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Consolidating Zoning Districts

By Donald L. Elliott, FAICP

“Council wants *another* new zone district?” sighed Peter Planalot. “I can’t even keep track of the ones we already have, and I’m the planning director! We need to get rid of some of the existing districts before we add new ones.”

I never actually heard Peter make the above statement, because he doesn’t exist. But I suspect that many planning directors and zoning administrators would sympathize with Peter’s frustration. As cities grow and counties mature, they need to accommodate new kinds of development, and that often leads to the creation of new zoning districts. They don’t exactly breed like rabbits, but they do tend to proliferate over time. In *A Better Way to Zone*, I quoted statistics from Denver as an example. Its 1923 zoning ordinance had 13 districts, the 1957 code had 19, by 1994 it was up to 42, and its 2010 code has 107 districts.

Proliferation of zone districts creates several problems, none of them fatal but most of them annoying. *First*, the creation of a new district needs to be reflected in all of the non-district based-controls in the zon-

ing code. If the new district has special sign or parking regulations, how do they relate to the general parking and sign standards? Are they consistent? Can they be integrated? If the new code is silent on those issues (because they weren’t the issues driving the creation of the new zone, which is common) what sign and parking standards should staff apply? And each time a new development standard is added or revised, its impact on each existing zone district needs to be considered. Did you check how the new landscaping requirements are going to fit with the dimensional or form requirements in each district? The more districts you have, the more checking you have to do. And the more chance there is for inconsistencies to enter the code. Why is it that this district has stronger landscaping requirements but weaker tree preservation requirements than

all the other similar districts in the code? Was that intentional or just an oversight by drafters who didn’t know what else was in the code?

A *second* problem (alluded to above) is that proliferation of zone districts make it hard for staff, citizens, and investors to understand and remember how the code works. Staff are paid to learn it, so they will, but the training time required each time staff turns can be long. Investors can hire consultants to learn it, but that increases development costs and puts the city at a possible competitive disadvantage when most cities want to do just the opposite. Citizens bear the brunt of the burden of complexity, because it is harder for non-planners to understand a complex code and no one is being paid to do it for them.

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➞ Outside of the city’s high-density city center, most residents of Winnipeg, Manitoba, live in low-density residential areas such as the bucolic Richmond West neighborhood pictured here.

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About the Author

Donald L. Elliott, FAICP, is a senior consultant with the Denver office of Clarion Associates, a former chapter president of APA Colorado, and a former chair of the APA Planning and Law Division. As a planner and lawyer he has assisted more than 40 North American cities and counties to reform and update their zoning, subdivision, housing, and land-use regulations. He has also consulted in Russia, India, Lebanon, and Indonesia, and served as USAID Democracy and Governance Advisor in Uganda for two years.

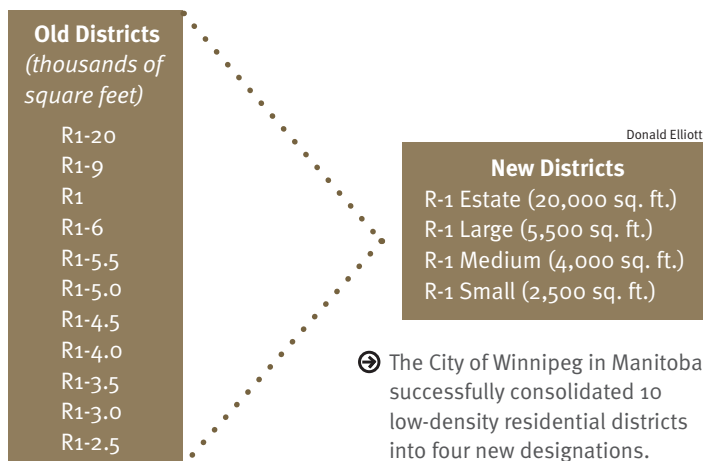
For all of these reasons, cities that reform their development codes often try to consolidate their current menu of zoning districts back into fewer, more flexible districts. In my code writing practice that request comes much more often than not—but the trend is not universal. As noted above, Denver recently adopted a new zoning ordinance with separate menus of form-based districts for each of its seven context areas—a total of 107 districts. The number of zone districts was driven by Denver’s desire for a more finely calibrated set of tools that would better tailor future development and redevelopment to the context of the surrounding area. It fits in with comments I have heard from both city staff and consultants that “We don’t care how many zone districts there are as long as they’re the right ones.” As a second example, both Chicago and San Diego operate “modular” zoning systems in which one portion of the zoning designation regulates permitted uses and a second module addresses permitted heights and densities. By allowing combinations of use and dimensional zoning modules, the pressure to proliferate districts can be reduced and the need to consolidate districts may not arise. A third example is that many form-based codes also result in more zone districts than the codes they replace.

Still, consolidation of existing zone districts is an effective tool to simplify development codes, and one that many cities want to try. It can be done, and it has been done.

WINNIPEG, MANITOBA

Between 2005 and 2007, Winnipeg revised all of its zoning bylaw provisions for areas outside the city center. When it started, the

city had 10 different R1 districts that differed based on the minimum lot sizes and widths. When it finished, there were just four variations. The consolidation is shown below.



an R1 or R2 property is subdivided, all lots within 100 feet (ignoring rights-of-way) of existing R1 or R2 neighborhoods must match or exceed the minimum lot width of the existing neighborhood. A new subdivision in the

➔ The City of Winnipeg in Manitoba successfully consolidated 10 low-density residential districts into four new designations.

As the table shows, no residential property owner was made nonconforming because the minimum lot sizes were lowered or held constant. In fact the opposite was true. Smaller minimum lot sizes could allow subdivision and densification of the R1 neighborhoods over time, and that could be a problem. In many residential neighborhoods potential zoning controversy arises not because zoning changes allow individual property owners to do less with their property, but because the change allows their neighbors to do more. Few suburban property owners want their neighbors to subdivide and create more units.

To prevent that possibility, the Winnipeg Zoning Bylaw provided that when

new R1-Small district across the street from developed parcels 50 feet wide would need to plat lots at least 50 feet wide, even if that meant that the minimum lot size for those lots exceeds 2,500 square feet. This helps promote similar development character adjacent to existing development. Further away from existing development, the property owner could plat narrower lots as long as they met the 2,500 square foot minimum lot size. The Winnipeg solution simplifies the structure of the zoning bylaw while avoiding claims of regulatory takings and relieving existing residents’ fears about the character of new development nearby. Incidentally, it also helps defuse “the numbers game” in which property owners insist that neighbor-

ing development be a particular minimum lot size in order to preserve neighborhood property values, when in fact well-designed, denser development could enhance those values even more.

As in Winnipeg, the question was how to ensure that future development would be consistent with the established character of surrounding areas. To do that, Duluth decided to use “contextual” standards for minimum



Many older neighborhoods in Duluth, Minnesota, have a well-preserved fabric of single-family homes on small lots. In the city’s new zoning code, contextual development standards encourage compatible redevelopment without requiring neighborhood-specific overlays or districts.

DULUTH, MINNESOTA

In 2006, Duluth adopted a visionary comprehensive plan to guide the future of the city and the redevelopment of its waterfront. Two years later it began integrating and updating its 1950s-era zoning code and seven other ordinances to help make that plan a reality. The new code adopted in 2010 is a hybrid code that includes eight new form-based districts targeted to key walkable mixed use areas of the city, including the waterfront and downtown. Since the development code was gaining a more complex district structure in some areas, the city looked for ways to simplify the code in others and eventually decided to consolidate the existing R1-a, R1-b, R1-c, and R-2 zone districts. The three R-1 districts differed only in minimum lot area, lot width, and setbacks, while the little used R-2 district also allowed construction of two-family structures.

Contextual standards that require consistency with existing development patterns can be an effective tool for facilitating district consolidations.

lot size, minimum lot width, and setbacks in the consolidated R-1 district. Those solutions are shown in the table below.

R-1 DISTRICT DIMENSIONAL STANDARDS

City of Duluth, Minnesota

Lot Standards		
Minimum lot area per family (One-family)		The larger of 4,000-sq. ft. or average of developed 1-family lots on the block face
Minimum lot area per family (Two-family)		The larger of 3,000 sq. ft. or average of developed 2-family lots on the block face
Minimum lot area per family (Townhouse)		2,500 sq. ft.
Minimum lot frontage (one-family, two-family, and townhouses)		The larger of 30 ft. or average of developed lots with similar uses on the block face
Setbacks, Minimum		
Minimum depth of front yard		The smaller of 25 ft. or average of adjacent developed lots facing the same street
Minimum width of side yard (one- and two-family)	General	The larger of 6 ft. or average of adjacent developed lots facing the same street
	Lots with less than 50 ft. frontage and garage	Combined width of side yards must be at least 12 ft.

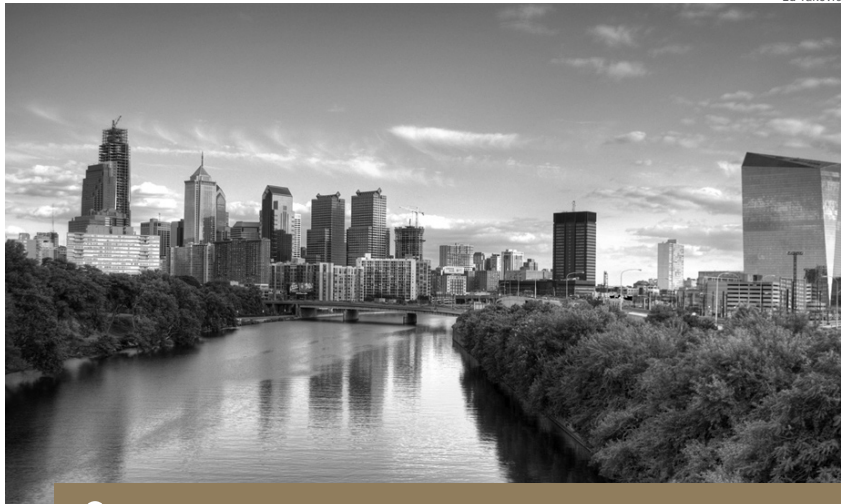
As the table illustrates, two different types of contextual standards were used. Minimum lot sizes begin at the lowest size permitted for single-family homes in the earlier code (4,000 square feet in area, 30 feet in width) but are modified upward to reflect the average size of lots developed with that use on the same block face (i.e., all of the lots on the same side of the street between the nearest two intervening cross-streets). The city originally intended to use the same contextual measure for front and side setbacks but later decided to simplify it by only referring to the immediately adjacent lots developed with the same type of structure. While lot size and width is based on the block face, setbacks are based only on adjacent lots.

The old Duluth zoning ordinance contained a 300-foot spacing requirement for two-family structures in single-family districts, as well as an 1,800-square-foot minimum size for two-family structures in order to protect the predominant character of those districts. Those provisions carried over into in early drafts of the new code and would have applied in the consolidated R-1 district. However, after discussion only the minimum unit size was retained and the spacing restriction was dropped as unnecessary.

PHILADELPHIA

On December 15, 2011, the Philadelphia City Council unanimously voted to replace its 1962 zoning ordinance with an entirely new document covering all of the city's 146

resulting overlays only included restrictions on uses and permitted signs, while others went further to address parking amounts, parking location, and other issues. A sample overlay district map is shown below.



Ed Yakovich

➡ Philadelphia is one of the latest major U.S. cities to complete a comprehensive zoning reform effort. Through consolidation the city reduced the total number of zoning districts by more than a third.

Because many of the local neighborhood controls were very similar, Philadelphia decided to create a new base (not overlay) zoning district called Commercial Mixed Use 2.5 (CMX-2.5). The new use contained a limited list of permitted uses similar to the city's existing CMX-2 district and the larger dimensional standards used in its existing CMX-3 district. After mapping the commercial corridors into the new CMX-2.5 district, most of the old overlay zones could be deleted.

Of course, the fit was not perfect—it never is in consolidation efforts. Those neighborhoods whose existing commercial mixed use overlays addressed other issues wanted those controls continued, so some of the overlay controls stayed in place. So, for example, the city's East Falls overlay remains in place to carry over specialized setback controls for Kelly Drive as well as specialized building width and curb cut controls. But use restrictions no longer appear in the overlay—they now appear in the underlying CMX-2.5 district. Similarly, the Ridge Avenue overlay remains in the code to carry over limits on use of space for commer-

square miles of land. In the process the number of base zoning districts was reduced from 55 to 36 and the number of overlay districts from 33 to 17. In some cases the remaining overlay districts include unique standards for different areas of the city (i.e., each area subject to special controls does not have a separate overlay), but the result is still much simpler than the structure it replaced. The most significant district consolidation occurred for small-scale, walkable commercial strips. Over the years 16 different Philadelphia neighborhoods had decided to reinforce the character of their local "main street" shopping area by crafting overlay districts for these areas. Most of the

➡ Before Philadelphia overhauled its zoning code, it had multiple different overlay districts with similar development standards intended to protect the character of neighborhood shopping districts. The city's new code remaps most of these overlays with a single new base zoning district.



City of Philadelphia

□ Ridge Avenue (Only applies to lots zoned CMX-2)

cial purposes and specialized sign controls for that area. In addition to reducing the number of overlay districts, Philadelphia's approach also grouped the remaining overlays in one section of the code. Not only do all of the overlay districts now appear in one chapter of the new code, but all neighborhood commercial area overlays now appear in the NCA subchapter of the overlay district chapter.

PITFALLS TO AVOID

As these examples show, it is possible to simplify development codes by consolidating similar zone districts, but there are several practices that can make the job easier and increase your chances of success.

Some cities have explored consolidating their higher density multifamily zones with lower intensity commercial zones as part of a mixed use strategy.

First, be careful consolidating residential zones. Commercial property owners use their property for business and can often support any consolidation that preserves or improves their business options and property values. But neighborhood residents often own their property because they like the “feel” of the neighborhood and don't want that to change. Allowing more uses and more density are often unpopular regardless of whether they increase flexibility and property values. The key in residential district consolidation is to find ways to reinforce the established character without needing a separate district for each platting pattern.

This caveat about residential zones is particularly applicable when a new building type will become available—for example, when the consolidation will allow two-family structures in some previously single-family districts or town houses in

a previously one- and two-family district. Generally, new types of residential structures need different dimensional or form standards (often a minimum lot area per unit or a waiver of side setbacks in the case of town houses), so be sure to address those in the dimensional standards for the new district. Although Duluth did not need to carry over a spacing requirement to assuage concerns about the new availability of two-family residences in a single-family district, that is one option that could be used to protect the current character of the area. Similarly, some consolidated districts that introduce town houses into lower density districts cap the number of adjacent town houses that can be constructed in a block (i.e., no more than six attached units permitted in a single structure).

Second, consolidate through “upzonings” rather than “downzonings” whenever possible. As long as the consolidated district allows the same or more opportunities for development and redevelopment as before, there is little chance of losing a lawsuit over regulatory takings. That doesn't mean the threat won't be bandied about—it usually is—but it will be bandied about less. Using the smallest minimum lot sizes and widths applicable in the included zones (as Winnipeg and Duluth did) also reduces the creation of nonconformities (i.e., lots, structures, or uses that met the requirements of the old code but don't comply with the new code). Upzonings can also increase opportunities for reinvestment and enhance the range of housing options available in the neighborhood. If some of the higher intensity commercial uses that will become available through consolidation create concern, make them conditional uses subject to a hearing (but clarify that existing uses of that type will be deemed to have already received a permit).

Third, commercial and industrial districts often offer significant opportunities for consolidation. The menu of those districts in older codes often reflects the idiosyncratic order in which shopping mall, business park, lifestyle center, and main street developers appeared on the scene rather than how many districts the city needs in order to regulate commercial and industrial development. In recent years many cities have recognized that they only need three or four industrial districts—usually (1) a light industry/mixed use/business

park/research park district, (2) a general manufacturing/processing/assembly district, (3) a district for heavier operations using hazardous materials or procedures or unavoidable environmental and neighborhood impacts, and (4) sometimes a planned industrial development district. Milwaukee, Minneapolis, and Seattle now use menus of industrial districts following this pattern.

In older codes commercial districts have often proliferated even more than industrial districts (as the Philadelphia case study shows). Increasingly, commercial districts are being consolidated to focus more on the scale of development (both the size of individual buildings and the maximum size of uses within buildings) rather than

Increasingly, commercial districts are being consolidated to focus more on the scale of development rather than the list of permitted uses.

the list of permitted uses. There is a big difference between a 10,000-square-foot neighborhood hardware store and a Home Depot superstore, so saying that “hardware stores” are only allowed in more intense commercial districts may not make sense. You can allow small stores in lower density districts and bigger stores and more intense commercial areas. In addition, some cities have explored consolidating their higher density multifamily zones with lower intensity commercial zones as part of a mixed use strategy. Duluth did just that when it combined its R-4 (dense apartments) and C-1 (neighborhood scale commercial retail) zones.

Fourth, it may not be worth trying to consolidate “one-off” special purpose districts like those specifically designed for casinos, stadiums, waterfronts, airports, or ports. While it may seem a waste to keep a lengthy chapter of the code devoted to

one or two sites in the city, special purpose districts often have few similarities with the heavy industrial or commercial districts that you may be tempted to group them with. Casino and stadium districts are notoriously idiosyncratic. At a minimum they often require unusual amounts of parking and unique types and sizes of signs. The controversies surrounding the location of these economically desirable but locally unpopular facilities often forces cities to balance very detailed development standards designed to control their impacts with very specific building program needs of the developer. The result is often a hash representing the personalities (or loudest voices) involved rather than a thoughtful blend of controls that could be safely applied in other contexts. It is often best to leave these types of districts out of the consolidation discussion.

KEYS TO SUCCESS

After the list of districts to be consolidated has been identified, you still need to proceed with caution. As with all planning and zoning activities, it is wise to keep in close communication with the neighborhoods that will be affected by the consolidation. Zoning changes make most property owners nervous, and often the only cure is repeated explanation of what is being done and why. Property owners want to know, and the city should be able to clearly communicate

- what zoning designations will be affected (i.e., what districts are being eliminated and what will the new districts be called);

- who will gain uses or development options and what they are;
- who will lose uses or development options and what they are;
- who (if anyone) will be subject to new development or design controls; and
- how the city will handle any nonconformities.

Regarding that last point, lawyers and planners know that nonconforming uses and structures can almost always be continued and can be bought and sold to new owners and operators, but citizens often need reassurances. A city program to clarify that those situations are deemed “not nonconforming” and a provision indicating that the city will issue letters to that effect upon request can go a long way to reducing anxiety.

Testing is also important. Some cities have their staff go over the past six or 12 months of applications to see how they would have been treated under the proposed consolidated district. If glitches are found—for example, the mix of large and small parcels in the new district would allow some buildings to be far taller or bigger than their neighbors—those can be fixed through revisions to the development standards before the new district is adopted.

If testing reveals that the consolidation will not work in part of the intended area, be prepared to map those areas into a different district. If a proposed consolidation doesn’t work for 10 percent of the properties, that doesn’t mean that the consolidation fails. It means that you need

to either exclude those areas (i.e., remap them into another existing zone district) or develop a new use standard or a design or development standard to address the anomalies. As a last resort, you can include a qualification that “this standard shall not apply to structures with X characteristic constructed before the effective date of this amendment.” While not elegant, this is a common solution. The “carve-out” only affects one or a handful of properties, so few planners and investors will ever have to deal with it. But failure to consolidate the districts just because of that anomaly would keep life more complex for all of the other planners and investors operating in the area. The benefits of a simpler, more flexible district structure may be worth a few exceptions, however inelegant.

So when codes evolve into a confusing plethora of districts, it is possible to get the cat back in the bag—or at least to get some cats back in some bags. It is possible to corral some of those “just slightly different from each other” zone districts into broader and more flexible consolidated districts. Using the techniques described above, district consolidations can help simplify life for planners, create new investment opportunities, increase housing diversity, and still preserve the established character of developed neighborhoods. The creation of new zone districts does not have to be a one-way ratchet towards a code complexity. And Peter Planalot can simplify the rest of the code to make room for the new districts that council wants.

Philadelphia’s new zoning code fixes many of the regulatory “cracks” that had emerged since the previous code’s original adoption in 1962.
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DOES YOUR COMMUNITY
HAVE TOO MANY ZONING
DISTRICTS?

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