BUILDING LINES, MAPPED STREETS, SET BACKS, FRONT YARDS

The American Society of Planning Officials in recent months has had many inquiries concerning the establishment of building lines.

Building lines are utilized by communities principally to achieve planned street patterns. They help insure that buildings will not be erected in the bed of projected streets or of potential street widenings. There are few communities that are not concerned with the adjustment of their 18th and 19th century street patterns to 20th century community and traffic needs. However, this report does not discuss at length the necessity for determining community development needs, and the formulation of a comprehensive or “master” plan prior to the revision of street patterns. Nor does it discuss the limitations of street widening for the relief of traffic congestion, despite the importance of such considerations.

Sometimes, there is confusion in the definitions and use of the terms “building lines” and “mapped streets”. In this report, “building lines” refer to those special legal restrictions which may be established to prevent by the provision of setbacks, the building or rebuilding of structures on land required for the eventual widening of streets, or on land required for the establishment of projected streets. Building lines may also be established for the purpose of preserving residential and commercial front yards.

The term “mapped streets” is frequently used to indicate any approved street shown on an official map, whether the street is in existence, or whether it is only projected. Thus, although “building lines” and “mapped streets” are not synonymous, when building lines establish an easement for future streets or widenings, they may be identical with “mapped street” lines.

“Front yards” is the term usually applied in zoning ordinances to that area in front of structures, extending across the width of lots, and lying between the front line of the lot and the nearest line of the building, which is designed primarily to provide an air space. The “front yard” in the zoning ordinance has sometimes been employed as a building line to provide for the eventual widening of a street. When this has been done the purpose has often been concealed.

Eminent Domain and Police Power

Building lines can be established through the power of eminent domain or through the police power. When established under eminent domain, easements over the rights-of-way reserved for street purposes may be acquired, and compensation paid to the property owners damaged thereby. It is usually intended that the land actually needed for the widening shall be acquired at a later date and that compensation shall be paid for the land and those parts of any
buildings which may have been constructed between the building line and the existing street line prior to the establishment of the building line. Extensive application of building lines under the power of eminent domain may be prohibitive in cost. By establishing building lines through the police power, no compensation is paid for easements; payment may be made however when the property is actually taken for the street widening or opening. The decision of the community to enforce these building lines is indicated by the withholding of building permits, and no new buildings may be erected or alterations made in existing buildings which do not conform to these building lines.

Court Interpretation

The courts are rather evenly divided as to the constitutionality of building lines, although in recent years the tendency has been to uphold them. However, many attorneys hold that building lines established to provide for future street widening through the police power are not constitutional. They claim that this is a deprivation of property on the part of the municipality. No generalizations should be made. What might be an unconstitutional or unfair taking of property in the case of a street with highly developed abutting properties, might be considered a reasonable regulation in the interest of public health, safety, and general welfare, if the abutting property is not built upon, if the lots are deep, or if no damage will actually accrue to the property or the property owner through a reduction in the depth of the lot.

It must be cautioned that this is an exceedingly complicated process and that the experience in one state will not necessarily apply to another state.

It has been customary to point to the Pennsylvania procedure and to suggest that since the courts have upheld the Pennsylvania laws, other courts will do likewise. It is important to understand that street openings and widenings have been authorized by means of a city plan and building lines by Pennsylvania legislation. There are separate acts for cities of the first class, cities of the second class, cities of the third class, boroughs and townships. An act of the assembly approved in May 1891 (amended in July 1913), required that "every municipality SHALL have a general plan of its streets and alleys, parks and playgrounds, including those which have been or may be laid out but not open; which plans SHALL be filed in the office of the engineer or other proper office of the municipality, and all subdivisions of property thereafter made SHALL conform thereto. No person shall hereafter be entitled to recover any damages for the taking for public use of any building or improvements of any kind which may be placed or constructed upon or within the lines of any located street, or alley, park or playground, after the same shall have been located or ordained by councils." There is additional Pennsylvania legislation which strengthens the powers of communities with respect to the establishment of street lines.

There are many judicial decisions of the Pennsylvania courts relating to city planning and the protection of streets from encroachment. When the case of Harrison's Estate (250 Pennsylvania 129) was argued in 1915, the court said,

"For the purpose of the present case, we do not deem it necessary to discuss at length the constitutionality of the Act of May 16, 1891 P. L. 75, which applies generally to the municipalities of the Commonwealth. This Act, as well as others of like import, has been under consideration in many cases with the result that its validity has always been maintained. It may be, as learned counsel for appellant so ably contend, that the profession have assumed the constitutionality of the Acts of 1871 and 1891 to be a settled question without giving due consideration to our bill of rights and to the Fourteenth Amendment of the Federal Constitution. But whatever the reason, the fact cannot be gainsaid, that counsel and courts have accepted our decisions as finally settling this question. It would be a shock to the profession if
it should now be determined for the first time that these acts were unconstitutional and void. Damages have been assessed upon the basis of their validity for a long period of years, and municipalities throughout the Commonwealth have plotted their streets and authorized their improvement upon the faith of this legislation. For the courts now to strike down these acts upon constitutional grounds would be an extreme exercise of judicial power, which nothing but plain and palpable violation of the organic law could justify. In our opinion the provisions of these statutes are not so plainly and palpably in violation of the Constitution as to require that they be stricken down after repeated decisions of this court upholding them.'"

Then the court goes on to make this significant comment:

"If the question, intended to be raised by appellants, were an open one, much might be said on both sides, but we think the underlying principle has been too long and firmly settled in this State adversely to plaintiffs' contention, to justify us in holding that any new principle was introduced, or change in the law effected, by the clause quoted.'"

It must be remembered that the attitude of the courts has been changing in recent years, and that needs may be recognized as reasonable today which would not have been so recognized some years ago. There has been a vast increase in the movement of traffic. Courts are aware that the public safety requires wider streets than were needed in the days of the horse and buggy. Again it must be emphasized, however, that provisions must be reasonable, and that what might be a reasonable application of a building line on one street and in a particular community, might not justify a building line on a built up street in another community.

For example, there is an unreported case in Ohio, namely, State ex rel. the Lucas Building Company v. Arnold De France, Commissioner of Inspection of the City of Toledo, Court of Appeals, July 1935. The property in question was at the intersection of two major streets, near but not in the central part of the main business district. Intensive business development had reached the vicinity of plaintiff's lot, but that lot still had the old small buildings, and plaintiff wished to proceed with the construction of a large commercial building. The intersection had heavy and increasing traffic on both streets. The original zone plan and ordinance placed the lot in a zone called "light industrial." After the enactment of the zoning ordinance, the planning commission made a major street plan designating future widths of many streets, including the two streets at the intersection, and this plan was incorporated by council into the zoning ordinance.

It is fair to assume that although this line was established as part of the zoning ordinance, it was intended to provide for a future street widening. The property owner brought a suit in mandamus to compel the issuance of a building permit. The court upheld the ordinance and enforced the building lines on the ground that the 7 ft. setback in commercial districts was a reasonable police power regulation.

Attention also ought to be called to the so-called Headley case. (Headley v. City of Rochester, Court of Appeals of State of New York, 272 New York 197, 5 N. E. (2d) 198, 1936)

The City of Rochester had adopted a mapped street line ordinance. Plaintiff had a vacant lot at the corner of East Avenue and Goodman Street. The mapped street ordinance provided for a 25 ft. setback on East Avenue. There was a zoning setback line on Goodman Street. It is important to point out that in spite of the building line, the property owner would have had a lot 95 ft. wide on East Avenue, 100 ft. wide in the rear and approximately 145 ft. deep. The highest Court of Appeals in New York refused to declare the ordinance invalid, saying that it
would not declare invalid a public law serving a public purpose because a single owner without proof or claim of actual injury asserts that he had been deprived of his property.

A leading case tried in the U. S. Supreme Court is that of Gorieb v. Fox et al. 274 U. S. 603 (1927) upholding a building line ordinance of Roanoke, Virginia. In this case, the court said:

"It is hard to see any controlling difference between regulations which require the lot owner to leave open areas at the sides and rear of his house and limit the extent of his use of the space above his lot and a regulation which requires him to set his building a reasonable distance back from the street. Each interferes in the same way, if not to the same extent, with the owner's general right of dominion over his property. All rest for their justification upon the same reasons which have arised in recent times as a result of the great increase and concentration of population in urban communities and the vast changes in the extent and complexity of the problems of modern city life."

The tendency in the state courts in recent years has been to uphold building lines, thus, there are some decisions upholding building lines established in various cities in Ohio. In view of the increasing need for street space and in view of the congestion of traffic and accidents being caused by inadequate streets, it is entirely likely that the tendency in the future will be to uphold reasonable regulations.

Widening Existing Streets

Much of the previous discussion relates to planned streets. What about building lines that have been established on existing streets? What experiences have there been? What methods have been employed?

In the City of Detroit where a very extensive street-widening program was carried out some years ago, it was the custom of the building department, after a street had been ordered condemned by the Common Council, to stamp each permit with a statement indicating that the street was about to be widened, and that the owner was building at his own risk. It was generally agreed that this warning was of doubtful legal force, but as a result of it, more than 100 buildings were set back to the new line of the street on a single street (Livernois Avenue) thus saving the city considerable money, which might otherwise have been paid for buildings, when the land was finally acquired by the city.

In the widening of Woodward Avenue, an important new hotel set its main structure back of the new street line, but placing a one-story structure out to the old street line. The owner of the property was compensated for the one-story structure. Subsequently, the charter of the City of Detroit was amended to permit the establishment of building lines. We have no record, however, of the utilization of the charter amendment for this purpose.

In recent years, the city of Miami, Florida has imposed a series of 5 ft. building lines on down-town streets to provide for their eventual widening. Some new buildings have honored the new street lines, and have set back. A crisis arose recently, however, when an important downtown building was being thoroughly remodeled. The city insisted that the remodeling was of such a nature that the building ought to be set back to the new line. The property owner refused. Apparently, the legislative body in recent months has been permitting buildings to come out to the old line of the street, thus effectively destroying the building line plan.

Abandonment of Building Lines

Let us assume that a police power building line regulation has been imposed by the muni-
cipality, and that some of the property owners have conformed thereto. Let us assume in particular that a property owner is situated between two existing buildings, has set a new building back to the new line. Let us assume further that after some years, the legislative body changes its mind, with respect to this particular street, and decides that it shall not be widened. What is its responsibility to the property owner who has voluntarily set his building back, and is now in a pocket? One city attorney has ruled that there is no legal responsibility on the part of the community, but that there is a moral responsibility. In at least one community, a property owner who set his building back, has been compensated for the cost of moving his building forward up to the re-established former line, or building an addition up to this line.

Standard City Planning Enabling Act

The Standard City Planning Enabling Act prepared by the Advisory Committee on City Planning and Zoning of the U. S. Department of Commerce, and adopted in modified form by many states, devoted Title III to "Buildings in Mapped Streets."

"Sec. 21. Reservation of Locations of Mapped Streets For Future Public Acquisition. --Any municipal planning commission is empowered, after it shall have adopted a major street plan of the territory within its subdivision jurisdiction or of any major section or district thereof, to make or cause to be made, from time to time, surveys for the exact location of the lines of a street or streets in any portion of such territory and to make a plat of the area or district thus surveyed, showing the land which it recommends be reserved for future acquisition for public streets. The commission, before adopting any such plat, shall hold a public hearing thereon, notice of the time and place of which, with a general description of the district or area covered by the plat, shall be given not less than 10 days previous to the time fixed therefor by one publication in a newspaper of general circulation in the municipality if the district or area be within the municipality, or of general circulation in the county if the district or area be outside of the municipality. After such a hearing the commission may transmit the plat, as originally made or modified as may be determined by the commission, to council, together with the commission's estimate of the time or times within which the lands shown on the plat as street locations should be acquired by the municipality. Thereupon by resolution, council may approve and adopt or may reject such plat or may modify it with the approval of the planning commission, or, in the event of the planning commission's disapproval, council may, by a favorable vote of not less than two-thirds of its entire membership, modify such plat and adopt the modified plat. In the resolution of adoption of a plat council shall fix the period of time for which the street locations shown upon the plat shall be deemed reserved for future taking or acquisition for public use. Upon such adoption the clerk of council shall transmit one attested copy of the plat to the county recorder of each county in which the platted land is located and retain one copy for the purpose of public examination and hearings of claims for compensation. Such approval and adoption of a plat shall not, however, be deemed the opening or establishment of any street, nor the taking of any land for street purposes, nor for public use, nor as a public improvement, but solely as a reservation of the street locations shown thereon, for the period specified in the council resolution, for future taking or acquisition for public use. The commission may, at any time, negotiate for or secure from the owner or owners of any such lands releases of claims for damages or compensation for such reservations or agreements indemnifying the municipality from such claims by others, which releases or agreements shall be binding upon the owner or owners executing the same and their successors in title. At any time after the filing of a plat with the county recorder, and during the period specified for the reservation, the planning commission and the owner of any land containing a
reserved street location may agree upon a modification of the location of the lines of the proposed street, such agreement to include a release by said owner of any claim for compensation or damages by reason of such modification; and thereupon the commission may make a plat corresponding to the said modification and transmit same to council; and if such modified plat be approved by council, the clerk of council shall transmit an attested copy thereof to the said county recorder or recorders, and said modified plat shall take the place of the original plat. At any time council may, by resolution, abandon any reservation and shall certify any such abandonment to the said county recorder or recorders."

Section 22 provides for compensation and for the appointment of a Board of Appraisers to fix the amounts of compensation to be paid to the owners of lands reserved. Section 24 provides for an appeal from compensation awards, while Section 25 deals with compensation for buildings in reserved street location.

Model City Charter

The model city charter, prepared by the National Municipal League, in its section on Planning, Zoning, and Housing, has a paragraph dealing with lines of mapped streets. There is another section dealing with Buildings in Mapped Streets, which says in part.

"The council may provide by general ordinance that no permit shall be issued for any building or structure or any part thereof on any land located between the mapped lines of a street as shown on the official map. Any such ordinance shall provide that the zoning board of appeals shall have the power, upon an appeal filed with it by the owner of such land, to grant a permit for a building or structure or part thereof in any such mapped street location in any case in which such board finds, upon the evidence and arguments presented to it upon such appeal, (a) that the entire property of the appellant, of which such mapped street location forms a part, cannot yield a reasonable return to the owner unless such permit be granted, and (b) that, balancing the interest of the city in preserving the integrity of the official map and the interest of the owner of the property in the use and benefits of his property, the grant of such permit is required by considerations of reasonable justice and equity.

"Before taking any action, the board of appeals shall hold a hearing at which the parties in interest shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be given to the appellant by mail at the address specified by the appellant in his appeal petition. In the event that the board of appeals grants a building permit in any such appeal, it shall have the power to specify the exact location, extent, ground, area, height, duration and other details and conditions to govern the building, structure or part thereof for which the permit is granted."

Legislation

Some states, such as Illinois, Indiana, Iowa, Kansas, Michigan, Nebraska, North Carolina, Ohio, Oklahoma, Tennessee and Texas, have had enabling legislation for land subdivision control which would permit the protection of street reservations by requiring the location of streets in accordance with the locality's street plan prior to the approval of land subdivision plats.

One of the major means of establishing building lines has been through legislation which includes provisions for the protection of mapped streets. The following states, in addition
to Pennsylvania which has been previously mentioned, are among those having such legislation:

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<tr>
<th>State</th>
<th>Legislation Details</th>
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<tbody>
<tr>
<td>Kentucky</td>
<td>Baldwin's Kentucky's Rev. Statutes, 1942 Sec. 100.280 (3037h -131) and 100.290 (3037h -132)</td>
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<tr>
<td>Maine</td>
<td>Laws of 1943, c. 199</td>
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<td>Maryland</td>
<td>Laws 1933, c. 599 as amended by Laws 1941, c. 523</td>
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<td>Massachusetts</td>
<td>Acts of 1947, c. 340</td>
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<td>Minnesota</td>
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<td>New Hampshire</td>
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<td>New York</td>
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<td>North Dakota</td>
<td>Laws of 1929, c. 177</td>
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<td>Utah</td>
<td>Laws of 1945, c. 23</td>
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<td>Wisconsin</td>
<td>Stats. 1939, sec. 62.23 (Laws 1937, c. 402) as amended Laws 1941, c. 203</td>
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**Source Book:** The best source of information on the subject, is the book entitled *Building Lines and Reservations for Future Streets*, by Russell V. Black, which is Volume VII in the Harvard City Planning Series. Although published in 1935, it is still the major source of information on this subject. The book contains chapters dealing with legislative and administrative aspects of building lines and local procedure and experience. It has a chapter dealing with court decisions, a section on eminent domain vs. the police power, a number of city and county ordinances in the appendix, an appendix on state legislation, and one containing model legislative forms.

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