

Planning Commission, Planning Board and Board of Appeals Education Course

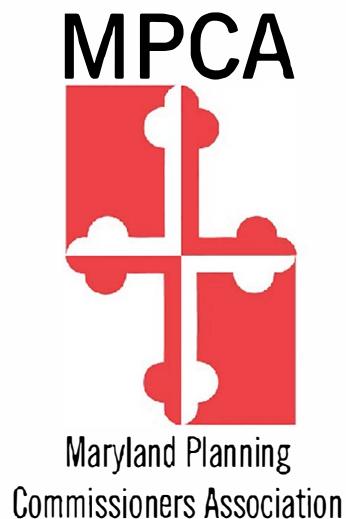
Developed pursuant to Section 1-206 of the Land Use
Article, Annotated Code of Maryland.

Module One: Introduction to Planning 101



Planning Commission, Planning Board and Board of Appeals Education Course

Developed pursuant to Section 1-206 of the Land Use Article, Annotated Code of Maryland.



Planning Commission, Planning Board and Board of Appeals Education Course

Welcome!

I am pleased to welcome you to the online Planning Commission, Planning Board and Board of Appeals Education Course, which was developed by the Maryland Department of Planning so that members of planning boards or commissions and boards of appeal can fulfill their education requirements under Section 1-206 of the Land Use Article, Annotated Code of Maryland. This requirement first came about through passage of Smart and Sustainable Growth Act of 2009, which implemented the requirement that, within six (6) months of appointment, members of local planning boards or commissions and boards of appeal complete an education course concerning certain aspects of land use planning.

This education requirement applies to the non-charter counties and municipalities that exercise planning and zoning authority, and to charter counties, including Montgomery and Prince George's counties. The law provides that the course must include education on (i) the role of the comprehensive plan, (ii) proper standards for special exceptions and variances, as applicable, and (iii) the jurisdiction's zoning, planned development, subdivision and other land use ordinances and regulations.

This course was developed with input from 2007's Task Force on the Future of Growth and Development, and your partners in planning policy and implementation including the Maryland Association of Counties (MaCo), Maryland Municipal League (MML), Maryland Planning Commissioner's Association (MPCA) and others. This joint effort has resulted in the course you are about to take, and we hope you find it informative, useful and beneficial in your important role as a planning official.

Our goal is to provide good information to help you make even better informed planning decisions for your city, town or county. I welcome and encourage your feedback on this course, and if you have any suggestions after completing it, please feel free to pass them along.

Enjoy the course!

Sincerely,



Rebecca L. Flora, AICP, LEED ND/BD+C
Secretary, Maryland Department of Planning

Table of Contents

Planning Commission, Planning Board and Board of Appeals Education Course	vi
Overview	vi
Module One: Introduction to Planning 101	1-1
Introduction	1-2
What is planning?	1-2
The Community's Vision of the Future	1-2
Accounting for the Past and Present	1-2
Goals, Objectives, Policies: Tools to Realize the Vision	1-2
What are some of the values of planning?	1-2
Conservation of Resources	1-2
Protection of the Natural Environment	1-2
Efficiency, Orderliness, and Rationality in the Built Environment	1-2
Predictability	1-3
Public Participation	1-3
What do planners do?	1-3
The Distant Goal v. the Immediate Decision	1-3
Incrementalism v. Comprehensive Planning	1-3
Public Sector Planning and Private Sector Decisions	1-3
Local, Regional, and State Perspectives	1-3
The United States Constitution	1-3
An Annotated History of Planning in America	1-4
Milestones in Planning	1-4
What is smart growth?	1-5
What does it do, and what is it trying to achieve?	1-5
Goals of Smart Growth Planning.	1-5
Characteristics of Smart Development	1-6
The Process of Smart Land Use Planning	1-6
Smart growth laws	1-6
The Twelve Visions	1-7
Trends, Statistics and Current Growth Patterns	1-8
Improve quality of life with more sustainable development	1-8
Develop land at a pace consistent with growth	1-8
Strengthen existing cities and communities	1-8
Protect farmland	1-8
Preserve natural resources	1-8

Reduce automobile dependency	1-8
Increase access to transit options	1-9
Concentrate jobs in existing cities and communities	1-9
Increase housing affordability	1-9
Minimize land consumption outside of existing communities	1-9
Priority Funding Areas	1-10
Priority Funding Areas (PFAs) Defined	1-10
Priority Funding Areas Established by Law	1-10
Consistency and PFAs	1-10
Locally-Designated Priority Funding Areas	1-10
State Funding Subject to the PFA Law	1-12
Department of Housing and Community Development (DHCD)	1-12
Department of General Services (DGS)	1-12
Department of Business and Economic Development (DBED)	1-12
Maryland Department of the Environment (MDE)	1-12
Maryland Department of Transportation (MDOT)	1-13
Maryland Historical Trust (MHT)	1-13
Growth Related Projects NOT Subject to the PFA Law	1-13
Planning Law	1-14
Legal Authority – Zoning Law	1-14
Five Sources of Law in the U.S.	1-14
Constitutional Enabling Authority for Land Use Regulation and Limitations on Powers	1-14
The U.S. Constitution	1-14
State Constitutions	1-15
Statutes (Maryland Examples of Enabling Authority)	1-15
Federal and State Court Rulings with Respect to Key Land Use Planning Issues	1-15
Is zoning a Constitutional use of police power?	1-15
What constitutes legitimate use of eminent domain power?	1-16
When is a regulation under the police power so onerous that a “regulatory taking” has occurred?	1-16
When is an exaction or dedication as a condition of permit approval, a taking?	1-16
What is an example of how Maryland courts have interpreted “takings” with regard to the Maryland constitution?	1-17
Basic Concepts and Tools of Zoning	1-17
Authority for zoning	1-17
The zoning ordinance	1-17
By right	1-17

Rezoning	1-17
Change or Mistake Rule	1-17
Special Exceptions	1-17
Variances	1-17
Hearing Procedure	1-18
Appeals	1-18
Subdivision	1-18
Vesting	1-18
Module One: Review Questions	1-19

Planning Commission, Planning Board and Board of Appeals Education Course Overview

Before we get started, you might be interested in knowing that Maryland is among a number of states that require training or education for planning commission, planning board and board of appeals members. Some are more stringent than others, and some are even rather costly. In developing this course, we looked at programs in several states, including Virginia, New York, New Jersey, South Carolina, Kentucky, Tennessee and Alabama. We also reviewed training offered by the American Planning Association, and the planning website *Planetizen*, along with a few offerings from local jurisdictions. It never occurred to us to charge anyone for taking the course, and we have specifically tailored the course to those servings as members of planning boards, planning commissions and boards of appeal here in Maryland.

This course covers a broad range of topics, from basic planning and smart growth concepts, the comprehensive plan, growth management tools, environmental laws and regulations, to the role of a planning commissioner, planning board member and board of appeals member. Each member that completes the course will receive a certificate.

While each jurisdiction is authorized under the law to create its own education course, we wanted to give local jurisdictions the option of using this course or preparing their own course. Taking this particular course will satisfy a member's the statutory educational requirements.

Module One: Introduction to Planning 101

What is planning?

- Introduction to planning
- Values of planning
- What planners do
- Smart growth
- The 12 visions
- Planning and zoning terms and definitions
- Priority Funding Areas, appeals, variances, ordinances and vesting
- State planning laws: charter v. commissioner forms of government

Module One: Introduction to Planning 101

Introduction

We begin with an introduction to the basic concepts of planning in the context of the following perspectives: *Social values and issues, legal framework and the historical context.*

What is planning?

Planning is undertaken to set a course of action that will shape the future in terms of how land is used. Planning is basically a function of the following:

A Community's Vision for the Future

The vision is often expressed as a statement of what the community will be in the future, if all goes as planned. For example, some communities envision economic growth in the form of new businesses and industry, while others see retaining their current scale and role as a place for small town living; some communities' vision is to retain their rural heritage in locations outside of population and economic centers and to protect and enhance the natural environment.

Accounting for the Past and Present

Plans for the future should consider what has happened in the past. Thus, knowledge about past and present trends in terms of the mixture of land uses, the rate of population growth, the loss of forest and agricultural lands, the extraction of mineral resources, and the quality of the environment is a necessary step in the planning process.

Goals, Objectives, Policies: Tools to Realize the Vision

Planning should adhere to some rational framework in order to make progress towards the vision. Planning requires a description of the manner in which the vision will be pursued. It does this by establishing formal goals (a desired end that is established for a range of topics, from the environment to the economy), objectives (specific steps and products that reflect the goals and topics), and policies (specific decision-making rules and guidelines).

The importance of establishing a framework of goals, objectives and policies is to formalize expectations and predictability for stakeholders (property owners, developers, residents, appointed and elected officials) and to have a rational basis -- in the form of an officially adopted document, such as a Master Plan, Comprehensive Plan, Small Area Plan, Sector Plan or other approved statement of policy -- for making planning decisions. Having this basis can help avoid decisions that may otherwise be construed to be arbitrary.

What are some of the values of planning?

While there are numerous social values that reflected in planning, the most fundamental are the protection of public health, safety, and welfare. This is the over-arching purpose of planning. Because land use planning and regulation are an exercise of the local police power, all planning and related regulations must be justified on the basis of promoting public health, safety, or welfare.

Over time, additional values have been incorporated into the planning process. These include:

Conservation of Resources

This value aims at conserving important natural resources such as farmland, forest land, and mineral resources, but also energy resources.

Protection of the Natural Environment

This value seeks to protect the quality of land, air and water resources, such as rural open space and greenways, wetlands, floodplains, potable water supplies and critical wildlife habitat.

Efficiency, Orderliness, and Rationality in the Built Environment

The overall objective of land use planning is to ensure that future growth is orderly and to discourage a hodge-podge or scattered pattern of development. The public benefits that accrue involve preservation or creation of community

character; cost-effective provision of roads, schools, and other facilities; efficiency in the transport of goods and services; and the preservation and viability of resource-based economies such as agriculture, forestry, mining, and fisheries.

Predictability

Planning is about stating how and when land will be used in the future. Predictability is important to all stakeholders including developers, the environmental community, residents, farmers, and neighboring jurisdictions.

Public Participation

Planning cannot be successful unless plans represent the values and desires of the public in general. While it is not possible to satisfy all things important to all people, public participation is important so that each person might have a voice and a role in the process.

What do planners do?

Planners often operate and make recommendations and decisions in the context of many varied and sometimes competing interests. The following illustrates the difficult decisions that planners face in both day-to-day work and in long-range planning.

A county might designate a certain area to be agricultural, whereas a municipality might decide that the same land be part of its annexation plan.

The Distant Goal v. the Immediate Decision

A jurisdiction might want to preserve a structure for preservation, but it might be deemed a public health hazard and eligible for demolition by neglect. However, if such a structure is a protected or designated historic resource, then consultation with the preservation commission, landmarks commission, planning department and local and state preservation agencies should occur.

Incrementalism v. Comprehensive Planning

A long range plan sets out the goals, but the here and now decisions are almost always incremental.

Planners must weigh whether the incremental process decision point maintains or compromises the comprehensive goal.

Public Sector Planning and Private Sector Decisions

There are often differences that separate private sector motivation from public sector policy. It helps if the respective stakeholders understand each other and learn to work together for the public good.

Local, Regional, and State Perspectives

Local plans, regional plans and state policies might not always be in concert with one another. Good working relationships are important, and consensus is often attainable.

The United States Constitution

From free speech (signage, adult entertainment) to due process, equal protection, and property rights (the “takings” clause), planners must pay particular attention to and always be especially cognizant of the 1st, 5th, 9th and 14th Amendments to the U.S. Constitution. The 10th Amendment, incidentally, is the one that grants the states the power to regulate land use.

An Annotated History of Planning in America

Planning in America has existed for centuries, and was evident with some of the first settlements occupying land from New England to Florida. Beginning with the Spanish model for development of new communities in the 1500's and up to the birth of the United States, planning often followed fairly regimented rules for the layout of towns which mirrored European precedents.

Early American settlements were often located along waterways where ships could bring goods and materials for use by town residents as well as for transport to outlying areas. Towns and cities were frequently designed with a grid pattern of streets, with central squares used as marketplaces. Other features of the grid included public buildings such as courthouses where people conducted legal and other business transactions.

The Northwest Ordinance of 1785, which divided the American frontier into uniform mile square divisions of land, continued the grid pattern of planning and development, but on a much larger scale. From Ohio westward to the Great Plains, land speculation became generally unconcerned by the constraints of geography, as evident from looking at a current county map of mid-western states.

Planning in the United States blossomed in the late 19th and the 20th century as immigration, the move away from an agrarian economy, and the advent of industrialism helped populate towns and cities. Planning and zoning laws came into effect during this period as concern for public health, safety and welfare grew with the concentration of sometimes incompatible uses in close proximity to one another.

Perhaps the most significant change in planning and development in the United States occurred after World War II. Prosperity after the War, the advent of the National Highway System (connecting theretofore disparate parts of states and the nation), and greater use and ownership of the automobile, all contributed to the spread of development and massive suburbanization of the country.

More recently, planning in the U.S. and in Maryland has focused on addressing some of the ill effects of this past suburbanization and growth outside of suburban areas. Greater emphasis is now placed on developing areas where infrastructure exists or is planned, and on revitalizing and redeveloping existing communities.

Milestones in Planning

Here are some selected milestones in the history of American planning, with a few from Maryland.

- The Plan for Washington, D.C., Detroit, New York (1790-1810)
- Purchase of Central Park, New York (1856)
- Tenement House Laws, New York (c. 1867)
- Supreme Court decision in *Munn v. Illinois*, 94 U.S.113 (1877)
- Birth of the New Town Movement (Ebenezer Howard, 1898)
- The Harford Commission on a City Plan (1907)
- Burnham's Plan for Chicago (1909)
- Supreme Court decision in *Hadacheck v. Sebastian*, 239 U.S. 394 (1915)
- Adoption of New York City Zoning Code (1916)
- Cincinnati Comprehensive Plan (1925)
- *Village of Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926), the namesake for "Euclidian" zoning
- Standard City Planning Enabling Act (1928)
- The Quiet Revolution (1970's)
- [The State Land Use Act of 1974 \(Maryland\)](#)
- [The Critical Area Law, 1984 \(Maryland\)](#)

- The Economic Growth, Resource Protection, and Planning Act of 1992 (Maryland)
- The “Smart Growth” Act of 1997 (Maryland – creation of Priority Funding Areas)
- Traditional Neighborhood Development, New Urbanism, Transit-Oriented Development, and other new planning models (1990's)
- Smart Codes Legislation, 2000 (Maryland)
- House Bill 1141 requiring municipal growth and water resources elements in comprehensive plans, 2006 (Maryland)
- Smart, Green and Growing Act of 2009 (Maryland)
- Sustainable Growth and Agricultural Preservation Act of 2012 (Maryland – the “Septics Bill”)

We will explore more of the concepts of planning, the legal framework, the fundamentals of the planning process, and day to day administration of planning later on. But let's move on to the concept of Smart Growth as we begin our focus on planning in Maryland today.

What is smart growth?

Most people in Maryland planning and development circles have heard the term “Smart Growth” bandied about for more about 15 years, following the passage of the Smart Growth and Neighborhood Conservation Act of 1997, better known to planners as the “Smart Growth Law.”

What does it do, and what is it trying to achieve?

Smart Growth is a term that includes three conceptual dimensions: the ultimate goals for land use planning, characteristics of smart development that address those goals, and the process of good land use planning. Maryland has emerged a leader in smart growth planning and implementation, not just since the 1997 “Smart Growth” Act¹ was passed, but since the formation of the Maryland State Planning Commission in 1933. To get at the details, let's examine these three dimensions in a bit more detail.

Goals of Smart Growth Planning

Smart Growth promotes livability, sustainability, well managed development, and a high quality of life for all Marylanders. What this really gets at is how smart development patterns make our day-to-day lives better by encouraging shorter drive times, locating housing closer to work, minimizing shopping trips, and giving our kids real options to walk and ride bikes to school, parks and playgrounds. It's really more about where and how development occurs, and less about what it looks like, although, good community design is an important part of smart growth.

The PFA provisions of the 1997 “Smart Growth” Act are codified in §5-7B of the State Finance and Procurement Article of the Annotated Code of Maryland.

¹ 1997 “Smart Growth” Act created Priority Funding Areas (PFAs), are directs State funding for growth related infrastructure to designated PFAs for the purpose of providing geographic focus for State investment in growth. PFAs are existing communities and places where local governments want State funding for future growth. Growth-related projects include most State programs that encourage growth and development, such as highway project, sewer and water construction, economic development assistance, and State leases or construction of new office facilities. The Act legislatively designated certain areas as PFAs, including municipalities as they existed on January 1, 1997, Baltimore City, areas inside the Baltimore and Capital Beltways, State Empowerment Zones, Department of Housing and Community Development Designated Neighborhoods, and also established criteria for locally designated PFAs.

Characteristics of Smart Development

Smart growth minimizes the human footprint by directing new development to existing population and business centers, to growth areas adjacent to those centers, and/or to strategically-selected new centers. In other words, it means building more compactly, and in places that already are developed and where infrastructure like roads, electric, natural gas, water and sewer lines already exist. Alternately, it means planning compact new communities in areas that have been identified as good locations for new growth, preferably within Priority Funding Areas (PFAs).

Smart growth development is characterized by mixed uses, walkability, a range of employment and transportation options, equitable distribution of costs and benefits, diverse housing choices for citizens of varying incomes and life cycle stages, and a strong sense of community and place. These design features and components vary in order to reflect the character of a given area. Smart growth planning policies promote vitality in cities and small towns, while preserving rural areas.

At the local level, it is wise to tailor your smart growth policy to the particular character of your town or county. Density goals and multimodal transit suited for city neighborhoods are not going to work in a small town or village. That doesn't mean that smart growth can't work in these places.

The Process of Smart Land Use Planning

The Smart Growth planning process features active participation by an aware and knowledgeable citizenry, and collaboration between government, businesses and citizens in crafting plans to achieve Smart Growth goals. The resulting policies, strategies, programs and funding for growth and development, for natural resource conservation, and for transportation and other infrastructure, are integrated across local, regional, state and interstate levels.

According to the Smart Growth Network (a national partnership of non-profit, academic and governmental organizations), there is growing concern that current development patterns are no longer in the long-term interest of our cities, existing suburbs, small towns, rural communities, or wilderness areas. Though supportive of growth, communities are questioning the economic costs of abandoning infrastructure in cities, only to rebuild further out.

Smart growth is about more than fiscal responsibility regarding infrastructure. It's about quality of life. Living closer to jobs means less commuting time and more time spent with family.

Smart Growth Laws

Density Minimums under the Smart Growth Act

The 1997 Smart Growth Act laid the groundwork for a new set of policies, procedures and requirements related to growth area allocation within the State. One such requirement established density minimums for an existing community, or undeveloped areas within an existing community, to be designated as a PFA.

Under Section 5-7B-03(d) of the State Finance and Procurement Article, a local government may designate as PFAs any existing communities, based upon the built environment as of January 1, 1997. To qualify for designation as a PFA, the existing community must be served by a public or community sewer system and be located within a locally designated growth area. In addition, those portions of the community designated for residential use or development must have an average density, or permitted density, of at least 2 units per acre.

The PFA law also permits local jurisdictions to designate as a PFA areas "beyond the periphery" of the developed portion of an existing community, provided that the area is served by a public or community sewer system and has a permitted average residential density of at least 3.5 units per acre. Similarly, an area other than an "existing community" – one not in existence as of January 1, 1997 – may be designated as a PFA if the area: (i) is located within a locally designated growth area; (ii) is planned for service under an approved 10-year water and sewer plan; (iii) represents a plan for orderly expansion and growth; and (iv) if designated for residential use, has a permitted average density of not less than 3.5 units per acre.

For more in depth information on density requirements, please refer to:

<http://planning.maryland.gov/Documents/OurProducts/Archive/72195/mg17-Designating-PFAs.pdf>.

The Twelve Visions

During the 2009 Legislative session, Maryland's then-eight existing planning visions were replaced with 12 new visions that address a broader spectrum of significant issues of relevance to all Marylanders. These new planning visions are the State's land use policy, and a local jurisdiction is required to include the visions in the local comprehensive plan and implement them through zoning ordinances and other regulations.

The 12 visions address the following:

- quality of life and sustainability
- public participation
- growth areas
- community design
- infrastructure
- transportation
- housing
- economic development
- environmental protection
- resource conservation
- stewardship, and
- implementation approaches

Trends, Statistics and Current Growth Patterns

Maryland is experiencing growth. We project that 1 million new residents, 400,000 additional households and 600,000 new jobs will come to Maryland over the next 20 years. What are these trends, what do the numbers mean and what will it look like on the ground? Why does this matter? What can we do about it?

Improve quality of life with more sustainable development

Total acreage of developed land in Maryland nearly doubled in the past three decades, resulting in large losses of farms and forests. It took three centuries to develop the first 650,000 acres of land in Maryland, and a mere 30 years to develop the next 650,000. In 1973, 6,900 square feet of land were needed to support each person (for homes, jobs, schools, etc.). This increased to 10,400 square feet by 2002, a 50 percent increase.

Marylanders live in larger homes on larger lots, shop in larger stores, and park in larger parking lots than ever before. The consequence is more time spent getting to those places, more public dollars needed to support that dispersion, more loss of natural resources, more pollution into the Bay, and fewer affordable housing options.

Develop land at a pace consistent with growth

Since the late 1960s, the nature of residential development (with an increasing share of homes built on large lots), combined with declining household size, has resulted in an increase in developed acres that far exceeds growth in either population or housing units. Since 1950, developed acres for single-family residential units has increased by 455 percent, nearly twice the rate of increase for housing units (234 percent) and more than triple the growth in population (139 percent).

Strengthen existing cities and communities

Sprawl has become an unrelenting cycle in which one malady feeds the next. Outmigration from existing communities leads to disinvestment in those communities, resulting in greater need for new roads and schools which helps drive up the cost of land and housing. These are contributing factors driving young families further out into suburban areas.

While Maryland is near the midpoint of state growth nationwide, it has experienced enormous churn from within, with tens of thousands of residents journeying from city to suburb to exurb and beyond. Nearly 40,000 Maryland workers relocated to Pennsylvania since 1980, with many trading lower housing costs for longer commutes. Development patterns fuel an income stratification that creates uneven schools and impoverished communities.

Protect farmland

Maryland has a long history of agricultural productivity that continues today, as evidenced by the more than 2 million acres of farmland within the state. Maryland has worked to preserve nearly 700,000 acres of land under conservation easement, protecting this land from development in perpetuity. Despite these conservation efforts, 500,000 acres of farmland were lost to development between 1982 and 2007—or one-fifth of the 1982 acreage. Sprawling development patterns have placed increasing value on these lands for development, pressuring Maryland farmers to remove their farms from agricultural productivity.

Preserve natural resources

In rural areas where community water and wastewater systems are not available or planned, development relies on septic systems. About 430,000 septic systems operated in Maryland in 2007, with thousands more being installed each year. The drain fields for septic systems require houses to be built on larger lots, exacerbating the effects of suburban sprawl development. To make matters worse, traditional septic systems do not provide effective treatment for nitrogen, the pollutant most pivotal to the health of the Chesapeake Bay.

Reduce automobile dependency

As a result of increasing population and continued sprawl development patterns, vehicle miles traveled are projected to increase by 28 percent between 2005 and 2020. Although new Federal fuel efficiency standards will help, current patterns will result in an increase in greenhouse gas emissions from mobile sources unless we reduce our dependency on automobiles to reach jobs, schools, shopping and other routine destinations.

Increase access to transit options

As population and jobs have become less concentrated, providing transit services to Maryland residents has become increasingly challenging. Nearly three-quarters of all workers in Maryland drive alone to work. And, though transit services are available to many (almost 80 percent of the state's population live within a 10- minute drive of a commuter service such as the Maryland Transit Administration's MARC and commuter bus services), development patterns make it difficult to take transit to non-work destinations, such as shopping and recreation.

Concentrate jobs in existing cities and communities

Maryland's economy continues to be strong, but along with trends in housing, employment locations are becoming increasingly dispersed. This is important because it means that employees can live in far flung suburban or even rural locations and still have reasonable access to jobs. This is important from a land use perspective because the movement of jobs outside the urban core and inner-suburban areas is contributing to sprawl development patterns.

Increase housing affordability

As land is consumed by larger houses, stores, and office parks, the supply of affordable housing and business space shrinks, increasing the cost of living and doing business in Maryland. Many moderate income workers, not to mention lower income workers, cannot afford to live in the communities or even in the counties where they work. In much of Central Maryland, housing and transportation costs are unaffordable when compared against standard benchmarks. For example, the percent of home sales in Maryland that were affordable to the State's teachers declined from 41 to 26 percent between 2002 and 2008.

Minimize land consumption outside of existing communities

Despite state programs to reverse these trends, sprawling land use has continued in Maryland. Programs over the last several decades were designed to protect farms and forests, to limit development along the shoreline of the Chesapeake and its tidal tributaries, and to foster growth generally within the boundaries of existing communities.

As mentioned, Priority Funding Areas (PFAs) were created in 1997 to encourage development in and around existing towns and cities by concentrating public investment for new infrastructure such as roads and schools in those areas. Despite these efforts, since 1990, 75 percent of statewide acres associated with residential development have been outside of PFAs. PFAs are discussed in greater detail in the next section.

Priority Funding Areas

Priority Funding Areas (PFAs) Defined

PFAs are geographic growth areas, as either defined under State law or as designated by local jurisdictions, where the State targets investments in infrastructure. The law directs the use of State funds for roads, water and sewer plants, economic development and other “growth-related” projects to PFAs, recognizing that these investments are the most important tool the State has to influence growth and development.

Priority Funding Areas were established to meet three key goals:

- To preserve existing communities;
- To make the most efficient and effective use of taxpayer dollars for costly infrastructure by targeting state resources to build on past investments; and
- To reduce development pressure on critical farmland and natural resource areas by encouraging projects in already developed areas

Priority Funding Areas Established by Law

The 1997 Smart Growth Act designated certain areas as Priority Funding Areas. These areas are the traditional core of Maryland’s urban development, and are areas targeted for economic development. As established by Section 5-7B-02 of the State Finance and Procurement Article, PFAs include:

- Municipalities as of January 1, 1997 (areas annexed after this date must meet additional requirements);
- Baltimore City;
- Areas inside the Baltimore and Washington Beltways;
- Neighborhoods designated for revitalization by the Department of Housing and Community Development (“Designated Neighborhoods”);
- Enterprise and Empowerment Zones; and
- Certified Heritage Areas within locally designated growth areas.

Consistency and PFAs

For the purposes of adopting local zoning ordinances in PFAs, the new consistency definition does not include land uses and densities or intensities within PFAs so as not to interfere with ordinances and regulations that allow for mixed uses and bonus densities beyond those specified in the comprehensive plan.

Locally-Designated Priority Funding Areas

Local governments play a principal role in determining the location of new development. As such, the PFA law provides that, in addition to those areas noted above that are established statutorily as PFAs, counties and municipalities may, under Section 5-7B-03, designate as PFAs other areas that meet certain minimum statutory criteria, subject to review and comment by MDP. Areas eligible for local designation under Section 5-7B-03 include:

1. Communities within locally designated growth areas that existed prior to January 1, 1997 that:
 - Have existing public or community sewer systems; and
 - Have an average density of at least 2.0 units per acre within the areas of the community designated for residential use.
2. Areas beyond the periphery of an existing community that:
 - Are served by public or community sewer systems; and
 - Have an average permitted residential density of at least 3.5 units per acre.

3. Areas other than communities in existence prior to January 1, 1997, that:
 - Are within a locally designated growth area;
 - Are planned to be served under an approved 10-year water and sewer plan;
 - Have an average permitted density of at least 3.5 units per acre in the parts designated by the local government for residential use or development;
 - Reflect a long-term policy for promoting an orderly expansion of growth and an efficient use of land and public services.
4. Areas zoned or classified for industrial use. Areas zoned or classified for industrial use after January 1, 1997, must also be served by a sewer system.
5. Areas where the principal uses are for employment if the area is served by, or planned for, a sewer system, and is within a locally designated growth area.
6. Areas zoned or classified after January 1, 1997 as industrial, if the area is served by, or planned for, a sewer system, and is within a locally designated growth area.
7. Areas designated in a comprehensive plan as rural villages as of July 1, 1998, provided that the boundary of the PFA is the periphery of the developed portion of the rural village as of July 1, 1998. State funding for growth-related projects within a designate rural village is limited to projects that maintain the community character and do not, with limited exceptions, increase the growth capacity of the village.

Areas designated as PFAs must also be based on:

- An analysis of the capacity of land areas available for development, including in-fill and redevelopment; and
- An analysis of the land area needed to satisfy demand for development at densities consistent with the master plan.

If MDP determines that a locally designated PFA does not satisfy the statutory requirements for a PFA designation, MDP will identify the area as a "PFA Comment Area. Given that the demand for State funding for infrastructure projects exceeds available the resources, the State has established a process to evaluate funding requests in comment areas.

State Funding Subject to the PFA Law – “Growth-Related” Projects

Department of Housing and Community Development (DHCD)

Programs defined as “growth-related,” for which funding is limited to PFAs, include:

- Programs under the Community Development Administration (CDA) and Maryland Home Finance Program, Subtitles 2, 3 and 8, of Title 4, Housing and Community Development Article – These programs provide low interest mortgages to qualified first time homebuyers for the construction or purchase of newly constructed single family homes.
- CDA’s program under Subtitles 2, 4 and 15, of Title 4 for the acquisition or construction of newly constructed multifamily rental housing.
- State funding for neighborhood revitalization projects, which include the Community Legacy program, the Community Investment Tax Credit, and the Neighborhood Business Works program.

Also note that, though not required by the law, DHCD requires that Community Development Block Grants be limited to PFAs. The program is not covered by the PFA law because it consists solely of federal funds, and funding under the program is not a State “growth-related” project.

Department of General Services (DGS)

While it has no capital budget itself, the Department of General Services is responsible for acquiring, leasing, and maintaining most of the State’s facilities. Thus, DGS is responsible for ensuring that the State’s “growth related funding” for leases and land acquisition of property by the State is limited to PFAs.

Department of Business and Economic Development (DBED)

DBED programs defined as “growth-related,” and therefore subject to the PFA Law’s restrictions, include:

- The Maryland Industrial Development Financing Authority (MIDFA), which encourages private sector financing in economic development projects by issuing private activity revenue bonds and by providing credit insurance.
- The Maryland Small Business Development Financing Authority (MSBDFA), which provides financial assistance to small businesses that are not able to qualify for financing from private lending institutions or are owned by socially and economically disadvantaged persons.
- The Maryland Economic Development Assistance Authority Fund (MEDAAF), which provides loans and grants to businesses and local jurisdictions.
- The Economic Development Opportunities Program Fund (Sunny Day Fund), which promotes Maryland’s participation in extraordinary economic development opportunities that provide significant returns to the State through creating and retaining employment and the creation of significant capital investments in Priority Funding Areas.
- Maryland Economic Adjustment Fund (MEAF), which assists business entities located in the State with modernization of manufacturing operations, the development of commercial applications for technology, and exploration of new markets.

Maryland Department of the Environment (MDE)

The following MDE programs are subject to PFA restrictions:

- The Maryland Water Quality Revolving Loan Fund (MWQRLF), which provides financial assistance to local governments and private citizens for a wide variety of projects to protect or improve the quality of Maryland’s rivers, streams, lakes, the Chesapeake Bay and other water resources.
- The Drinking Water Supply Financial Assistance Program, which provides financial assistance to local governments for the acquisition, construction, rehabilitation, and improvement of publicly owned water supply facilities throughout the State.

- The Supplemental Assistance Program, which provides grants to local governments for planning, design, and construction of needed wastewater facilities.
- Maryland Drinking Water Revolving Loan Fund (MDWRLF), which provides financial assistance to local governments and private citizens to protect or improve the quality of community water systems and ensure their compliance with national primary drinking water standards.

Maryland Department of Transportation (MDOT)

For MDOT, “growth-related” projects include all major capital projects, defined as “any new, expanded, or significantly improved facility or service that involves planning, environmental studies, design, right-of-way, construction, or purchase of essential equipment related to the facility or service.” MDOT lists such projects in its Consolidated Transportation Program (CTP) as “Major Projects,” and details the PFA status of each project as part of that report.

MDOT’s modal administrations that undertake major capital projects for which PFA restrictions apply include the State Highway Administration (SHA), the Maryland Transit Administration (MTA), the Maryland Aviation Administration (MAA), the Maryland Port Administration (MPA), the Motor Vehicle Administration (MVA), The Secretary’s Office (TSO), and payments to the Washington Metro Area Transit Authority (WMATA).

Transportation projects that are explicitly excluded from PFA restrictions include existing Maryland Transportation Authority (MDTA) facilities projects, project planning, initial project planning, and “Minor Capital Projects,” which are projects for the preservation and rehabilitation of existing facilities or services that do not increase capacity.

It should also be noted that a number of MDOT’s capital projects are not location-specific, meaning that they involve system-wide improvements, such as local transit assistance programs and transit vehicle acquisition by MTA, and facility management system improvements by MVA.

Maryland Historical Trust (MHT)

Though not required to do so by law, MHT voluntarily restricts certain of its programs to PFAs in order to further the aims of Smart Growth.

Growth-Related Projects NOT Subject to the PFA Law

The Smart Growth Act allows for growth-related projects located outside the Priority Funding Areas to receive state funding if specifically approved under certain circumstances by the Maryland Board of Public Works (BPW) (see Section 5-7B-05 of the State Finance and Procurement Article) or if the project: (1) is necessary “to protect public health or safety”; (2) involves federal funds and if compliance with the Smart Growth Act would conflict or be inconsistent with federal law; or (3) is a “growth-related project related to a commercial or industrial activity, which, due to its operational or physical characteristics, [must] be located away from other development.” Section 5-7B-06.

Further, the law explicitly exempts projects for “maintenance, repair, additions, or renovations to existing facilities, acquisition of land for telecommunications towers, parks, conservation and open space, and acquisition of agricultural, conservation, and historic easements.” Section 5-7B-01(c)(2).

Planning Law

Legal Authority – Zoning Law

This course element will examine the following topics:

- Sources of land use law in the U.S.
- Legal and constitutional constraints on land regulation
- Basic concepts, tools and procedures in zoning
- State law including variances, ordinances and vesting

Five Sources of Law in the U.S.

- U.S. and State Constitutions
- Statutes and ordinances
- Case law
- Administrative regulations
- Administrative cases

Regarding land use planning, constitutions, statutes and ordinances, and case laws are the most important sources of law.

Constitutional Enabling Authority for Land Use Regulation and Limitations on Powers

The U.S. Constitution

10th Amendment to the U.S. Constitution: “Powers not delegated to the U.S. by the Constitution or prohibited to it by the States, are reserved by the States respectively, or to the people.” Included in these powers are:

- Police Power: governmental authority to regulate in order to protect public health, safety, and welfare. Police power is the basis for zoning and other land use regulations. This power is reserved by the States under the 10th Amendment, but can be delegated to local governments through state constitution and statutes. The Maryland General Assembly has delegated to local jurisdictions the power to plan and zone through former-Article 66B, Article 25A, and Article 28 of the Annotated Code of Maryland. The applicable delegation provisions are now codified in the Land Use Article.
- Eminent Domain: governmental authority to take land for public use, subject to provisions of the 5th and 14th Amendments to the U.S. Constitution (see below), and to provisions of state constitutions.

5th Amendment to the U.S. Constitution: “. . . nor shall any person be deprived of . . . property without due process of law; nor shall private property be taken without just compensation.”

- When the impacts/consequences of a regulation under the police power becomes too onerous on a property owner, a “taking” of property may occur. Generally, “takings” occur when a property owner is deprived of “reasonable and significant use” of the property. Alleged “takings” are litigated and enforced through court action.

Due process under the 5th Amendment consists of substantive due process and procedural due process.

- Substantive due process: government action must pass a three-fold test: (1) the action must be for a valid police power purpose; (2) there must be a rational connection between the goals of the government action and the means used to achieve those goals; and (3) the action must not be confiscatory (see further discussion of “takings”, below.)
- Procedural due process: Citizens have the right to notice of pending government action; public hearing, cross examination, creation of a record; a written determination; and appeal. The exact nature of process due varies with the nature of the government action in question. Lesser degrees of procedural due process

are required in legislative proceedings, such as the adoption of comprehensive plans, and the enactment of comprehensive zoning or zoning text amendments. Higher degrees of procedural due process are required for actions that are more specific to an individual person or property, such as considerations of zoning variances, special exceptions, subdivision and site plan approvals, and permit appeals.

14th Amendment: “. . . nor shall any State deprive any person of property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” This amendment extends the requirements of the 5th Amendment to state governments.

- The equal protection standard requires that any distinctions or classifications made by regulations between groups or individuals must give similar treatment to persons in similar situations with respect to the purposes of the law. Differing classifications are permitted if they are rational, non-arbitrary, and reasonable in relation to the objectives of the law or regulation. Classifications based on suspect classes (race, national origin, ancestry) or fundamental rights (First Amendment rights, right to vote, right to interstate travel, etc) are subject to strict scrutiny by the court and are unlikely to be upheld. In a zoning context, for example, it is constitutional for a government to place land within its jurisdiction into varying zoning categories such that owners in different categories have different development rights, but owners with properties in the same zoning category must be subject to the same regulations.

State Constitutions

- Regarding the powers of eminent domain, Maryland's Constitution,
- Article II, Section 40, states that “[t]he General Assembly shall enact no law authorizing private property to be taken for public use without just compensation.”
- Each state constitution has a bill of rights that is subject to interpretation by its state courts.

Statutes (Maryland Examples of Enabling Authority)

- Local Government Article (former Article 25A) – Enables charter counties to enact local planning and zoning laws.
- Land Use Article, Division II (former Article 28) – Establishes Bi-county, Maryland-National Capital Park and Planning Commission for Montgomery and Prince George's Counties to implement planning, zoning and subdivision.
- Land Use Article, Division I (former Article 66B) – Enables jurisdictions not covered by Article 25A and Article 28 – non-charter counties and municipalities -- to
- implement planning, zoning and subdivision.
- Land Use Article, Division I, applies to charter counties, including Montgomery and Prince George's counties, in specific areas such as required and optional elements for comprehensive plans. Section 1-401 lists all of the sections of Division I that apply to charter counties.
- Other planning-related state statutes relate to required water and sewer planning, smart growth, stormwater management, forest conservation, non-tidal wetlands, tidal wetlands, endangered species, floodplain management, etc.

Federal and State Court Rulings with Respect to Key Land Use Planning Issues

Is zoning a Constitutional use of the “police power”?

In *Euclid v. Ambler Realty Co.*, 272

U.S. 365 (1926), the first U.S. Supreme Court case that tested of the constitutionality of zoning, the Court ruled that zoning is a valid use of the police power and does not constitute a taking when it is not done in an arbitrary and capricious manner. There must be a “rational basis” for zoning determinations.

What constitutes legitimate use of the power of eminent domain?

Ordinarily, the power of eminent domain is considered in the context of government taking private property to build a road, government building, or for some other traditional public use or purpose. But, in a 1954 U.S. Supreme Court case, *Berman vs. Parker*, 348 U.S. 26 (1954), the Court established aesthetics and redevelopment as valid public purposes under eminent domain.

- In 1981, the Michigan Supreme Court ruled in *Poletown Neighborhood Council v. City of Detroit* 410 Mich. 616 (1981), that the City of Detroit could use eminent domain to condemn hundreds of properties, including 1,300 homes, 140 businesses, 6 churches and a hospital, in order to convey the land to General Motors for redevelopment and construction of a Cadillac plant. The court determined that such action was a “public use” for constitutional takings purposes because the company’s operations would contribute to the health of the city’s economy.
- In 2005, the U.S. Supreme Court, in *Kelo v. New London Conn.*, 545 U.S. 469 (2005), concluded, in a 5-4 decision, that economic development was a legitimate public purpose for a local government’s use of the eminent domain power. In *Kelo*, a group of New London, CT residents challenged the city’s use of eminent domain to seize homes to make way for a hotel-office-retail complex. Even though the property was not blighted, the city claimed that the land could be put to a much better use, with widely- shared benefits.

When is a regulation under the police power so onerous that a “regulatory taking” has occurred?

In *Pennsylvania Coal v. Mahon*, 260 U.S. 393 (1922), the Supreme Court ruled that a regulation “that goes too far” will be considered a taking. The Court, however, did not specifically define what “going too far” means. The Supreme Court has since regularly grappled with the issue and better-defined what sorts of regulations will amount to a “taking” of property:

- In *Lucas v. the South Carolina Coastal Council*, 505 U.S. 1003 (1992), the Supreme Court ruled that a taking occurs when a regulation denies a landowner of all economically viable use of land. There, the South Carolina’s newly-enacted coastal zone law prohibited all new construction on the landowner’s property, which the Court found to be a taking because the landowner had purchased the property for the specific purpose of residential development.
- In *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), the Supreme Court ruled that a moratorium on development imposed in order to give a local government time to prepare a comprehensive plan is not a taking per se. This case also established that the question of whether a “taking” occurs requires looking at potential uses on the whole tract, not just a portion of it.
- The Consequence of a Taking – In its 1987 decision in *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987), the Supreme Court concluded that the just compensation clause of the 5th Amendment, as applied to the states through the 14th Amendment, entitles a landowner to recover monetary damages (rather than simply an invalidation of the regulation) when a court finds the regulation is a “taking.”

When is an exaction or dedication, as a condition of permit approval, a taking?

- In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the Court ruled that there must be a “rational nexus” between the exaction required for permit approval and the legitimate government purpose to be served by the exaction. There, the Court found that there was not a rational nexus between the Coastal Commission’s requirements for a beachfront easement on the Nollans’ property and the Commission’s objective of providing “visual access” to the beach for the public.
- In *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the Court ruled that there must “rough proportionality” in nature and degree between the impacts of a proposed development and the impact-related exactions imposed by government on a landowner as a condition of development approval.

What is an example of how Maryland courts have interpreted “takings” with regard to the Maryland constitution?

In *City of Annapolis v. Waterman*, 357 Md. 484 (2000), the court established two, two-part takings tests. For regulatory takings, the test is whether the regulation a) is for a valid public purpose; and b) leaves the owner with some viable use of the parcel (as in *Lucas*). For exactions, the test is whether a) there is an essential nexus (per *Dolan*); and b) rough proportionality (as in *Nollan*).

Basic Concepts and Tools of Zoning

Authority for zoning

Prior to zoning, land use control had been limited to common law concepts of nuisance and restrictive covenants (voluntary agreements). In 1926, New York City was the first big city to introduce city-wide zoning. In 1924, the U.S. Department of Commerce issued a Standard State Zoning Enabling Act, as a template for state governments to use to enable local governments to zone. The U.S. Supreme Court's 1926 decision in *Euclid v. Ambler* led to the proliferation of local zoning.

The zoning ordinance

A zoning ordinance consists of text and maps. Traditionally, ordinances relied on “Euclidean zones” that segregated land uses in order to separate incompatible land uses and to protect property values.

More recently, zoning ordinances have evolved to permit some mixing of uses through floating zones, performance zoning, and planned unit developments.

By right

Uses in a given zone are “by right” and others are conditional (or by special exception). Zoning ordinances also regulate density, building height, and bulk of building on the land.

Rezoning

A comprehensive re-zoning is a legislative act, while “piecemeal,” or individual rezoning, may be either quasi-judicial or quasi-legislative.

Change or Mistake Rule

Piecemeal or individual rezoning (in Euclidean or traditional zones) is governed by a “change-mistake” rule in Maryland. Zoning done on a piecemeal or individual basis is only permitted when there is a mistake in the zone or a change in the character of a neighborhood, and the burden of proof is on the applicant. In such cases, Maryland law permits, but does not require, the local government to rezone (unless not doing so would be “confiscatory”).

Special Exceptions

A special exception, or conditional use, is the granting of a specific use that is generally not appropriate within a given zone. The requested use must be compatible with the existing neighborhood, and must be consistent with or have consistency with the zoning ordinance. (Note: the terms “special exception” and “conditional use” are terms used similarly in Maryland, per *Schultz v. Pritts*, 291 Md. 1 (1981)). In non-charter counties and municipalities, a special exception must be consistent with, and not contrary to, the local comprehensive plan. See Section 1-303 of the Land Use Article. For charter counties, requirements for the grant of special exceptions are generally set forth in the charter or ordinance, which may or may not require consistency with the local comprehensive plan.

Variances

As defined in the Land Use Article for non-charter counties and municipalities, variances are modifications to density, bulk or area requirements. These may be granted due to “conditions peculiar to the property,” and may not be contrary to the public interest. The “peculiar conditions” cannot be the result of actions taken by the applicant, and variances are granted in cases in which literal enforcement of the zoning ordinance would result in either unnecessary hardship or practical difficulty.

Standards for granting variances in charter counties are generally defined in the charter or ordinance.

Hearing Procedure

Procedural aspects of hearings and decision-making are critical. Procedural due process requirements must be met, including the ability of an applicant to present testimony and evidence at a hearing. Administrative agencies are not bound by the technical rules of evidence and other procedures applicable to judicial proceedings, but administrative agency decisions must be based upon “substantial evidence” presented at hearing.

Appeals

Appeals are allowed from certain local land use decisions and orders. Appeal procedure for non-charter counties and municipalities are established Title 4 of the Land Use Article, and for charter counties in local charter or ordinance. The doctrine of “exhaustion of administrative remedies” applies when a property owner seeks an appeal in court. The party must have “standing” to appeal, meaning that the “aggrieved” party must be affected by the decision in some way different from the general public. Some charter counties, through ordinance, allow parties, other than those that have standing, to appeal certain decisions. The standard for judicial review of an agency decision is the “fairly debatable” or “clearly erroneous” test: a court will not set aside the decision of an administrative agency unless it is predicated upon an erroneous application of the law or not supported by “substantial evidence.” See *Anne Arundel County v. 2020C West Street*, 656 A.2d 341 (1994).

Subdivision

In non-charter counties and municipalities, authority for subdivision approval is with the planning commission. In charter counties, the person/body responsible for subdivision approval is set by ordinance. Subdivision regulations must conform to relevant provisions of the comprehensive plan.

Vesting

A property owner is permitted to move forward with a development proposal even though a change in the applicable law might prevent such development if the development proposal is vested. Cases on vesting in Maryland include: *Pemberton v. Montgomery County*, 275 Md. 363 (1975) and *Prince George's County v. Sunrise Development L.P.*, 330 Md. 296 (1993). To claim a vested right in Maryland, a property owner must meet a two-part test:

- The property owner must have followed either existing procedures and laws or the representations of government agents (generally this means spending money to progress through the development process); and
- The property owner must have made changes to the property that can be discerned as a manifestation of the commencement of work, thereby giving notice to the public. Generally, this means that some kind of construction has occurred on the property, such as digging and the pouring of footings.

Module One: Review Questions

1. Over the next twenty years (2010 - 2030) it is expected that Maryland will grow by:
 - A. 1 million new residents.
 - B. 400,000 additional households.
 - C. 600,000 new jobs.
 - D. All of the Above.
2. Maryland's twelve planning visions include which of the following?
 - A. Housing, public participation and economic development.
 - B. Growth Areas, adequate shopping and resource conservation.
 - C. Environmental protection, community design and safe beaches.
 - D. Right to Farm, transportation and planning implementation.
3. Eminent Domain is best defined as?
 - A. A land use law that's about to be enforced.
 - B. The government right to taxation.
 - C. Government taking private property to build a road, government building or other valid public purpose.
 - D. When private lands are lost due to flooding or erosion.
4. In Maryland for non-charter counties and municipalities, authority for subdivision approval rests with:
 - A. Subdivisions are not approved.
 - B. The planning commission.
 - C. Independent Board of Subdivision Review.
 - D. Zoning Appeals Board.
5. The purpose of Euclidian zoning is to:
 - A. Divide a community into equal amounts of land uses.
 - B. Create concentric rings of land uses around the community core.
 - C. Segregate land use in order to separate incompatible land use and protect property values.
 - D. All of the above.

Planning Commission, PlanningBoard and Board of Appeals Education Course

Developed pursuant to Section 1-206 of the Land Use Article, Annotated Code of Maryland.

