

The Basics of Land Use Law

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Euclidean Zones

- “Generally, by means of Euclidean zoning, a municipality divides an area geographically into particular use districts, specifying certain uses for each district. Each district or zone is dedicated to a particular purpose, either residential, commercial, or industrial, and the zones appear on the municipality's official zoning map. Euclidian zoning is designed to achieve stability in land use planning and zoning and to be a comparatively inflexible, self-executing mechanism which, once in place, allows for little modification beyond self-contained procedures for predetermined exceptions or variances.”

People's Counsel for Baltimore Cty. v. Loyola Coll. in Maryland, 406 Md. 54, 70, 956 A.2d 166, 176 (2008) (internal quotations and citation omitted).

Euclidean Zones

- Examples of zoning categories
 - Residential
 - Commercial
 - Industrial
 - Agricultural
 - Maritime
 - Open Space

Residential Zones

- Rural Residential Zone
- Residential Estate Zone
- Residential Single-Family Detached
- Residential Single-Family Attached
- Residential Multi-Family



Prince George's County Council
CB-13-2018, § 27-4202(d)

Commercial Zones

- Commercial Shopping Center
- Commercial Office
- Commercial Neighborhood
- Commercial Service



Prince George's County Council
CB-13-2018, § 27-4203(d)

Industrial Zones

- Industrial Employment
- Industrial Warehouse
- Industrial Light
- Industrial Heavy



Prince George's County Council
CB-13-2018, § 27-4203(f)

Mixed-Use Zones

- Town Activity Center
- Downtown



Prince George's County Council
CB-13-2018, § 27-4204(c)

Bulk Regulations

SUBTITLE 5. R1 – RESIDENTIAL DISTRICTS

§ 18-4-501. Bulk regulations.

Except as provided otherwise in this article, the following bulk regulations are applicable in an R1 District:

Minimum lot size	40,000 square feet
Maximum coverage by structures	25% of gross area
Minimum width at front building restriction line; for waterfront lots the building restriction line is measured from the rear lot line	125 feet
Minimum setbacks for principal structures:	
Front lot line	40 feet
Rear lot line	35 feet
Side lot line	15 feet
Combined side lot lines	40 feet
Corner side lot line	40 feet

Anne Arundel County Zoning Ordinance

Variations

- “Variance” means a modification only of density, bulk, dimensional, or area requirements in the zoning law that is not contrary to the public interest, and where, owing to conditions **peculiar to the property** and not because of any action taken by the applicant, a literal enforcement of the zoning law would result in unnecessary hardship or practical difficulty, as specified in the zoning law. Md. Code Ann., Land Use Article § 1-101(s).

Variations

- Unique or Peculiar to the property
 - In the zoning context the “unique” aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. **434 “Uniqueness” of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.*, its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. Cromwell v. Ward, 102 Md. App. 691, 710, 651 A.2d 424, 433–34 (1995)
- Area variance vs. Use variance
- Other deviations from standards
 - Terms—Variation, Modification, Departure
 - Subdivision regulations, Forest conservation laws, Parking and loading standards

Special Exception/Conditional Use

- A special exception is a use which has been legislatively predetermined to be **conditionally compatible** with the uses permitted as of right in a particular zone, the condition being that a zoning body must, in each case, decide under specified statutory standards whether the presumptive compatibility in fact exists. Creswell v. Baltimore Aviation Serv., Inc., 257 Md. 712, 719, 264 A.2d 838, 842 (1970) (emphasis added).
- General Standards—Cannot be detrimental to public health, safety, or welfare; the location, nature, and height of each building will be compatible with the orderly development of the district; must be consistent with the jurisdiction’s comprehensive plan.
- Specific Standards—Commercial Kennel must be on a property with at least 5 acres, enclosed structure must be 100 feet from any residence
- “[A] *special exception*, while not exactly twice removed from what is permissible, as the term implies, is nevertheless a conditional allowance.” Costco Wholesale Corp. v. Montgomery Cty., No. 2450, Sept. Term, 2015, 2018 WL 1747920, at *1 (Md. Ct. Spec. App. Apr. 11, 2018).

Variance vs. Special Exception

“The variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use once the prescribed conditions therefor are met.

“A variance is ‘authority’ to use his property in a manner forbidden, while an exception allows him to put his property to a use which the enactment expressly permits. The standards for exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.

“A special exception is one which is controlled and permissible in a given zone. It is granted upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized where the literal enforcement of its terms would result in unnecessary hardships.”

Cromwell v. Ward, 102 Md. App. 691, 699–700, 651 A.2d 424, 428 (1995) (quoting 3 Robert M. Anderson, *American Law of Zoning* § 18.02–03 (2d ed. 1977) (alterations and internal quotation marks omitted).

Table of Uses

Permitted and Special Exception Uses	Residential Agriculture	Residential Low Density	R1	R5
Single-family detached	P	P	P	P
Single-family attached				P
Golf Course	P	P	P	P
Kennels, Commercial	SE	SE		
Rifle, pistol, skeet	SE	SE		
Solar energy generating facility	P	SE		

Table of Uses – Like the “Sorting Hat”

- The local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed only by special exception in various zones, considers in a generic sense that certain adverse effects, at least in type, potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located. In that sense, the local legislature puts on its “Sorting Hat”³³ and separates permitted uses, special exceptions, and all other uses. That is why the uses are designated special exception uses, not permitted uses.

People's Counsel for Baltimore Cty. v. Loyola Coll. in Maryland, 406 Md. 54, 106 (2008).

- In the Harry Potter series of books, the “Sorting Hat” is a magical artifact that is used to determine in which house (Gryffindor, Hufflepuff, Ravenclaw or Slytherin) first-year students at Hogwarts School of Wizardry and Witchcraft are to be assigned. After being placed on a student's head, the Sorting Hat measures the inherent qualities of the student and assigns him or her to the appropriate house. Id. at 106 n.33 (citing J.K. Rowling, *Harry Potter and the Sorcerer's Stone* (1998)).

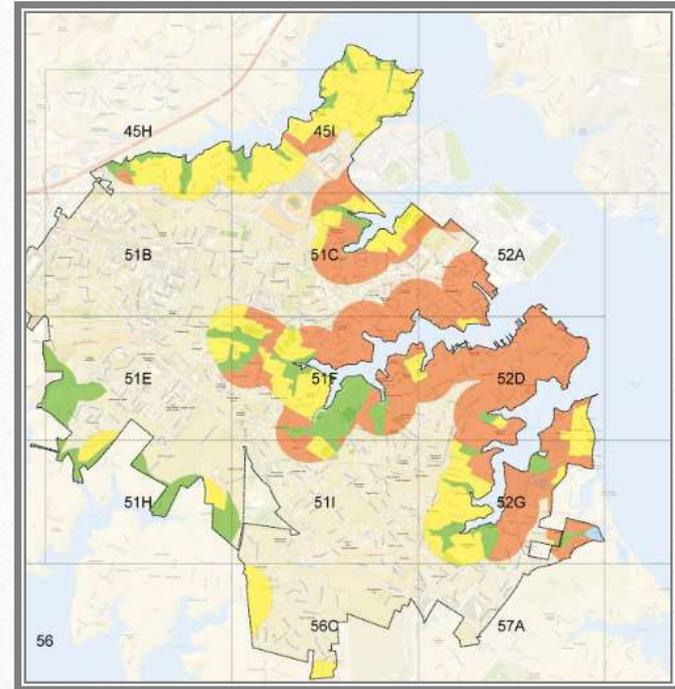
Standing

- **Participation before administrative agency vs. court**

- “[A]bsent a reasonable agency or other regulation providing for a more formal method of becoming a party, anyone clearly identifying himself to the agency for the record as having an interest in the outcome of a matter being considered by the agency, thereby becomes a party to the proceedings.” Greater Towson Council of Cmty. Associations v. DMS Dev, LLC, 234 Md. App. 388, 406 (2017) (citation omitted).
- “Person Aggrieved”—“one whose personal or property rights are adversely affected by the decision of the board. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is **personally and specially affected in a way different from that suffered by the public generally**.” Bryniarski v. Montgomery Cty. Bd. of Appeals, 247 Md. 137, 144 (1967) (emphasis added).
- “In sum, Maryland courts have accorded standing to challenge a rezoning action to two types of protestants: those who are *prima facie* aggrieved and those who are almost *prima facie* aggrieved. A protestant is *prima facie* aggrieved when his proximity makes him an adjoining, confronting, or nearby property owner. A protestant is specially aggrieved when she is farther away than an adjoining, confronting, or nearby property owner, but is still close enough to the site of the rezoning action to be considered almost *prima facie* aggrieved, *and* offers ‘plus factors’ supporting injury. Other individuals are generally aggrieved.” Ray v. Mayor & City Council of Baltimore, 430 Md. 74, 85, 59 (2013).

Overlay Zones

- Transit-Oriented Overlay
 - Development-District Overlay
 - Historic Conservation Overlay
 - Aviation Policy Area
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- Source: City of Annapolis Critical Area Map
<https://www.annapolis.gov/1505/Critical-Area-Program-Update>



Rezoning

- Original Zoning
- Comprehensive Zoning
- Piecemeal Rezoning/Zoning Map Amendment
- Text Amendment
- “Local zoning authorities implement their delegated zoning authority through establishment of original zoning through adoption of a [an original] zoning map, comprehensive rezoning of substantial areas of the jurisdiction through a legislative-type process initiated by the local government, and piecemeal rezoning of individual properties (by application of the owner or contract purchaser) through a quasi-judicial process.” Ctny. Council of Prince George's Cty. v. Zimmer Dev. Co., 444 Md. 490, 508, 120 A.3d 677, 687 (2015) (citation and internal quotations omitted)

Comprehensive Zoning

- “Comprehensive zoning is fundamentally legislative and no significant quasi-judicial function is involved. As comprehensive zoning encompasses a large geographical area, the process is initiated generally by a local government, rather than by a property owner or owners. When local zoning authorities devise comprehensive zoning ordinances, the “focus is not on a single piece of property, but rather on a considerable number of properties as they relate to each other and to the surrounding area. These are not adjudicative determinations affecting one property owned by one person, *but instead are classically legislative determinations* designed to affect local and regional needs and all property owners within the planning area.”

Anne Arundel Cty. v. Bell, 442 Md. 539, 553, 113 A.3d 639, 647–48 (2015) (emphasis in original) (internal citations and quotations omitted).

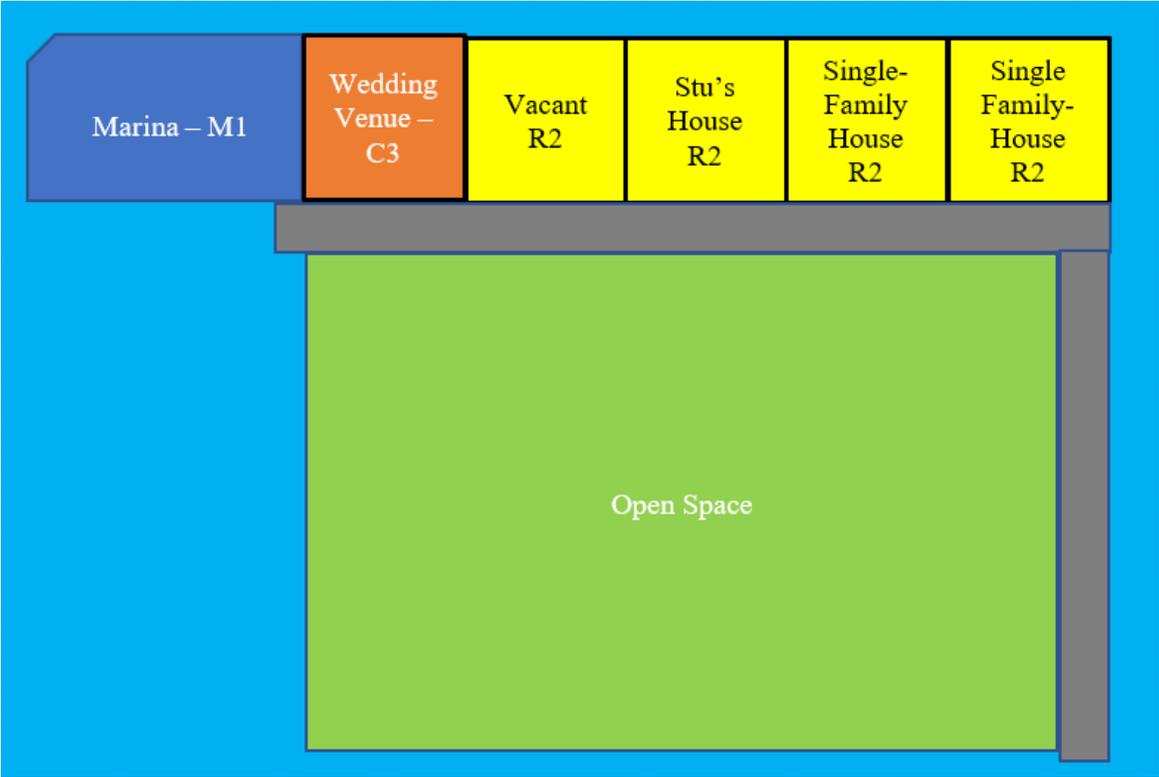
- <https://pgccouncil.us/589/Zoning-Ordinance-Rewrite-Portal>

Piecemeal Rezoning/Zoning Map Amendment

- Change/Mistake Rule—“While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced.”

Stratakis v. Beauchamp, 268 Md. 643, 652–53 (1973).

Piecemeal Rezoning/Zoning Map Amendment



Text Amendment

Uses	Commercial, Light	Industrial, Light
Used auto sales		P
Storage for online used auto sales	SE	

Floating Zones

- Legislative response to rigidity of Euclidean zones
- Used to allow the development of specialized or mixed uses (e.g., golf course or resort community, town center, planned unit development)
- Two-step process
 - Legislature assigns specific purpose or class of purposes for the zone
 - Property owner initiates rezoning process (change/mistake not required)
- Planning considerations are normally accorded greater weight in assessing rezonings for floating zones than Euclidean zones.

Cnty. Council of Prince George's Cty. v. Zimmer Dev. Co., 444 Md. 490, 515–17 (2015).

Nonconforming Use

- Nonconforming use means a lawfully existing use of a structure or of land that, as of the effective date of this Code (June 5, 2017) or the effective date of an amendment to this Code, does not conform to the use regulations applicable to the district in which it is located.” Baltimore City Zoning Code, § 18-201(d).
- Some ability to intensify the nonconforming use, but cannot expand the use.

Subdivision

- Major vs. Minor
- Adequate public facilities
 - Schools, roads, water and sewer, emergency services
- Different from site plan process

Land-Use Exactions

- A requirement imposed by a local government that a developer dedicate real property for a public facility or pay a fee to mitigate the impacts of the project, as a condition of receiving a discretionary land-use approval. Exaction, Black's Law Dictionary (11th ed. 2019).
- “Essential Nexus” and “Rough Proportionality”
- Nollan v. California Coastal Commission, 483 U.S. 825 (1987).
- Dolan v. City of Tigard, 512 U.S. 374 (1994).
- Koontz v. St. Johns River Water Management District, 570 U.S. 595 (2013).

Private Restrictions on Land

- Covenants, Conditions, and Restrictions
- Easements
 - Express, Implied, Prescriptive, Conservation, Agricultural Land Preservation, Historic Preservation, Viewshed, Reciprocal Parking