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ZONING IN SUBURBIA

by DONALD FOHRMAN*

I. THE PROBLEM

The suburban landowner who desires to use or develop his property for a purpose prohibited by a local zoning ordinance faces the deluge of inconsistencies and inequities in local administrative agencies. Although the aggrieved landowner can usually seek vindication of his rights through judicial review of local zoning appeals decisions,¹ he, nevertheless, due to the injustices of local administrative proceedings and the judiciary's reluctance to assume dominant control over zoning disputes, may never receive a fair and equitable adjudication of his rights. This article will first focus on the plight of a hypothetical Illinois suburbanite seeking rezoning of his property, presently zoned for single-family dwellings, to permit the construction of a large and profitable apartment complex. This produces vehement opposition from the adjacent property owners who envision their security, financial investment, and safety to be in grave danger. Hence, the prospect of the invasion of an apartment complex into the suburb, composed predominantly of single-family dwellings, provides the impetus for exposing the central issues and problems which face the parties to zoning disputes in Illinois' administrative agencies and courts.

A. ECONOMIC INCENTIVES

In the present economic and legal climate, incentives are available not only to the suburban landowner, but to the developer, investor, or lender as well. The ensuing discussion will include an enumeration and analysis of the various factors motivating and deterring the landowner, developer, and investor, and also the Illinois judiciary's pronouncements on the validity of the arguments espoused by these individuals.

(1) THE LANDOWNER

The price paid for open land in a suburban area is highly speculative, varying greatly with the expected density² of the

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¹ Administrative Review Act, ILL. REV. STAT. ch. 110, §264 (1967).

² For example, as a general rule, land bought for 15 cents per square foot for single family dwellings is worth 75 cents per square foot appraisal for apartments. Murray, *How To Make Money Building Apartment Houses*, HOUSE AND HOME, Oct. 1960, at 144.

development; the higher the permitted density, generally, the higher the land value. Since densities are usually higher in multi-family dwellings, it is generally of financial advantage for the suburban landowner to construct multi-family rather than single-family units on his property. However, the suburbanite whose property is located in a low density zoning district, permitting construction of single-family dwellings only, would be denied a building permit by the local enforcement official, building inspector, or town clerk for the development of a multi-family housing complex. Thus, in his quest for justice and financial remuneration for his property, the landowner could seek redress of his grievances from the local zoning board of appeals, since he is a "person aggrieved" as prescribed by the statute.³

Alternatively, however, the landowner could avoid a confrontation with the local administrative agency by bringing a direct judicial appeal alleging that the effect of the zoning ordinance as a whole is to constitutionally impair the value of his property and destroy its marketability.⁴ After expounding the above principle, the court in *Bright v. City of Evanston* proceeded to establish the premise for the exhaustion of the administrative remedies doctrine when it stated:

[W]here the claim is merely that the enforcement or application of a particular classification to the plaintiff's property is unlawful and void, and no attack is made against the ordinance as a whole, judicial relief is appropriate only after available administrative remedies have been exhausted.⁵

Notwithstanding the complexities involved in selecting the appropriate forum and remedy, the landowner's primary contention will be financial deprivation due to the application of the zoning ordinance. However, the Illinois courts have been for the most part hostile to plaintiffs who seek to invalidate local zoning ordinances or obtain an exemption from their application on the theory of financial hardship. In *Urann v. Village of Hinsdale*,⁶ the Supreme Court of Illinois upheld the validity of the Village's zoning ordinance where the plaintiff sought a reclassification of his property from single-family to multi-family dwellings in order to construct apartments. Expert witnesses testified that the lots would be worth \$200-\$250 a foot if zoned for single-family dwellings but \$350-\$400 a foot if zoned for apartments. Although the court balanced the respective interests of the landowner seeking to derive the greatest economic use of his property against the right of the adjacent residents

³ ILL. REV. STAT. ch. 24, §11-13-2 (1961).

⁴ *Bright v. City of Evanston*, 10 Ill. 2d 178, 139 N.E.2d 270 (1956).

⁵ *Id.* at 185, 139 N.E.2d at 274.

⁶ 30 Ill. 2d 170, 195 N.E.2d 643 (1964).

to secure the value of their property from diminution where extenuating circumstances exist,⁷ it still rejected the plaintiff's financial deprivation contention.

In contrast, the court in *Ehrlick v. Village of Wilmette*,⁸ through its injunctive power, abrogated the harsh and inequitable application of the zoning ordinance to the particular property of the plaintiff. Here the plaintiff-landowner's property was classified by the village zoning ordinance as within a residential district, even though it fronted on a business street and was opposite a railroad passenger station. The property was worth only about \$50 per front foot as residential property, as compared to \$350 to \$400 per front foot as apartment property.

From the foregoing discussion, it is evident that the suburban landowner contemplating the construction of apartments in contravention of local zoning ordinances will not prevail by asserting the theory of financial hardship, if: (1) the financial benefit accruing to him as a result of a zoning reclassification produces a corresponding decrease in the property values of the adjacent residents, or (2) he cannot prove that, due to extenuating circumstances, the strict application of the zoning ordinance would produce inequitable and severe financial consequences.

(2) DEVELOPER OR BUILDER

The builder or developer also has incentives to construct multi-family dwellings. The high cost of suburban land has effectively priced many prospective single-family dwelling purchasers out of the market and into the market for multi-family dwelling units. The housing shortage of the 1940s has given way to a surplus of single-family subdivision residences in many areas.⁹ Thus, the logical alternative for the real estate developer is the construction of apartment buildings.

The developer or builder who purchases suburban real estate subject to a pre-existing zoning classification prohibiting construction of apartment buildings will encounter some difficulty in securing effective and unprejudicial administrative and judicial relief. Opposition to the contract-vendee's right to relief is manifest by two primary theories. First, in order to comply with the jurisdictional requirements prescribed by the Illinois Enabling Act¹⁰ and most local zoning ordinances,¹¹ the claimant must be a "person aggrieved" by the application of the zoning ordinance to his property. Moreover, for the developer to achieve such a status he must be prepared to

⁷ See *Ehrlick v. Village of Wilmette*, 361 Ill. 213, 197 N.E. 567 (1935).

⁸ *Id.*

⁹ HHFA, Housing Statistics 23, Feb. 1963.

¹⁰ ILL. REV. STAT. ch. 24, §11-13 (1961).

¹¹ See Appendix, art. 16 §1.

show that he has sustained, or is immediately in danger of sustaining some direct injury as a result of the enforcement of the ordinance.¹² Further, it should be recognized that the standing required to question the validity of a zoning ordinance is much greater than the interest required to petition for amendment of such ordinance.¹³ Secondly, if the developer can sustain the burden of proving the requisite degree of direct injury, he may nevertheless be precluded access to an administrative agency or the courts if the purchase of land was conditioned upon rezoning of the property.

In *Jans v. City of Evanston*,¹⁴ conditional contract purchasers contemplating construction of a multiple dwelling housing development in an area presently zoned exclusively for single-family residence, sought a determination that the zoning ordinance as applied to the property was arbitrary and void. The court, in upholding the validity of the ordinance, stated that "the law in this state is clear that a purchaser under a contract conditioned upon rezoning has no standing to attack the validity of the zoning ordinance."¹⁵

Assuming an unconditional contract to purchase and proof of direct injury, the contract vendee may nevertheless be relegated to a relatively unfavorable position in challenging the validity of the zoning ordinance. However, in *LaSalle National Bank v. City of Evanston*,¹⁶ the Illinois Supreme Court declared an ordinance void which arbitrarily zoned the plaintiff's property for single-family rather than multi-family use. Even though the plaintiff's beneficiary purchased the land with full knowledge of the single-family zoning, the court nevertheless affirmed the plaintiff's right to attack the validity of the pre-existing restriction; but added the caveat that a purchaser who buys property subject to a previously imposed zoning restriction is not in as favorable a position as one who buys prior to rezoning in reliance upon the existing ordinance.

After the developer establishes his standing to attack the validity of the zoning ordinance, he will utilize essentially the same legal theories as those propounded by the landowner. However, if the local zoning authority can prove that the classification bears a "real and substantial" relationship to public health, welfare, or safety the ordinance will be upheld by the Illinois courts. In ascertaining the existence of this "real and substantial" relationship, the reviewing court will consider

¹² *Clark Oil and Refining Corp. v. City of Evanston*, 23 Ill. 2d 48, 177 N.E. 2d 191 (1961).

¹³ *Id.* at 51, 177 N.E.2d at 193.

¹⁴ 52 Ill. App. 2d 61, 201 N.E.2d 663 (1964).

¹⁵ *Id.* at 71.

¹⁶ 24 Ill. 2d 59, 179 N.E.2d 673 (1962).

numerous relevant factors, such as: (1) existing uses and zoning of nearby property, (2) the extent to which property values are diminished by the particular zoning restrictions, (3) the extent to which the destruction of property value promotes the health, safety, morals, or general welfare of the public, (4) the relative gain to the public as compared to the hardship imposed upon the individual property owner, (5) the suitability of the property for the zoned purposes, and (6) the length of time the property has been vacant as zoned, considered in the context of land development in the area.¹⁷ Even though these factors or modifications thereof are relatively standardized and consistently applied by the courts to determine the validity of local zoning ordinances, the actual determinations of the court are necessarily subjective, since each zoning case must be decided according to its own facts and circumstances.¹⁸ Hence, the suburban landowner and developer contemplating capitalization of the economic incentives associated with construction of multiple-dwelling units will encounter insurmountable difficulties in the formulation of coherent litigation plans, including legal theories, expert witnesses, and surveys, due to the effective absence of perceptible judicial standards for determining the validity of zoning ordinances.

(3) THE INVESTOR

The investor is also encouraged to invest in multi-family dwellings. Accelerated depreciation and a low capital gains tax provide tax incentives for apartment investors. The right to charge off high percentages of the original cost of a new building during the early years of the building's life substantially increases the net anticipated cash flow from the property during those years, thereby stimulating the construction of new buildings.¹⁹ In addition, the difference between the sale price of the building and the seller's cost, less the accelerated depreciation, is taxed only at the lower capital gains rate.²⁰

Indirectly, federal policies relating to lending institutions have also encouraged the construction of multi-dwelling housing in the suburbs. The statutes controlling the Federal Housing Authority and the policy of the Veterans Administration still favor single-family housing in suburban areas. Nevertheless, F.H.A. policy is not a dominating factor in the area of multiple-dwelling financing in the suburbs, since the numerous

¹⁷ *Brookhaven Plaza Corp. v. County of Du Page*, 72 Ill. App. 2d 224, 218 N.E.2d 257 (1966).

¹⁸ See note 4 *supra*.

¹⁹ INT. REV. CODE OF 1954, §167(B).

²⁰ *Id.* §1231.

small savings and loan associations, that have always invested in conventional uninsured loans, are the major source of debt capital for the suburbs.²¹ The small savings and loan associations are primarily concerned with the over concentration of single-family dwelling mortgages in their portfolios, as a result of the increasingly large number of mortgage foreclosures on single-family units which represent a threat to their financial stability. For example, in 1961 there were 73,074 non-farm real estate foreclosures in the United States, and 64,399 during the first nine months of 1962.²² In an effort to minimize this potential loss, the savings and loan associations are encouraging the construction of multi-family housing. Further, federal restrictions which had limited the extent of their investment in multi-family housing have been modified.²³ It can therefore be concluded that the requisite supply of capital for the construction of multi-dwelling units in the suburbs will be supplied by various financial institutions, primarily small savings and loan associations.

(4) DEMAND

Regardless of the number of incentives motivating the suburban landowner, developer or builder, and investor, the number of multi-family housing units that will be constructed is necessarily limited by their demand. The housing industry believes there is sufficient demand to support the continued construction of multi-dwelling units in the suburbs. The propositions supporting this conclusion are as follows:

1. People age thirty to forty buy homes, while age twenty to thirty rent apartments. Since the birth rate in the 1940s as compared to the 1930s was relatively high, during the 1970s there will be many potential tenants but few potential buyers;
2. Increased longevity coupled with social trends encourage these older people to occupy separate dwelling units rather than residing with their children. It is usually more convenient for older people to rent than buy, thus increasing the demand for multi-family housing for our elderly citizens.
3. Many industries are moving to the suburban

²¹ Babcock and Bosselman, *Suburban Zoning and the Apartment Boom*, 111 U. PA. L. REV. 1040 (1963).

²² Note 9 *supra*.

²³ Act of Oct. 9, 1962, Pub. L. No. 87-779, §1 (a), 76 STAT. 778, amending 24 U.S.C.A. §1464 (1961) (codified at 24 U.S.C.A. 1464(c) (1969)). Act of Oct. 9, 1962, Pub. L. No. 87-779, §2, 76 STAT. 779, amending 24 U.S.C.A. §1422 (1961) (codified at 24 U.S.C.A. 1422(1) (1969)).

areas. Since their employees naturally desire to live near their place of employment and cannot afford expensive housing, they will look for suburban multi-family housing.

4. The demand for multi-family housing should broaden because of the increased variety in the types of multi-family housing now being constructed, including low-density row houses, garden apartments, suburban high rises, and condominiums.
5. Finally, multi-family housing is now being constructed which provides for child care services and fresh air and quiet, which were previously associated only with single-family housing. Moreover, the suburban high rise cooperative affords luxury living in the suburbs which has never previously been available in multi-family dwellings.²⁴

B. SUBURBANITES' REACTION

The reaction of the individual suburbanite to the invasion of the apartment building into his community has not been entirely consistent, yet it is relatively safe to assume that the reaction of the majority of suburban residents will be hostile. In order to effectively evaluate the judicial attitude toward multi-family dwellings and promulgate possible solutions to the problems confronting the parties to zoning disputes, an analysis of the suburbanites' motives, both expressed and silent, logical and illogical, must be undertaken.

(1) OSTENSIBLE ARGUMENTS

The so-called "ostensible arguments" are those commonly shouted by irate suburban residents at local hearings and board of appeals meetings, legal theories espoused by municipal attorneys defending the validity of the zoning ordinance, and those incorporated in countless numbers of legal texts, reporters, and treatises. The subsequent discussion will focus on the most common arguments, providing some insight as to their internal consistency and the judiciary's determination of their validity.

(a) *Diminution of Property Values*

Owners of single-family residences surrounding proposed apartment development sites frequently argue that the value of their property will be adversely affected if the zoning law is modified to permit the construction of multi-family housing units. This argument seems inconsistent with the fact that

²⁴ See note 21 *supra*.

land values in most existing apartment areas are high, as previously discussed in the context of the landowner's incentives. Discounting the fact that the proximity of apartments often adds to the speculative value of the surrounding property, there is little evidence that an apartment per se will detract from the value of surrounding land.²⁵ Rather, the value of commercial property in the neighborhood will increase as a result of the influx of population residing in the apartments. The surrounding residents' argument of reduced property values is further diluted when considering the aesthetic value an artistically designed and well-constructed apartment complex can contribute to a community composed almost entirely of relatively standardized single-family dwellings.

One ramification of the "reduction in property value argument" is manifest in local zoning ordinances eliminating or restricting the location of apartment buildings. Notably, a few suburbs have attempted to prohibit all multiple dwellings within their corporate boundaries; however, in *Spenoni v. Board of Appeals of the City of Sterling*²⁶ the court expressly negated the validity of such a prohibition. Moreover, the court in upholding the validity of the zoning ordinance, which denied the plaintiff the right to construct an apartment building on his property, stated: ". . . a municipality may not expressly prohibit the erection of apartment buildings or restrict permissible locations to districts unfit for human habitation or already overcrowded with buildings of a permanent nature . . ." ²⁷

Some suburbs which seek to restrict the location of apartment buildings relegate multiple-family housing only to the second floors of buildings in commercial zones. For example, Lake Forest, Illinois, prior to a 1966 rezoning plan, prohibited the construction of apartment buildings unless the ground floor was occupied by stores or offices. Presently section 6 of the Lake Forest Zoning Ordinance provides for the construction of separate multi-dwelling structures upon a lot containing a minimum of 40,000 square feet. Further, more than one multi-dwelling structure may be erected on a lot, zoned "O-1" (office district); under certain prescribed conditions.²⁸

Another sophisticated device for restricting the location of apartment buildings in order to protect the property values of surrounding single-family homeowners is the "floating zone." This device is designed to give the community a chance to

²⁵ Shelger, *Technique of Analyzing Residential Areas*, REAL ESTATE APPRAISAL PRACTICE 51, 57 (1958).

²⁶ 368 Ill. 568, 15 N.E.2d 302 (1938).

²⁷ *Id.* at 572, 15 N.E.2d at 304.

²⁸ LAKE FOREST, ILL., CODE ch. 46 (1971). See Appendix, §6, ¶2.

scrutinize each specific proposal for multi-family development with a provision for a "floating zone" in the text of the local zoning ordinance, but without a corresponding district on the map.²⁹

A final restrictive device incorporated in local zoning ordinances is the so-called "buffer zone." This device provides that multi-family housing districts are to be inserted between single-family and commercial districts. In *Evanston Best & Co. v. Goodman*,³⁰ the court upheld the validity of the 1921 Evanston Zoning Ordinance establishing "buffer areas" on the ground that while the existence of such areas was not necessary, its creation was not an unreasonable exercise of police power.

The judicial ramification of the "reduction in property value argument" is manifest by the court's consistent recognition of the zoning of surrounding property and the depreciative effect on apartments as significant factors in determining the validity of local zoning ordinances.³¹ Recently, the validity of a local zoning ordinance restricting the interjection of multi-dwelling units into a predominantly single-family residential area, on the ground that such a restriction protected against depreciation of the surrounding land, was upheld on the basis that it had a reasonable relationship to the public welfare.³²

(b) *Tax Increase (Cost-revenue Analysis)*

Suburbanites frequently oppose the invasion of apartment complexes, reasoning that "since multi-family dwellings do not pay their own way, our taxes will be increased." From the limited number of local studies on this problem, it is clear that multi-family housing does not per se have any particular effect on municipal finances.³³ Rather, the real effect of apartments on municipal costs is still a disputed question, as indicated by the following two surveys: (1) a report which concluded that single-family homes cost more to serve than they pay, whereas apartments contribute to taxes over and above their costs to the county because of fewer school-age children; and (2) a study sponsored by School District #68 indicated that apartment use imposed a more serious drain on District #68's

²⁹ See *Rodgers v. Village of Tarrytown*, 302 N.Y. 115, 96 N.E.2d 731 (1951).

³⁰ 369 Ill. 207, 16 N.E.2d 131, (1938).

³¹ See *Viggiano v. City of Elmhurst*, 67 Ill. App. 2d 140, 213 N.E.2d 571 (1966) and *Mutual National Bank v. City of Chicago*, 75 Ill. App. 2d 102, 221 N.E.2d 116 (1966).

³² *Marquette National Bank v. Village of Oak Lawn*, 65 Ill. App. 2d 286, 212 N.E.2d 502 (1965).

³³ R. MACE, *MUNICIPAL COST REVENUE RESEARCH IN THE UNITED STATES* 71-123 (1961).

financial resources than did single-family residences.³⁴

These inconsistent results also tend to illustrate the inherent unreliability of cost-revenue surveys due to the absence of uniform criteria and procedures for their preparation. The relative ease with which the conclusions of cost-revenue surveys can be manipulated is illustrated by the fact that most of these studies are prepared by suburban municipalities in order to "make a case" for a predetermined course of action. They are designed specifically to provide a scientific basis for discouraging low and medium-priced residential uses.

Local legislatures, ignoring the above considerations, have enacted ordinances subjecting the permission to build apartments to the performance of conditions designed to make apartments pay their own way. One such technique is to require monetary payment or dedication of land for public purposes as a condition precedent to the issuance of a building permit. This device has consistently been opposed by Illinois courts as a valid tool for implementing the "increase in taxes argument."

In *Village of Downers Grove v. Rosen*,³⁵ the court lucidly illustrated the current position of the judiciary on the soundness of this device. Here a suit was brought by a developer who had been required, pursuant to the local zoning ordinance, to deposit in escrow \$325 for each lot sold as a condition to the approval of his subdivision plot. These funds were eventually to become the property of the school district. The court held this requirement invalid on the ground that the Illinois Enabling Statute³⁶ authorized only requirements of land dedication and not monetary charges. The court also held invalid another section of the ordinance which required dedication of land because it failed to fix adequate standards to effectively guide the planning commission in determining the amount of land to be dedicated. Subsequent to this decision, the Illinois legislature and most local municipalities deleted those sections relating to the establishment of or contribution to educational facilities.

A second device employed by some municipalities is to contract with developers who promise to dedicate land or pay money in exchange for the suburb's promise to approve the lot or provide improvements. In *Board of Education v. E. A. Herzog Construction Co.*,³⁷ the court, in applying estoppel principles, held that the plaintiff was entitled to specific performance of a

³⁴ Symposium, *The Legal Significance of Cost Considerations in the Regulation of Apartments by Suburbs*, 59 Nw. U.L. REV. 413 (1964).

³⁵ 19 Ill. 2d 448, 167 N.E.2d 230 (1960).

³⁶ [1949] Law of Illinois 456 (Repealed 1965).

³⁷ 29 Ill. App. 2d 138, 172 N.E.2d 645 (1961).

written contract, which provided that in exchange for the plaintiff's promise to persuade the Cook County Board to rezone the subdivision for residential use, the defendant would contribute \$95,000 to the school district for the contemplated construction of a new school. The court held that *Rosen* supported the plaintiff's contention that the Board of Education was authorized to enter into voluntary agreements with subdividers to accept payments to help defray the cost of erecting school buildings.³⁸ It seems that the *Herzog* court, instead of adopting the rationale of *Rosen*, was in effect circumventing it by distinguishing "voluntary" from "involuntary" payments and exactions made to local municipalities and those made to local school districts. It is difficult to determine voluntariness when the coercion imposed by the economic necessity of obtaining a building permit is considered.

A final device utilized by municipalities to pacify those suburbanites fearful of a tax increase, due to apartment construction in their community, is regulation aimed at increasing the apartment building's tax base. A typical ordinance may require that the building be located on a lot containing a minimum number of square feet per dwelling unit.³⁹ Ordinances of this variety, which tend to increase municipal revenue by building up the tax base, have been sustained by the Illinois courts.⁴⁰

It can reasonably be concluded that suburban communities desiring to restrict the development of apartments within their borders will encounter persistent judicial opposition to the use of such direct techniques as monetary conditions, land dedication and contracts. It is therefore evident that, under the present judicial climate in Illinois, suburban communities may lawfully apply only those preventive measures that are aimed at protecting the municipality's tax base.

(c) *Increase in Crime, Fire and Disease*

The argument that the influx of apartment buildings in the suburban community will increase crime, fire, or disease is manifest by the often-quoted phrase, "protection of public health, safety, morals, and welfare." In the landmark case of *Euclid v. Amber Realty Co.*,⁴¹ the Supreme Court of the United States sustained the constitutional right of municipalities to exercise their inherent police power to promulgate reasonable zoning ordinances. The Court stated that a zoning ordinance must be clearly arbitrary and unreasonable and without sub-

³⁸ *Id.* at 142, 172 N.E.2d at 647.

³⁹ See Appendix, 36 ¶1 (a).

⁴⁰ See *Reitman v. Village of River Forest*, 9 Ill. 2d 448, 137 N.E.2d 801 (1956).

⁴¹ 272 U.S. 365 (1926).

stantial relation to public health, safety, morals, or general welfare before it will be declared unconstitutional.⁴²

The Illinois Enabling Act⁴³ provides for the promotion of the "public health, safety, comfort, morals, and welfare." The typical local zoning ordinance also employs this phrase in connection with the approval by the Planning Commission of proposed apartment developments.⁴⁴ Hence, local municipalities, through the state's police power, can exclude or restrict the construction of apartment buildings, if they can conclusively prove a causal relationship between multiple-dwelling units and a proportionate, or even unproportionate, increase in crime, fire, or disease. However, no reported case to date has upheld the exclusion of an apartment building based on substantial evidence of such a causal connection.

(d) *Increased Traffic Congestion*

The irate suburbanite frequently argues that the construction of apartment buildings necessarily contributes substantial numbers of motorists to already overcrowded city streets, causing considerable traffic congestion. The Supreme Court of Illinois, in *American Nat'l Bk. & Trust Co. v. County of Cook*,⁴⁵ held unconstitutional a single-family zoning classification on property upon which the plaintiff was contemplating construction of apartment buildings. In response to the defendant's allegation of increased traffic as a result of the proposed construction of the apartment building, the plaintiff's expert witness testified that traffic would be no greater for the proposed multi-dwelling than it would be for single-family dwellings. The court resolved the issue by stating that the probability of increased traffic was not sufficiently related to the proposed multiple dwelling to justify the single-family classification. Further, the court in *LaSalle Nat'l Bk. v. Village of Skokie*⁴⁶ held that even though traffic is a factor in zoning, it is not in itself entitled to much weight, since it is merely representative of an increasingly more aggravated problem in all but the most sheltered neighborhoods.

Although various local government legislatures have taken cognizance of the problem by incorporating in the zoning ordinance provisions relating to "congestion in public streets" as a factor determining the propriety of proposed apartment developments,⁴⁷ the possibility of increased traffic congestion continues

⁴² *Id.*

⁴³ ILL. REV. STAT. ch. 24, §11-13-1 (1971); Appendix A.

⁴⁴ LAKE FOREST, ILL. CODE ch. 46 (1971). See Appendix, §6, ¶2(b).

⁴⁵ 27 Ill. 2d 468, 189 N.E.2d 305 (1963).

⁴⁶ 26 Ill. 2d 143, 186 N.E.2d 46 (1962).

⁴⁷ LAKE FOREST, ILL. CODE ch. 46 (1971). See Appendix, §6, ¶2(b,3).

to play a relatively insignificant role in determining the validity of a particular zoning classification.

(e) *Degradation of the "Character"
of the Neighborhood*

Suburbanites contend that the "character" of their community must be protected from degradation resulting from the invasion of apartments. The Illinois judiciary has recognized this argument in the context of determining whether a purported exercise of the police power is so unreasonable and confiscatory as to constitute an unlawful invasion of property.⁴⁸

In conjunction with the "character" argument, suburbanites demand the right to regulate the aesthetics of their community. Until recently, aesthetic considerations have provided an insufficient legal basis for the invasion of property rights via local zoning ordinances.⁴⁹

In *Neef v. City of Springfield*,⁵⁰ the plaintiff sought an injunction to bar enforcement of the zoning ordinance prohibiting the construction of a filling station in a residential zone in which an intensive beautification program had been initiated. The court, in discounting the aesthetic factor as a determinant of the validity of the classification, stated:

[T]he question here . . . is whether or not, disregarding the evidence relating to the beauty of the neighborhood and the streets and other aesthetic purposes, the ordinance should be sustained on the grounds of public health, safety, morals and of general welfare.⁵¹

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In 1952, Lake Forest, Illinois provided the impetus for the regulation of the aesthetics of buildings constructed in that suburb. The rationale for the regulation is stated in the ordinance itself: "Excessive similarity, dissimilarity or inappropriateness in exterior design and appearance of new buildings adversely affects neighboring areas."⁵² The regulation provides that when the Director of Building and Zoning in Lake Forest believes that a proposed building may produce a harmful effect on the community, he then refers the question to the Building Review Board. The Board has authority to make recommendations on the question of similarity and dissimilarity along with

⁴⁸ See *Galt v. County of Cook*, 405 Ill. 396, 91 N.E.2d 395 (1950), for a discussion of the due process and equal protection in this area.

⁴⁹ See *Forbes v. Hubbard*, 348 Ill. 166 at 181; 180 N.E. 767 at 773 (1932).
⁵⁰ 380 Ill. 275, 43 N.E.2d 947 (1942).

⁵¹ *Id.* at 280, 43 N.E.2d at 950.

⁵² See CHICAGO DAILY NEWS, Feb. 28, 1969 at 17, col. 1.

the quality of architectural design, landscaping, and construction material.⁵³

Shortly after Lake Forest enacted the amendment regulating the aesthetics of buildings, the towns of Glenview and Winnetka, Illinois also amended their zoning regulation, providing for control over the appearance of new buildings in their communities. According to the Superintendent of Public Works of Winnetka, the restrictions on the appearance of buildings are made to "maintain certain characteristics of the community and eliminate others."⁵⁴ At the date of this writing, there have been no reported cases testing the validity of these "appearance codes."

The suburbanites' hostility toward the construction of apartment buildings and their seemingly genuine desire to regulate community appearances can produce interesting paradoxes. For example, in the early 1960s, Lake Forest amended its zoning ordinance to permit the construction of new college dormitories both at Lake Forest College and at Barat College, while at the same time resisting by various means the construction of apartments. The rejected apartments would have produced substantial tax revenues; they would have been consistently occupied throughout the year; they would have been occupied by middle-income wage earners; and the apartments would have maintained the *character* of the neighborhood in which they were built. On the other hand, the college dormitories are tax exempt and put a heavy burden on municipal services; they are unoccupied targets for vandalism for several months out of the year; they are occupied by an inherently unstable and "obnoxious" element; and they differ sharply in style and appearance from the large single-family residences adjacent to the campuses.⁵⁵

The glaring inconsistencies in the suburban zoning policy illustrated by the above situation could serve as valuable evidence for the proposition that the commonly articulated arguments as to the odious effects of apartments, particularly the alleged decrease in property values, increased taxes and traffic, and degradation of the "character" of the community are merely a subterfuge for the suburbanites' latent motives for opposing the invasion of apartment buildings.

(2) LATENT OBJECTIONS

The latent objections are those which are rarely mentioned at local zoning meetings, rarely transcribed in the record of

⁵³ CHICAGO DAILY NEWS, Feb. 21, 1969 at 22, col. 1.

⁵⁴ *Id.*

⁵⁵ Symposium, *Aesthetic Control of Land Use, A House Built Upon the Sand*, 59 NW. U.L. REV. 372, n.22 (1964).

judicial proceedings, and usually described abstractly in sociology textbooks and treatises. Due to the inherent nature of these objections, documentation of their existence and effect is necessarily inadequate; nevertheless, a brief analysis is essential for apprehension of the deep-rooted problems facing zoning litigants in Illinois today.

(a) *Increased Influx of Transients*

Traditionally, residents of rental housing have had higher mobility ratios than home-owners.⁵⁶ When the home-owner decides to move, a buyer must first be found and the title transferred, which is often time consuming and expensive. It would seem logical that persons contemplating moving in the near future would choose the short-term lease rather than the mortgage as the appropriate form of tenure. However, this trend has subsided, and today the mobility rate of owner-occupants is much closer to that of tenants than it has been in the past.⁵⁷ Due to the wide variety in types of multi-family housing now being built in the suburbs, it is difficult to generalize concerning both the influx and subsequent migration of transients. For example, the high-rise suburban condominium or high-rise cooperative possesses the identical stabilizing attributes of the single-family residence, including high prices and correspondingly high mortgages. Also, large multi-family housing complexes for elderly citizens are characterized by their stabilizing attributes, since potential mobility is not great. Thus, the validity of the suburbanites' argument that apartments attract transients who have no local interest is negated by the fact that a multi-family dweller is no longer a standardized "tenant."⁵⁸

(b) *Influx of Blacks and Other Minority Groups*

The typical suburbanite can be heard to say: "If we permit them to build apartment buildings in our community they will soon be renting them to Blacks." Disregarding moral and social issues involved in this argument, the suburbanites' prophecy could eventually become a reality. The increasing social pressure against racial discrimination in housing is currently exhibited in "open occupancy" and other similar legislation designed to eradicate ghettos. Even though this movement is most active in the central city, the urban fringes cannot be expected to hold out indefinitely against this pattern.⁵⁹

⁵⁶ Foote, Abu-Lug-Lod, Foley, Winnick, HOUSING CHOICES AND HOUSING CONSTRAINTS, 143 (1960).

⁵⁷ *Id.*

⁵⁸ See *Jacobson v. Village of Wilmette*, 403 Ill. 250, 85 N.E.2d 753 (1949).

⁵⁹ See *McEntire, Residence and Race*, 107 (1960).

When the suburban-housing discrimination barrier is scaled, more economic apartment-type accommodations will be necessary to meet the demand of the less affluent minority groups.

The above cursory examination intimates that the actual reasons behind the suburbanites' hostility toward the advent of the apartment building in their community often lies in areas outside the scope of judicial or legislative regulation.

II. CONFRONTATION

An inevitable conflict results when the suburban landowner, motivated by the prospect of substantial monetary remuneration, attempts to construct an apartment building in an area presently zoned exclusively for single-family residence. The confrontation between the landowner and the local zoning ordinance, representing the prejudices, fears, and financial investment of thousands of irate suburbanites effectively commences at the local zoning board of appeals meeting.

A. LOCAL ZONING BOARD OF APPEALS

(1) FORMAL PROCEDURES (ILLINOIS ENABLING ACT)

Local zoning boards of appeals are granted jurisdiction by the Illinois Enabling Act⁶⁰ to entertain appeals from actions of enforcement officers and to hear appeals for variance to relieve "practical difficulties or particular hardship."⁶¹

In addition to the above jurisdictional requirements, the Act specifies the parties entitled to appeal to the local zoning board. Appeals may be taken to the board by "any person aggrieved or by any officer, department, board, or bureau of the municipality."⁶² Although no Illinois decision has concisely articulated who is a "person aggrieved," New York, whose enabling statute is similar to Illinois', has held that the owner of property who has been denied a permit and who alleges a misinterpretation of the ordinance provisions by the enforcement official or seeks a variance from the ordinance with respect to his particular property, would be a "person aggrieved" within the meaning of the ordinance, as would the board of trustees of a municipality or a mayor challenging the decision of an administrative officer.⁶³ Also, in *Babitzke v. Village of Harvester*,⁶⁴ a party executing a binding contract for the pur-

⁶⁰ ILL. REV. STAT. ch. 24, §11-13-3(d) (1971).

⁶¹ *Id.* §11-13-5.

⁶² *Id.* §11-13-12.

⁶³ *Tarrant v. Incorporated Village of Roslyn*, 19 Misc. 2d 238, 187 N.Y.S.2d 133 (Sup. Ct. 1959), *aff'd*, 104 App. Div. 2d 37; 197 N.Y.S.2d 317 (1960), *aff'd*, 8 N.Y.2d 1129; 9 N.Y.S.2d 813, 171 N.E.2d 983 (1960).

⁶⁴ 32 Ill. App. 2d 289, 177 N.E.2d 644 (1961).

chase of realty, conditioned on the grant of a zoning variance, was held to have sufficient interest to apply for the variance.

The Illinois Enabling Act gives the local zoning boards of appeals the jurisdiction to grant or recommend variations to the legislature. The variation is a technique used to relieve the impact of the zoning ordinance in cases where a "unique hardship" would result to the owner because of the limitation placed on the use of his property. The grant of a variation⁶⁵ must be based on a finding that "practical difficulties or particular hardship" exist due to the strict enforcement of the ordinance against the particular parcel of real estate. Nevertheless, in *Welton v. Hamilton*,⁶⁶ the Supreme Court of Illinois held that the grant of power to an administrative agency to allow variations was an unconstitutional delegation of legislative power without adequate standards. The decision did not apply to variations granted by the local legislative bodies; thus, many local governments circumvented the *Welton* barrier by delegating to the zoning board of appeals the duty to hold the necessary public hearings on a variation, after which the board would recommend adoption or rejection of the variation to the legislative body.⁶⁷

However, in *Lindburg v. Zoning Board of Appeals*,⁶⁸ the Illinois Supreme Court itself circumvented the *Welton* mandate, and finally, in 1967, the Illinois State Legislature ignored the decision when it amended the Enabling Act to provide that in municipalities of over 500,000 population, *only* the board of zoning appeals could grant variations.⁶⁹ Even though the amendment effectively revoked the power of the local legislature to grant variations, it also recognized the power of the local zoning ordinance, enacted by the legislature, to limit the grant of variations by the board of zoning appeals.⁷⁰ In municipalities of less than 500,000 population, variations could be granted either by the zoning board of appeals or the local legislature, depending on the language of the local zoning ordinance.⁷¹ Depending on such factors as the population of the municipality, the location of the property, and local administrative policies, it would appear that the variation may be granted by the local legislative body or an administrative zoning board of appeals.

The Act sets up various standards relating to zoning board of appeals membership. For example, it specifies the number of

⁶⁵ ILL. REV. STAT. ch. 24, §11-13-5 (1971).

⁶⁶ 344 Ill. 82, 176 N.E. 333 (1931).

⁶⁷ LAKE FOREST, ILL., CODE ch. 46 (1971).

⁶⁸ 8 Ill. 2d 254, 133 N.E.2d 266 (1956).

⁶⁹ ILL. REV. STAT. ch. 24, §11-13-4 (1971).

⁷⁰ *Id.*

⁷¹ *Id.* at §11-13-5 (1971), See Appendix, art. 16, §3.

members, the length of their terms, the procedure for the calling of meetings, and the necessary vote for the reversal of a decision of an administrative official.⁷² However, to the detriment of the landowner requesting a hearing on the merits of his grievances by an impartial and knowledgeable panel, there are no requirements in the Enabling Act concerning the knowledge or experience of the board members. Moreover, this problem is compounded by the fact that the zoning board members are usually appointed by the mayor of the local municipality, confirmed by the legislative body, and subject to removal only "for cause" by the mayor or the local legislative body.⁷³ Hence, the resolution of complex legal, economic, and social issues is seemingly entrusted to a legally and procedurally uneducated body.

(2) INFORMAL PROCEDURES

The inequities endured by the aggrieved landowner at the administrative level are not primarily a consequence of the above formalities enumerated in the Enabling Act, but instead result from the virtual absence of formal procedures for the conducting of local zoning board proceedings. The Act justifiably gives substantive freedom to the municipalities, but improperly extends that latitude to administrative procedures. The Act authorizes each municipality to adopt and provide for the administration of its own zoning laws.⁷⁴ The restraints imposed upon the municipality in promulgating rules of procedure are minimal. For example, the meetings are required to be open to the public, minutes of the proceedings must be kept, a quorum must be present, and all rules and decisions of the board are to be filed for public record.⁷⁵ These requirements are wholly inadequate to guarantee a fair and orderly administrative hearing, as the subsequent discussion will indicate.

The Illinois Enabling Act provides that an appeal to the local zoning board is to be made by the filing of a notice of appeal, supported by the grounds thereof.⁷⁶ Generally, the purpose of the pleadings is to formulate issues and inform a litigant of his adversary's position so that he may properly prepare a defense and support his position. But, it should be noted that there is no provision in either the Act or local zoning ordinances requiring the municipality to file written objections prior to the hearing. Thus, the landowner must prove himself entitled to relief, or at least he is forced to divulge the legal

⁷² ILL. REV. STAT. ch. 24, §11-13-3 (1971).

⁷³ ILL. REV. STAT. ch. 24, §11-13-3 (1967), See Appendix, art. 16, §1.

⁷⁴ *Id.* §11-13-1.

⁷⁵ *Id.* §11-13-3.

⁷⁶ *Id.* §11-13-12.

basis of his cause of action knowing in advance what arguments may be raised and what evidence he will need to refute.

The local zoning board of appeals is an administrative agency, therefore, strict rules of evidence do not apply to its relatively informal proceedings.⁷⁷ Indicative of this informality, it was noted in *Rosenfield v. Zoning Board of Appeals of Chicago*⁷⁸ that the zoning board had refused to hear the testimony of an expert witness because, "we remember him," and the same board observed at the beginning of a hearing, "that we know all about this lot."

Another more serious problem confronting claimants in Illinois' administrative agencies is the lack of ethics, customarily deemed essential in any legal system through which substantial property rights must be settled. One such example was an oral directive by a zoning board employee concerning the anticipated future action of the administrative body which brought the plaintiff to court prematurely.⁷⁹ Also, members of the board of appeals have participated in hearings involving matters in which they had a direct interest.⁸⁰ Obviously, hidden interests in zoning disputes would not be consistent with basic due process requirements, but apparently this is a matter courts cannot consider. The court, in *Village of Justice v. James C. Jamieson*,⁸¹ in response to the plaintiff's allegation that employees of the zoning board had hidden interests in the zoning dispute, stated:

[W]hile the complaint makes charges involving employees of the County Board, no facts of which a court can take legal cognizance are presented. If there is substance to plaintiff's charges with respect to these employees, it is a matter for the County Board to consider and not for the courts.⁸²

Another unethical and unauthorized procedure of local zoning boards is the practice of the Cook County Board of Appeals to condition recommendation for amendments to the execution of restrictive covenants by the plaintiff.⁸³ The Illinois judiciary has intervened, however, where the local municipality had perpetrated a blatant injustice upon a zoning dispute claimant. In *Phillips Petroleum Co. v. City of Park Ridge*,⁸⁴

⁷⁷ *Flick v. Gately*, 328 Ill. App. 81, 65 N.E.2d 137 (1946).

⁷⁸ Ill. App. 2d 447, 154 N.E.2d 323 (1958).

⁷⁹ 13 Ill. 2d 493, 150 N.E.2d 97 (1958).

⁸⁰ 10 Ill. 2d 132, 139 N.E.2d 218 (1956); *cert. denied*, 353 U.S. 987, 358 U.S. 896 *rehearing denied*, 358 U.S. 913.

⁸¹ 7 Ill. App. 2d 113, 129 N.E.2d 269 (1955).

⁸² *Id.* at 118, 129 N.E.2d at 271.

⁸³ *Dallstream and Hunt, Variations, Exceptions and Special Uses*, 1954 U. ILL. L. FORUM 213, 236.

⁸⁴ 16 Ill. App. 2d 555, 149 N.E.2d 344 (1958).

the Illinois Appellate Court held the refusal to issue a permit for an allowed use, merely because the municipality wanted time to amend the ordinance to forbid the offending, but permitted use, was improper. Additional inequitable and unethical practices and procedures of local zoning boards of appeals in Illinois include: (1) no formal transcript of the proceedings; (2) board decisions based on unsworn testimony; (3) no examination by the board of the property in question; and (4) the delegation to one member of the power to conduct a hearing when the docket is full.⁸⁵ It can be concluded from the preceding discussion that the Illinois legislature's failure to establish comprehensive and uniform administrative procedures has produced a chaotic and inequitable system for resolving disputes between aggrieved landowners and the local zoning authorities.

B. JUDICIAL REVIEW OF THE LOCAL ZONING BOARD'S DECISION

The Illinois courts, in a concerted effort to avoid their functioning as a "super zoning commission," have abstained from exercising dominance over zoning controversies, and thereby have enhanced the local municipalities' administrative and legislative powers. Thus, the zoning litigant, appealing to the courts from an adverse decision by a disorganized and biased zoning board, will encounter several judicially created obstacles designed to preserve the integrity and authority of the local zoning boards. The Illinois Supreme Court⁸⁶ has articulated the court's function in zoning disputes by stating that "matters of policy, or the wisdom and desirability of a particular restraint, are not within the domain of judicial competence."⁸⁷ Moreover, it has held that judgments of municipal authorities, such as local zoning boards of appeals, will not be disturbed, unless they are shown to be arbitrary or unrelated to public welfare.

Another obstacle to an objective judicial determination is the presumption that the zoning board of appeals' findings of fact are prima facie true, and the courts will not disturb those findings unless they constitute an abuse of discretion.⁸⁸

If the petitioner did not have the foresight to engage the services of a reporter at the administrative hearing, his right to judicial review could be irreparably prejudiced. The Illinois Supreme Court has made it clear that persons who pursue

⁸⁵ Babcock, *The Unhappy State of Zoning Administration in Illinois*, 26 U. CHI. L. REV. 509 (1959).

⁸⁶ 10 Ill. 2d 178, 139 N.E.2d 270 (1956).

⁸⁷ *Id.* at 180, 139 N.E.2d at 272.

⁸⁸ Dawson v. Board of Appeals, 41 Ill. App. 2d 125, 190 N.E.2d 123 (1963).

relief from administrative channels must preserve a sufficient record at all stages of the proceedings.⁸⁹ If the administrative body fails to preserve a record, the proceeding is effective, and the circuit court will have no jurisdiction to commence a trial de novo; if the record is insufficient the case will be remanded.⁹⁰ Further, even if a record is preserved at the administrative level, the local zoning board of appeals' decision cannot be reversed unless it is against the manifest weight of evidence.⁹¹

Thus, considering the absence of formalized administrative procedures, which are necessarily essential to guarantee the zoning litigant a fair and unbiased determination of his rights, coupled with the self-exclusionary policies of the judiciary, it becomes evident that the state legislature is the appropriate forum for the reformation of the chaotic state of zoning administration in Illinois.

III. POSSIBLE SOLUTION TO THE PROBLEM

The Illinois Enabling Act should be amended to provide for the creation of a state-wide zoning commission, authorized to perform a dual function. First, establishing uniform and comprehensive procedures for the conducting of local zoning boards of appeals hearings; prescribing specific, well-defined standards relating to substantive determinations. The establishment of uniform procedures and standards would not deprive local municipalities of the autonomous control over local land use determinations, but, rather, it would insure to every owner of real estate, wherever it is located in the state, a judgment based on general standards and rendered according to uniform procedures. Some possible procedures for the conducting of local boards of zoning appeals include: mandatory formal pleadings; application of basic rules of evidence; all testimony taken under oath; confining testimony and evidence to relevant issues under consideration; a mandatory requirement for formal transcripts to be made at every hearing; provision for positions on the board for a lawyer, real estate broker, member of the planning commission, building contractor, and local businessman, all to be paid a salary commensurate with the time expended in performing their functions; and a requirement that the board clearly articulate the rationale of its decisions.

⁸⁹ *Strohl v. Macon County Zoning Bd. of Appeals*, 411 Ill. 559, 104 N.E.2d 612 (1952).

⁹⁰ *Id.* at 563, 104 N.E.2d at 615.

⁹¹ *Kaufman v. City of Highwood*, 91 Ill. App. 2d 196, 233 N.E.2d 230 (1968).

The second function of the commission would be to hear appeals from final decisions of local zoning boards or legislative bodies. This would materially help to alleviate the congested court dockets. Since most of the zoning disputes do not require a determination of law but rather a detailed factual analysis, the commission could make objective factual determinations, which would be impossible at the local zoning board level due to intricate political pressures. The commission would be non-partisan, composed of educated and experienced technicians in the fields of real estate, law, planning and business. Where complex legal problems are involved, the commission could be vested with the authority to certify a direct appeal to the Supreme Court of Illinois. The state-wide commission would be able to objectively consider and resolve inter-municipality planning problems, not possible at the local level due to various vested rights and animosities between adjacent municipalities. The commission could also coordinate the policies of the local zoning boards, provide services, and disseminate relevant information to the various administrative bodies.

The state-wide zoning commission, briefly outlined above, would be the most appropriate and practical solution for eradicating the unjust and haphazard administration of zoning disputes prevailing in Illinois today.

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A P P E N D I X

LAKE FOREST ZONING ORDINANCE

SECTION 6. *Additional Multiple Dwelling Unit Regulations*

1. Specific Requirements

- (a) Separate multiple dwelling structures shall be located upon a lot or parcel containing a minimum of forty thousand (40,000) square feet.
- (b) Living quarters shall not be constructed below the finished grade adjacent to the multiple dwelling structure.

2. More than one multiple dwelling structure may be allowed on a lot or parcel in the "O-1" Office District under the following conditions:

- (a) *Procedure — Plan Commission Considerations.*
The applicant shall submit for consideration by the Plan Commission:

- (1) A statement describing the general character of the intended development together with such other pertinent information as may be necessary to determine the requirements of this Ordinance and the general standards established herein.
- (2) A general development plan showing:
 - a. The intended use of land.
 - b. The dimensions and location of proposed structures.
 - c. The dimensions and location of areas to be reserved for vehicular and pedestrian circulation.
 - d. The dimensions and location of areas to be reserved for parking.
 - e. The dimensions and location of areas to be used for landscaping, recreation and open space.
- (3) The Plan Commission may recommend modification of paragraphs 1, 2 and 3 of Section 5 of Article VIII of these regulations.

- (b) *Basis for Plan Commission Recommendation.*
Before recommending approval of such development, the Plan Commission shall determine that:

- (1) Such development will create an attractive residential environment of sustained desirability and economic stability, com-

patible with the established character of the area in which it is proposed.

- (2) Adequate provision has been made for (i) landscaping and fencing for screening purposes, (ii) ingress and egress to cause minimum interference with traffic flow on abutting streets and (iii) off-street parking and service facilities.
- (3) The use is so designed, located, and proposed to be operated as not to impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or diminish the taxable value of land within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of The City of Lake Forest.

ARTICLE IX

"B-1" NEIGHBORHOOD SHOPPING DISTRICT REGULATIONS

SECTION 1. The regulations set forth in this Article or set forth elsewhere in this Ordinance when referred to in this Article, are the regulations in the "B-1" Neighborhood Shopping District.

SECTION 2. *Use Regulations:* A building or premises shall be used only for the following purposes:

1. Any use permitted in the "O-1" Office District except that apartments and multiple dwelling units will be permitted only where located above the first floor of a building to be used for business purposes.
2. Any local retail business or service established which supplies commodities or services primarily for residents of the surrounding neighborhood, such as grocery stores, meat markets, drug stores, shoe and radio repair shops, barber shops, clothes cleaning or laundry pickup stations and banks.
3. Restaurants where there is no dancing or entertainment.
4. Greenhouses operated as a retail business.
5. Public and private off-street parking areas.
 - (a) within seventy (70) feet of the established center line of pavement of that portion of Waukegan

Road (Illinois State Highway Route 42-A) that is located within the corporate limits of The City of Lake Forest, Illinois;

- (b) within thirty (30) feet of the westerly line of the existing right-of-way of that portion of Skokie Highway extending from Buena Road northerly to Old Elm Road;
- (c) within fifty-three (53) feet of the established center line of Everett Road, Telegraph Road, Conway Road, Old Elm Road, and Buena Road.

ARTICLE XVI

BOARD OF APPEALS

SECTION 1. *Membership.* A Board of Appeals is hereby authorized to be established. The word "Board" when used in this Ordinance shall be construed to mean the Board of Appeals. The Board shall consist of seven (7) members appointed by the Mayor and confirmed by the City Council. At least one (1) member of the Board shall be a member of the Plan Commission. The members of the Board shall serve respectively for the following terms: one for one (1) year, one for two (2) years, one for three (3) years, one for four (4) years, one for five (5) years, one for six (6) years, and one for seven (7) years; the successor to each member so appointed shall serve for a term of five (5) years. One (1) of the members so appointed shall be named as Chairman of the Board by the Mayor and confirmed by the City Council at the time of his appointment, and shall hold his office as such Chairman until his successor is appointed. The Mayor and City Council have the power to remove any member of the Board for cause after a public hearing. Vacancies in the Board shall be filled for the unexpired term of the member whose place has become vacant in the manner herein provided for the appointment of such member.

SECTION 2. *Meetings.* All meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence, the acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations, hearings and other official actions. Every rule, regulation, every amendment or repeal

thereof, and every order, requirement, decision, or determination of the Board shall immediately be filed in the office of the Board and shall be a public record. The Board shall adopt its own rules of procedure, but such rules shall: not be in conflict with the statute authorizing the creation of such Board.

SECTION 3. *Appeals to the Board.* An appeal may be taken from the Administrative Officer by any person aggrieved or by an officer, department, board or bureau of the City. Such appeal shall be taken within such time as shall be prescribed by the Board of Appeals by general rule, by filing with the Administrative Officer and with the Board of Appeals, a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrative Officer certifies to the Board of Appeals after the notice of appeal has been filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case the proceedings shall not be staid otherwise than by a restraining order which may be granted by the Board of Appeals or by a court of record on application, on notice to the Administrative Officer and on due cause shown.

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 a 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 modify the 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 Administrative Officer. The concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of the Administrative Officer upon which it is required to act or to recommend any variation or modification in this Ordinance to The City Council.

No exception or variation shall be considered or acted upon by the Board until after a public hearing has been held by the Board of which there shall be a notice of the time and place of the hearing published at least once, not more than thirty (30) nor less than fifteen (15) days before the hearing in one or more newspapers published in or with a general cir-

ulation within The City of Lake Forest, such notice to contain the particular location for which the exception or variation is required as well as a brief statement of what the proposed exception or variation consists.

SECTION 4. *Review.* All final administrative decisions of the Board of Appeals shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act," approved May 8, 1945, and all amendments and modifications thereof, and the rules adopted pursuant thereto.

SECTION 5. *Powers and Duties.* The Board of Appeals shall have the following powers and it shall be its duty:

1. To hear and recommend to the City Council upon appeals where it is alleged there is error of law in any order, requirement, decision or determination made by the Administrative Officer in the enforcement of this Ordinance.
2. In hearing and recommending upon appeals the Board shall have the power to *recommend an exception* in the following instances:
 - (a) To permit the extension of a district where the boundary line of a district divides a lot or tract held in a single ownership on the effective date of this Ordinance.
 - (b) To interpret the provisions of this Ordinance in such a way as to carry out the intent and purpose of the plan, as shown upon the map fixing the several districts, accompanying and made a part of this Ordinance, where the street layout actually on the ground varies from the street layout as shown on the map aforesaid.
 - (c) To permit the reconstruction of a non-conforming building which has been damaged by explosion, fire, act of God, or the public enemy, to the extent to more than fifty (50) per cent of its value, where the Board finds some compelling necessity requiring a continuance of the non-conforming use is not to continue a monopoly.
 - (d) To waive or reduce the parking and loading requirements in any of the districts whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the

use of the lot, as contrasted with merely granting an advantage or a convenience.

- (e) To permit land within three hundred (300) feet of a church to be improved for the parking spaces required in connection with the church but only when there is positive assurance that such land will be used for such purpose during the existence of the church.
 - (f) To determine whether an activity should be permitted within the "B-2" Business or "S-1" Service Districts because of the methods by which it would be operated and because of its effect upon uses within surrounding zoning districts.
 - (g) To permit in undeveloped sections of the city, the issuance of temporary and conditional permits for not more than two (2) years for structures and uses in contravention of the use regulations controlling Residence Districts; provided such uses are important to the development of such undeveloped sections and also provided such uses are not prejudicial to the adjoining and neighboring sections already developed.
 - (h) In the "S-1" Service District the granting of permission to devote premises to uses that may be carried on not primarily for the purposes of supplying services or commodities for consumption or use in The City of Lake Forest; provided that such use will not seriously injure the appropriate use of neighboring property.
3. The Board shall make recommendations upon applications for the following *variations*:
- (a) To permit a variation in the yard requirements of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of these provisions due to an irregular shape of the lot, topographical or other conditions, provided such variation will not seriously affect any adjoining property or the general welfare.
 - (b) To permit a variation within the building setback lines of Article XIV but only when such adjustments are made that would meet the objectives of the regulations and when such variation will

not merely constitute a convenience or individual advantage.

- (c) To permit a variation in the height of a building where such building is erected with a frontage on a public waterway or on a natural hillside, but such variation shall be made only for the purpose of adjusting the height limits so as to conform with that of neighboring structures.
- (d) To authorize, whenever a property owner can show that a strict application of the terms of this Ordinance relating to the use, construction or alterations of buildings or structures or the use of land will impose upon him unusual and practical difficulties or particular hardship, such variations of the strict application of the terms of this Ordinance as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to practically deprive the owner of any use of the property and thus warrant a variation from the comprehensive plan as established by this Ordinance, but at the same time, the surrounding property will be properly protected.

In considering all appeals and all proposed exceptions or variations to this Ordinance, the Board shall, before recommending any exceptions or variations from the Ordinance in a specific case, first determine that it will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or diminish the taxable value of land within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of The City of Lake Forest.

SECTION 6. *Action by City Council.* Upon receipt of the recommendations of the Board, the City Council may by ordinance without further public hearing adopt any proposed variation or may refer it back to the Board for further consideration. Every such variation shall be accompanied by a finding of fact specifying the reason for making such variation. Any proposed variation which fails to receive the approval of the Board of Appeals shall not be passed except by the favorable vote of

two thirds of all the elected members of the City Council.

SECTION 7. *Fee.* A fee of One Hundred Dollars (\$100.00) to cover the approximate cost of the procedure, shall be paid to the Administrative Officer at the time the notice of appeal is filed, which the Administrative Officer shall forthwith pay over to the City Treasurer to the credit of the general revenue fund of the City of Lake Forest.

(as amended by ordinance, March 5, 1962)