

Initial ideas for discussion and testing
to create a simpler ordinance based
on sustainability and quality of place.



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III. Definitions

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Introduction

The definitions section of the Zoning Code consists of 354 terms located in Section 59-A-2.1, within the General Article of the regulations. A simple word search quickly revealed that 25, or 7%, of the definitions are not used in the body of the Code. This adds length and unnecessary confusion.

The diagnosis of the Zoning Ordinance, as summarized in the “Zoning Discovery” publication, has shown that many definitions are outdated or unused, while others are overlapping or conflicting.

Definitions in a complex legal document like the Zoning Code have three purposes:

1. To simplify the text,
2. To precisely establish the meaning of a word or term that may be subject to differing interpretations, and
3. To translate technical terms into usable and understandable terminology.

This paper briefly outlines observations related to definitions in the Code and suggestions for improvement by using illustrations or graphics to clarify meaning, including new definitions that are currently lacking, checking for legal consistency, and ensuring that we are using clear, concise, and contemporary terms.

Problem Statement

The Montgomery County Zoning Ordinance definitions section is outdated and needs to be comprehensively reviewed to provide a strong foundation for the Code. A concise and systematic solution will address the following issues.

1. Many current definitions do not correspond to terms used in the Code.
2. Many defined terms and explanations are antiquated.
3. There is a lack of contemporary terminology for emerging uses and technologies.

Background

Over time, the Zoning Ordinance has evolved from 25 definitions in the 1928 Zoning Ordinance to 354 definitions in the current Code.

Understandably, as the Code grew, more terms and definitions were needed to address and clarify the text. Over the years, however, when text was changed or removed, unused definitions remained in the Code.

A review of the Code's definitions has found that overlapping and contradictory terms and definitions contribute to the difficulty of implementing the Code. For instance, the "office, general" definition includes both professional and general business offices, but the

land use tables contain 13 different listings for "office".

Problematic Definitions

Some terms are simply misused. For example, there is a definition for "legitimate theater". The intention is to differentiate live theater from a motion picture theater, i.e., "legitimate theater" is meant to refer to any live performance theater. But "legitimate theater" already has a specific meaning: theater that does not include anything other than speech or natural movement. Operas and musicals, for example, are not legitimate theater. Our definition should be changed to "theater, live performance".

Another set of problematic terms is "family", "parent", and "child". The current definition of "family" includes people related by marriage or blood, or up to five unrelated people. A strict reading would prohibit a married couple with four adopted children from legally occupying a single family residence. The definition of "parent" and "child" mentions both "legitimate" and "illegitimate" children – are these terms still used and is the distinction necessary?

Definitions that are not found in the body of the Code:

1. Automobile garage, group
2. Automobile garage, private
3. Automobile garage, public
4. Automobile sales lot
5. Camper (as defined)
6. Camper unit
7. Community sewerage system
8. Community water supply system
9. Court height

10. Dairy farm
11. Enclosed porch
12. Foster home
13. Ground area of a building
14. Lot, depth of
15. Marquee
16. Metrostation policy area
17. Newspaper, village
18. Pre-development grade
19. Residential mobile home option area
20. Roof line
21. sanatorium
22. Sending area
23. Sewage treatment plant
24. Street width
25. Unenclosed porch

Rewrite Team Suggestions

After a diagnosis of the existing state of our definitions section and research into the practices of several other jurisdictions, the zoning rewrite team has come to several conclusions:

1. Only define a term if it is used in the Code; add new definitions that are needed.
2. Definitions should not include standards. This tends to bury or hide regulations because most users look to the substantive provisions to find the information pertaining to a use.
3. There should be consistency of terms. At times, differing terms are used interchangeably, which

causes confusion and the need for interpretations.

4. Definitions should be relevant, current, and simple.
5. Use illustrations or graphics to clarify a term.
6. Use computer and web-based technology to enhance the electronic version of the Code, such as a hyperlink to the definition each time a defined term appears.

A few of these conclusions are discussed in more detail below.

Definitions should not include Standards.

The most important conclusion is that definitions should not contain controlling regulations or development standards. For example, our Code, as well as many other zoning codes, attempt to define home occupations in terms of standards under which the home occupation can be established. We suggest defining it as a business activity that is carried out on the same site as a dwelling unit and which is accessory to the household living use on the site. Within the Code, a set of regulations may limit the number of employees, type of business, proportion of the home used for business, limitations on noise, and so on. These regulations should not be part of the definition.

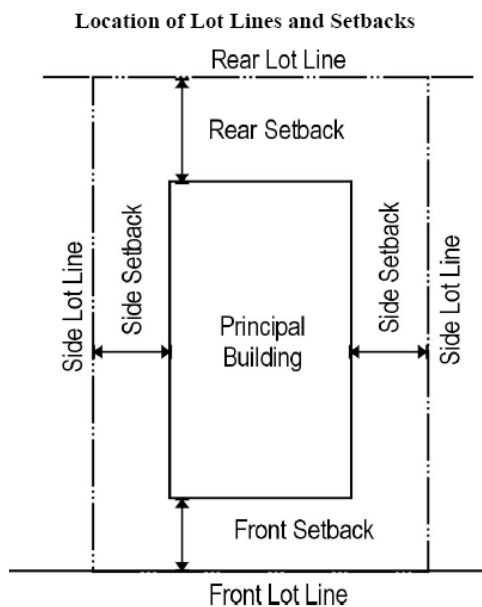
Definitions and Illustrations

Certain definitions can be clarified with illustrations or graphics. Examples include:

- Basement
- Cellar
- Court; Court, inner; Court, outer
- Dwelling unit – an illustration of all the types, such as detached, attached,

- semidetached, townhouse, multiple-family, etc.
- Height of building
- A diagram showing front, side, and rear lot lines and required building setback lines
- Story, half
- Yard – front, rear, side

Illustrations and examples of defined land uses clarify the meaning of a term and offer bases for deciphering the intent.



Examples of new terms to be defined

1. Small wind turbine (energy system)
2. Live/work unit
3. Adjoining and confronting properties
4. Driveway
5. Density calculation
6. Parking garage/structure

7. While the term "priority funding area" is not currently used in the ordinance, it may be useful to the new one. It is an officially designated "smart growth" area where local governments are allowed to use state funding

Consistency in terminology

There should be consistency in the use of terminology and definitions throughout the Code. At times, differing terms are used interchangeably. For example, currently land use tables reference churches, places of worship, and places of religious worship. Why not use one term, 'religious institutions', as it appears in the Religious Land Use and Institutionalized Persons Act (RLUIPA)?

Summary

Definitions are important because they clarify the meaning of particular terms or phrases that do not otherwise have a commonly understood meaning. They also serve to abbreviate text by collapsing long lists into single terms. Instead of listing every possible type of store, (such as jewelry, book, clothing, variety, or gift), a definition like 'retail sales' could be introduced which describes businesses involved in the sale, lease, or rent of new or used products or merchandise to the general public.

In the rewrite process, legal and technical review is needed to ensure the legality of terms and their technical correctness.

Selected Resources for Definitions

Texts:

Elliott, Donald, *A Better Way to Zone*, Washington DC, Island Press, 2008.

Moskowitz, Harvey S. & Carl G. Lindbloom *The Latest Illustrated Book of Development Definitions* Rutgers, The State of New Jersey, 2004.

Jurisdictions Researched:

City of Portland, Oregon

City of Sarasota, Florida

Burlington, Vermont

New York City, New York

Chicago, Illinois