city plan.

A farsighted zoning commission will early enlist the favor of the owners of small homes and stores. They can be shown in the beginning how they can be protected against flats, garages, junk yards and factories. To feature Fifth Avenue, Euclid Avenue or Michigan Avenue is the wrong way to begin. Then, too, throughout the preparation of the plan property owners of all sorts should be taken into the confidence of the commission. Taxpayers' associations, boards of trade, manufacturers' associations, fire insurance men, savings banks and title companies, and owners of high buildings, low buildings and vacant land should all have a part in advising what will stabilize property and prevent confiscation.

Zoning looks mainly to the future. The zoning of built-up localities must recognize actual conditions and make the best of mistakes of the past. But the zoning of open areas, while following desirable natural tendencies, must check the undesirable tendencies. Zoning should follow nature and it should not be forgotten that the city has a history. There will be a temptation for radical individuals and officials to use zoning as a field for experimentation. This is a mistake. The scope of the police power is measured by the universality of its recognition as well as the universality of its need. Some of the features of modern zoning have not yet been so widely approved by the courts that cities newly preparing plans can afford to go very far in advance of the procession.

Such a city will be tempted to try piecemeal zoning. On the appointment of a zoning commission home owners in localities subjected to some immediate danger will go to the commission and show how they must have an immediate remedy because private restrictions are about to expire or a factory is about to be built or plans for a public garage are being filed. If the zoning commission refuses to act, they go to the council. Sometimes more time is lost in debating the items of proposed

piecemeal zoning than would suffice to zone the entire city. Such piecemeal zoning should not be done. In the long run it delays. Precarious localities should get behind comprehensive zoning and hurry it up. Comprehensive zoning of an entire city is strong because localities substantially similarly situated are treated alike. Piecemeal zoning is weak because it is discriminatory. Piecemeal zoning is apt to produce test cases full of danger because, for instance, an owner of a vacant lot is prevented from building a garage in one residential locality when a similar owner in a similar locality ten blocks away is allowed to build a garage. This is discriminatory on its face and is likely to incur the criticism of the courts. Then if some adverse decision is handed down in such a test case, critics of zoning and sometimes newspapers will assert that the courts have declared zoning to be unconstitutional. More time is taken to explain how the mistake was made and thus comprehensive zoning is still more delayed. The favor of precarious districts is needed in advancing a general plan. To zone all such districts first is to throw away part of the help which a zoning campaign needs. In New York the temptation to allow piecemeal zoning was successfully resisted. The actual damage that occurred was almost infinitesimal. If, however, the piecemeal plan had been started the city might not be zoned today. Another argument against piecemeal zoning is that one cannot know how to zone any spot in a city until he knows how to zone the entire city because the use of any one locality has some relation to all others. If a city is determined not to wait for the completion of the comprehensive plan it should resort to interim zoning, which by broad regulations covers the entire city.

The zoning of the entire city should be preceded by an accurate mapping of existing buildings and uses. Present and future transportation lines must be taken into account. In New York a chart was made showing height of buildings, another showing frame buildings, another showing use, whether industrial, business or residence, another showing density of population and another showing by different colors the distances of every part of the city from City Hall measured by travelling time on rapid transit railroads. These fundamental data assist in preparing a foundation of facts instead of a foundation of guesswork.

It is apparent that the members of a zoning commission cannot personally attend to the collection of data, preparation of maps and the working out of innumerable detail problems. The city must furnish the zoning commission with a staff headed by a competent consultant. The chief of staff should be more than an ordinary engineer or architect or lawyer. He should be a broad-gauge expert in the distribution of urban population, in the layout of streets and public places, in forms and materials of buildings and in the limitations imposed by law on the exercise of the police power. No city should be too proud to retain an outside man. New York city took five years and did not do the job as well as she could do it today in two years. The reason was that she was plowing new ground and there were almost no precedents to help. But some one may say "Why not get the ordinances and maps from zoned cities and pick out what seems to be the best?" The reason is that imitation is likely to be disastrous. No two cities are alike. Each deserves an accurate study of its own growth, tendencies and needs. The heights of buildings allowed in

New York are far too great for imitation. It was the case of the horse being stolen before the barn door was locked. Lower heights in the skyscraper districts could not be imposed with fairness to owners of partially improved land. Too great congestion in tenement house districts is allowed. This was due to some extent to existing conditions and to some extent to the novelty of the enterprise which properly induced caution. The chief of staff should know the *reasons* that have prompted different methods in different cities. He will, of course, have before him the ordinances and maps of all other cities, but he will be more than an imitator.

We are now ready to listen to the question of the intelligent reader which at this point is quite sure to be "How can you run a city into a zoning plan mould and expect it to stay there; do not cities have to grow and change?" The answer is that zoning encourages growth while at the same time it prevents too rapid changes. Every vital growing city must change and the zoning plan must be capable of change. The same authority that has adopted the ordinance and maps must have the power to amend them. On the other hand a high degree of permanency or stiffness must be insisted upon, otherwise the property owner who puts up a fourteen-story building in compliance with the zoning law might be disappointed to find that the council had altered the law so that a twenty-story building might go up on each side of his building. He would then be penalized because he obeyed the law. Or a man might put up a fine residence in an outlying residence district depending upon its permanence and find that the council had changed it to business and he was likely to have a butcher store on one side and a grocery on the other. It is apparent that any provisions inserted in the ordinance itself are not a sufficient protection to owners to build in conformity with the zoning ordinance because one council may undo the work of its predecessor. The only safeguard is in a provision of the legislature which will prevent the city council from freely changing the maps and ordinance. The New York enabling act provided that the city authorities could not change the ordinance or maps without fixing and advertising a public hearing, and this further provision was added that, if 20 per cent of the frontage affected by the change, or 20 per cent of the frontage opposite, or 20 per cent of the frontage in the rear protested in writing against the change, then the unanimous vote of the board of estimate was required to make the change valid. Under a legislative requirement of this sort there is little danger of hasty action, and if a protest of 20 per cent of the frontage is filed it is practically impossible for the applicant to obtain the unanimous vote of the council unless his case is sound and imperative. Cities which have large powers under the home rule act should ask their state legislatures to impose this check or some similar check upon the city council.

Another provision that should be supplied by the state legislature is to empower the city to create a board of appeals. The city without such a grant cannot endow a board of appeals with power to decide certain borderline cases of buildings which will be enumerated in the ordinance itself, or to make variations in the provisions of the law to carry out the spirit of the law and prevent unnecessary hardship. It is a safeguard in the administration of the law to have a board of appeals. The letter of the ordinance and maps may be the extreme of hardship. No

words can be used in the ordinance that will provide for the multitudinous contingencies of new buildings. If there is no board of appeals to apply the spirit of the law and vary its letter, the exercise of the police power may in certain cases be arbitrary and incur the criticism of the courts. Moreover it is a great safeguard to preserve that elasticity which a board of appeals can give to a zoning plan in order to minimize the danger of a pronouncement of unconstitutionality by the courts. It is a well-recognized rule of the law that before an aggrieved owner can obtain a writ of mandamus from the court against a building superintendent to compel him to file plans and issue a permit, he must exhaust all of the remedies afforded him by the city. This means that before he can bring up the question of unconstitutionality he must bring his plans before the board of appeals. Experience has shown that a wise board of appeals can practically always mitigate the unfairness involved in the letter of the law if the applicant has a sound and deserving case. If, however, the board of appeals will not adjust his case to suit him, he goes before the courts with all of the chances against him, for the courts will say that his plans run counter to an impartial plan covering the entire city and that in addition a fair board of appeals having the power of adjustment in cases of unnecessary hardship decided against the applicant. Every decision of the board of appeals should be reviewable by the courts on writ of certiorari. Such review, however, involves no danger of overthrow of the law itself by the courts but only a possible limitation of the functions of the board. Some will say that there should be no board of appeals because such a board will be too easy and break down the law by granting favors. A corrupt or incompetent board of appeals could do a vast amount of injury but it is the business of the mayor or appointing power to see that the board is made up of impartial and experienced men.

The council should have power to amend the maps and ordinance and the board of appeals should not. The board of appeals should have the power to vary the ordinance and maps in cases of specific buildings and the council should not. In other words the council should have charge of the maps, for the law-making power should control the fundamental restrictions. The board of appeals should have charge of the application of the ordinance and maps to specific buildings because the council does not have the time or preparation to go into the details of exceptional circumstances as to specific buildings. There should be no confusion of the powers of the council and the board of appeals. The field of each is entirely separate and distinct.

In New York the board of appeals is authorized by the ordinance to grant a permit for a public garage in a business street if there is already one public garage or public stable in that street between two intersecting streets; to allow the projection of a business building into a residence district or a factory building into a business district in certain specified cases at the borderline between two districts, and to permit a temporary non-conforming use in outlying undeveloped areas. Other powers similar to these are enumerated. Their power to vary the ordinance and maps in cases of unnecessary hardship is an entirely separate power and is given directly by the state legislature.

V. WHERE TO GET INFORMATION

The reader can hardly hope to obtain from this article more than a brief

outline of the subject of zoning. The councilman, city engineer or legal adviser of a city contemplating zoning will desire to know where he can obtain more complete information on what has been done or attempted. Probably the most exhaustive books that have been published, collecting data from all cities, giving full tabulation and maps, and with discussions of legal problems involved, are the report of the heights of buildings commission of the board of estimate and apportionment of the city of New York, December 23, 1913, and the report of the commission on building districts and restrictions of the board of estimate and apportionment of the city of New York, June 2, 1916. These reports were made during the preparation of the zoning ordinance and maps for New York. These volumes will be found in many public and municipal libraries. The following cities have to a greater or less extent adopted the zoning plan:

Alameda, Cal.
Berkeley, Cal.
Coronado, Cal.
Fresno, Cal.
Los Angeles, Cal.
Oakland, Cal.
Palo Alto, Cal.
Pasadena, Cal.
Pomona, Cal.
Sacramento, Cal.
San Francisco, Cal.
Santa Barbara, Cal.
Sierre Madre, Cal.
South Pasadena, Cal.
Turlock, Cal.
Washington, D. C.
Atlanta, Ga.
Evanston, Ill.
Glencoe, Ill.
Oak Park, Ill.
Brockton, Mass.
Gardner, Mass.
Minneapolis, Minn.
Richmond Heights, Mo.
St. Louis, Mo.
Omaha, Neb.
Bound Brook, N. J.
Caldwell, N. J.
Cliffside Park, N. J.
East Orange, N. J.
Glenridge, N. J.
Hoboken, N. J.
Irvington, N. J.
Maplewood, N. J.
Montclair, N. J.
Newark, N. J.
Nutley, N. J.
Paterson, N. J.
Rahway, N. J.
Roselle Park, N. J.
South Orange, N. J.
Westfield, N. J.
West Orange, N. J.
Gloversville, N. Y.
New Rochelle, N. Y.
New York City, N. Y.
Niagara Falls, N. Y.
Ossining, N. Y.
Rochester, N. Y.
White Plains, N. Y.
Yonkers, N. Y.
Cleveland Heights, Ohio.
East Cleveland, Ohio.
Lakewood, Ohio.
Salt Lake City, Utah.
Tacoma, Wash.
Cudahy, Wis.
Milwaukee, Wis.
Neenah, Wis.
Racine, Wis.

By addressing the chief engineer, information can usually be obtained from any of the above mentioned cities. The National City Planning Conference has for the last ten years carried on an unremitting and intensive study of this subject. It has undoubtedly been not only the principal advocate and supporter of zoning but also the most active disseminator of informa-

tion about zoning. The American City Planning Institute, affiliated with the National Conference, has devoted a series of meetings to discussing the principles of zoning from every angle, receiving suggestions from every part of the country in the hope that it might promulgate an authoritative statement of such principles. The annual reports of the National Conference contain a great deal of helpful material on zoning. Lawson Purdy is the president and Flavel Shurtleff, 60 State Street, Boston, Massachusetts, is the secretary of both organizations. Herbert Hoover, secretary of commerce, Washington, D. C., with the help of an advisory committee representing many states is now preparing information on enabling acts and ordinances.

VI. STATEMENT OF PRINCIPLES OF ZONING FORMULATED BY THE AUTHOR

(1) The subject in relation to city planning should be called zoning, the boards zoning boards or commissions. In laws and ordinances the word zoning should be used in the title and the word districts in the body of the law to specify the areas affected.

(2) Zoning is the creation by law of districts in which regulations differing in different districts prohibit injurious or unsuitable structures and uses of structures and land.

(3) Zoning should be done under the police power of the state and not by condemnation.

(4) Zoning by the exercise of the police power of the state must relate to the health, safety, morals, order and general welfare of the community. It follows therefore that police power zoning must be confined to police power reasons such as fire risk, lack of light and air, congested living quarters and other conditions inimical to the general welfare. The preventive regulations based on these reasons, which necessarily must be applied differently and in different measure in different districts, naturally group themselves into zoning according to use of structures and land, according to height of buildings and according to portion of lot covered by buildings. Zoning might go further and embrace the subjects of fire limits, setbacks, and doubtless other classes of regulations. Enhancement of value alone, or aesthetics alone has not thus far been considered by the courts to be a sufficient basis for zoning when done under the police power.

(5) Before enacting zoning regulations a city should have obtained the power to do so from the state legislature. The essential statement in such grant of power is that the city may impose different regulations for structures and for the uses of land and structures in different districts.

(6) Zoning is part of the city plan and should be applied to land as early as possible and where practicable at the time the street layout is adopted. Studies for zoning in undeveloped districts should be accompanied by studies for at least main and secondary thoroughfares.

(7) Zoning when applied to existing cities should be adapted generally to existing conditions but should endeavor to check undesirable tendencies.

(8) In the same city, localities having substantially a like character and situation should be zoned in the same manner. This principle should prevent arbitrary, piecemeal or partial zoning, which is dangerous and may be illegal.

(9) Zoning should be sufficiently stable to protect those who comply with the law, but at the same time should be susceptible of change by the municipal authority under strict checks prescribed by state law, so that it can be altered to meet changing conditions or conditions not adequately recognized.

(10) Provision should be made that interested property owners may initiate the consideration of changes, but the actual application of the zoning regulations to the land and any changes therein should rest with the municipal authority and not with the property owners. It is a wise expedient to require more than a majority vote or even a unanimous vote, of the municipal authority to changes unless a substantial majority of the property owners affected thereby have given their consent thereto.

(11) Zoning regulations may properly be supplemented by restrictions in deeds based upon purely aesthetic reasons or for the purpose of creating a uniform residential development or for other purposes.

(12) Regulations applicable to all buildings of a class regardless of location, such as relate to plumbing, strength of material, safety devices, or protection of employes against fire should not be placed in a zoning law. They are properly part of a housing law, factory law or building law. Only those requirements which differ in different districts enter into a zoning law.

(13) Use districts normally comprise residence, business, light industry and heavy industry districts. The kinds of industries prohibited in light industry districts should be enumerated. Residences should be permitted in business districts and both residences and business should be permitted in light industry districts. It is a moot question whether and under what conditions residences should be prohibited in heavy industry districts. Classes of use districts should be few. The more minute adaptation to local needs should as a rule be provided for in the area and height zoning and by permitting special uses under conditions stated in the ordinance or under the administration of a board of appeals empowered to make building exceptions. There is lack of agreement as to the desirability and legality of prohibiting apartment houses, flats, tenement houses and other multiple dwellings in certain districts limited to single family dwellings.

(14) Where zoning regulations apply only to new buildings (as is the safer practice) buildings occupied for non-conforming uses should be placed under constant pressure to become conforming through changes with the lapse of time.

(a) Structural alterations made in a non-conforming building should not during its life exceed one-half its value, nor should the building be enlarged, unless its use is changed to a conforming use.

(b) No non-conforming use should be extended by displacing a conforming use.

(c) In a residence district no non-conforming building or premises devoted to a use permitted in a business district should be changed into a use not permitted in a business district.

(d) In a residence or business district no non-conforming building or premises devoted to a use permitted in a light industry district should be changed into a use not permitted in a light industry district.

(e) In a residence, business or light industry district no building devoted to a use excluded from a light industry district should be structurally altered if its use shall have been changed since the time of the passage of the ordinance to another use also excluded from a light industry district.

(f) In a residence, business or light industry district no building devoted to a use excluded from a light industry district should have its use changed to another use which is also excluded from a light industry district if the building has been structurally altered since the time of the passage of the ordinance.

(15) In business and industry districts towers within a prescribed height limit should be permitted but should not occupy over one-quarter of the lot area. They should be allowed on the street line all the way up, but should stand away from side lines according to a suitable rule.

(16) Height limitations should be determined primarily by widths of streets and the use of the property. There should also be flat maximum limitations irrespective of street widths which should be fixed with due regard to local conditions.

(17) Included in area limitations there should be a provision for the percentage of lot that can be covered and a limitation of families per acre or of the minimum square feet of lot area per family.

(18) There should be an administrative board with power under state law:

(a) To rectify on appeals the errors of building superintendents in passing on applications for building permits.

(b) To decide borderline and exceptional cases of buildings where specified in the ordinance.

(c) To vary the literal requirement of the law in individual cases of buildings where unnecessary and excessive hardship is caused and the intention of the law is equally accomplished by an alternative method to be prescribed.

Not only should the powers of such a board be specified in the ordinance, but the state legislature should authorize the municipal authority to create such a board and to provide in the ordinance what borderline and exceptional cases it may decide. A larger vote than a mere majority should be required for an affirmative decision. Proceedings and records of the board should be public and members of the board should be removable for cause. Decisions of the board should be subject to court review.

VII. SUGGESTIONS FOR FORMS OF LEGISLATIVE ENACTMENTS

The acts of the legislature of the state of New York probably cover the subject of zoning more completely than those of any other state. Reference to these enactments is more confidently made by the author because they have been worked out from the ground up in the most painstaking manner, and have stood the test of court construction.

The statutes applicable to New York city will be found in Chapter IX "Enabling Acts." They are embodied in the charter of the city of New York.

Appended hereto, however, is the New York legislative enactment granting zoning powers to all cities of the state. It contains the best features of the New York charter, with a few changes made desirable by court decisions.

"An Act to amend the general city law, in relation to the regulation of buildings and the location of trades and industries.

(Section 20. Grant of specific powers. Subject to the constitution and general laws of this state, every city is empowered).

24. To regulate and limit the height and bulk of buildings hereafter erected and to regulate and determine the area of yards, courts and other open spaces, and for said purposes to divide the city into districts. Such regulations shall be uniform for each class of buildings throughout any district, but the regulations in one or more districts may differ from those in other districts. Such regulations shall be designed to secure safety from fire and other dangers and to promote the public health and welfare, including, so far as conditions may permit, provision for adequate light, air and convenience of access, and shall be made with reasonable regard to the character of buildings erected in each district, the value of land and the use to which it may be put, to the end that such regulations may promote public health, safety and welfare and the most desirable use for which the land of each district may be adapted and may tend to conserve the value of buildings and enhance the value of land throughout the city.

25. To regulate and restrict the location of trades and industries and the location of buildings, designed for specified uses, and for said purposes to divide the city into districts and to prescribe for each such district the trades and industries that shall be excluded or subjected to special regulation and the uses for which buildings may not be erected or altered. Such regulations shall be designed to promote the public health, safety and general welfare and shall be made with reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values and the direction of building development, in accord with a well considered plan."

Chapter 483 of the general city law of the state of New York, passed May 15, 1917.

"An Act to amend the general city law, in relation to the regulation of buildings and the location of trades and industries.

§81. Board of appeals. 1. The Mayor of any city, except a city of the first class, may appoint a board of appeals consisting of five members, each to be appointed for three years. Such board of appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to paragraphs twenty-four and twenty-five of section twenty of this chapter. They shall also hear and decide all matters referred to them or upon which they are required to pass under any ordinance of the common council adopted pursuant to such two paragraphs. The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant any matter upon which they are required to pass under any such ordinance or to effect any variation in such ordinance. Every decision of such board shall, however, be subject to review by certiorari. Such appeal may be taken by any person aggrieved or by an officer, department board or bureau of the city.

2. Appeal, how taken. Such appeal shall be taken within such time as shall be prescribed by the board of appeals by general rule, by filing with the officer from whom the appeal is taken and with the board of appeals of a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

3. Stay. An appeal stays all proceedings in furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by the supreme court, on application, on notice to the officer from whom the appeal is taken and on due cause shown.

4. Hearing of and decision upon appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of such ordinance, the board of appeals shall have the power of passing upon appeals, to vary or modify any of its rules, regulations or provisions re-

lating to the construction, structural changes in, equipment or alteration of buildings or structures, so that the spirit of the ordinance shall be observed, public safety secured and substantial justice done.

§82. Certiorari to review decision of board of appeals. 1. Petition. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any officer, department, board or bureau of the city, may present to the supreme court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to a justice of the supreme court or at a special term of the supreme court within thirty days after the filing of the decision in the office of the board.

2. Writ of certiorari. Upon presentation of such petition, the justice or court may allow a writ of certiorari directed to the board of appeals to review such decision of the board of appeals and shall prescribe therein the time within which a return thereto must be made and served upon the relator or his attorney, which shall not be less than ten days and may be extended by the court or a justice thereof. Such writ shall be returnable to a special term of the supreme court of the judicial district in which the property affected, or a portion thereof, is situated. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

3. Return to writ. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

4. Proceedings upon return. If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly or may modify the decision brought up for review.

5. Costs. Costs shall not be allowed against the board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

6. Preferences. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

§83. Amendments, alterations and changes in district lines. The common council may from time to time on its own motion or on petition, after public notice and hearing, amend, supplement or change the regulations and districts established under any ordinance adopted pursuant to paragraphs twenty-four and twenty-five of section twenty of this chapter. Whenever the owners of fifty per centum or more of the frontage in any district or part thereof shall present a petition duly signed and acknowledged to the common council requesting an amendment, supplement, change or repeal of the regulations prescribed for such district or part thereof, it shall be the duty of the council to vote upon said petition within ninety days after the filing of the same by the petitioners with the secretary of the council. If, however, a protest against such amendment, supplement or change be presented, duly signed and acknowledged by the owners of twenty per centum or more of any frontage proposed to be altered, or by the owners of twenty per centum of the frontage immediately in the rear thereof, or by the owners of twenty per centum of the frontage directly opposite the frontage proposed to be altered, such amendment shall not be passed except by the unanimous vote of the council."

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X. THE BIBLIOGRAPHY OF ZONING

BY THEODORA KIMBALL[1]

Within the last ten years in this country there have appeared a considerable number of publications relating to zoning. The earliest of these dealt largely with European practice as a suggestion or guide for proposals in the United States. As our cities drafted their own zoning ordinances, and succeeded in getting them adopted, a steady and increasing stream of reports and descriptive articles has come forth, valuable to other cities as a record of experience. In addition, members of the American City Planning Institute, especially Messrs. Bartholomew, Bassett, Cheney, Ford, Swan, Whitten, and Williams, have summarized the results of their work in the zoning field. A small selection from all the above-mentioned groups of publications is given below.

A full bibliography of American references on zoning would comprise a large number of additional titles, including reports of local progress, condensations of the same paper in several periodicals, and publications with little or no explanatory text, of maps

and ordinances, drafted or enacted. Some account of these latter will be found by consulting the list of cities where zoning has been adopted, given elsewhere in this pamphlet. In the bibliography for the earlier edition of the pamphlet (1920), a number of local publications not repeated here were included.

This present bibliography has been checked by Mr. Bassett with the files of the Zoning Committee of New York and has been selected from all publications received both at the Harvard School of Landscape Architecture and the Zoning Committee's office up to March 16, 1922.

[1]Librarian, School of Landscape Architecture at Harvard University; Honorary Librarian, American City Planning Institute.

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