

THE COMMISSIONER | BEST PRACTICES

SAVING VINTAGE AND HISTORIC SIGNS

Three cities tackle the challenge of preserving these nonconforming community landmarks. *By James B. Carpentier, AICP*



A years-long effort to restore the iconic diving girl sign on the Pueblo Hotel in Tucson prompted the city to rewrite its sign code to allow for preservation of local landmark signs.

TUCSON'S EIGHT-YEAR OLD historic landmark sign ordinance started with one man's effort to save the "diving lady" sign (left), which for more than 60 years had welcomed visitors to the Pueblo Hotel. Barry Davis, the new owner, converted the property into law offices in 1993 and then started a years-long effort to get the city to grant a permit to restore the dilapidated sign.

It wasn't easy. The existing code banned signs that were located in a right-of-way, exceeded the 12-foot maximum height, and/or failed to meet the required setback. The fact that the diving lady topped a pole was another mark against it.

The good news is that the battle to save one sign started a discussion about Tucson's past and whether icons and community landmarks with significant ties to the past like this one should be saved—and provides a few best practices for other communities looking to do the same.

How they did it

First came a new sign code. A small group that included the Tucson-Pima County Historical Commission, the Citizen Sign Code Committee, the Downtown Partnership, and the business owner with the historic sign worked together to develop a code that allowed for the preservation of signs such as the diving lady. Forming a broad stakeholder group, as Tucson did, ensures sign regulations that are representative of the entire community.

To get ideas, the group chose outstanding examples from jurisdictions throughout the U.S., including Flagstaff, Arizona; Orlando, Florida; and San Jose, California. It took 24 public meetings, but the city council finally approved the sign code in June 2011. The code defines three types of landmark signs: classic,

transitional, and replica. The rules define a classic sign as one installed before 1961. A transitional sign dates from between 1961 and 1974. A replica historic sign is an accurate copy of a pre-1961 sign.

To date, some 200 signs have been included in the city's official register of historic landmark signs. Inclusion is voluntary, but the city does provide some incentives to encourage participation. For one thing, property owners who are involved in the program may exempt compatible registered signs from the total square footage of signage allowed for their building. They may also put up new signs if they are appropriate. The code also allows registered signs to be relocated to another location so long as the zoning is appropriate and the signs do not exceed the measurements allowed by the Historic Landmark Sign Concentration requirement.

Other models

Salt Lake City also has done a notable job with its recently adopted vintage sign ordinance. It has developed comprehensive design guidelines for new and existing signs in historic districts.

A model in ensuring that new signs in historic districts are appropriate is Portsmouth, New Hampshire, where the historic district commission has developed guidelines for an eight-page policy document for new signs and awnings. The document includes many helpful images and provides clear guidance for applicants.

If your community is seeking ways to save its historic signs or to address new signs in historic districts, the approaches outlined here are worth a look.

Carpentier is the director of state and local government affairs for the International Sign Association in Alexandria, Virginia.

THE COMMISSIONER | TOOLS

THE BASE, THE OVERLAY, AND THE FLOAT

By DAVID SILVERMAN, AICP

Zoning can be endlessly creative and endlessly confusing, both to land-use practitioners and lay people. Let's explore a few basic zoning terms and tools that every commissioner needs to know.

BASE ZONING DISTRICT. Likely 99.9 percent of your time involves dealing with standard base districts, shown on your zoning maps as permitted or specially permitted uses. The base zoning district plays a key role either by perpetuating existing development patterns or setting the stage for new ones. Besides permitted uses, base districts include bulk regulations governing the massing of buildings on zoning lots (e.g., height, floor area ratio, and setbacks) and other matters pertaining to improving property. Your base district may also include regulations for things like accessory uses, landscaping, and architectural requirements.

BEYOND THE BASE—OVERLAY AND FLOATING ZONES. Now consider another scenario, one that addresses a unique development challenge that does not fit anywhere—but must be accommodated. Zoning, in its infinite capacity to be creative (and maddening), came up with solutions—one that may appear on your zoning map without immediate effect, and one that shows up in the zoning code but does not appear on the map.

Consider these nonexhaustive examples: You have an area that requires intensive redevelopment with projections of a certain scale. Another is an ecologically sensitive area that warrants redevelopment, but at a lesser scale than is permitted by the underlying base zoning. A third use could be to maintain and expand unique architectural features.

There are two other zoning tools that can help address these challenges. The first is the overlay zone, which overlays a discrete area of a base district or districts and creates an additional set of development standards to account for specific land-use policy goals and objectives. The overlay zone enables new standards to be introduced in a very targeted and strategic way. It can be used to address specific land-use policy goals and objectives in your community's comprehensive plan.

The next is the floating zone. It is similar to an overlay zone, with one important caveat. It "floats" over a community or a specific part of a community, with yet another set of standards to accommodate specific development opportunities. It differs from the overlay zone in that it is unmapped and can be "set down" on top of any base zoning district in the community. You only know the floating zone exists because the regulations governing it are part of the zoning text.

Both the overlay and the floating zones result from certain triggering events that govern the development of a property. Usually that event is a planned development. Be aware, however, that the floating zone will require a map amendment along with the other zoning entitlements.

Silverman is a partner at Ancel Glink, a law and planning firm in Chicago.

THE COMMISSIONER | LAW

A FAIR SHAKE FOR COMMUNITY RESIDENCES

If your local zoning code requires special-use permits for group homes, your city could be violating federal antidiscrimination law. *By Daniel Lauber, AICP*

SERVING AS A planning commissioner is challenging enough. Being told to follow zoning provisions that violate the nation's fair housing law doesn't make it any easier—or ethical, for that matter.

If your local zoning ordinance requires a special-use permit to allow “community residences”—also known as group homes or care homes—to locate in residential districts even when a proposed community residence complies with your ordinance's definition of “family,” it's clearly time to revise your zoning code to comply with the nation's Fair Housing Act (FHA).

Common types of “community residences” include group homes for folks with developmental disabilities, mental illness, or physical disabilities, as well as homes for the frail elderly and people in recovery from substance addiction.

The essential characteristic of all community residences is that they seek to provide as normal a living environment as possible (“normalization”) and to incorporate residents into the social fabric of the surrounding community (“community integration”). Living in the family-like setting of a community residence allows all these groups to engage in the everyday activities most of us take for granted.

The Fair Housing Amendments Act (FHAA) of 1988 added people with disabilities as a protected class, thus prohibiting discrimination against them. The FHA requires cities and counties to make

a “reasonable accommodation” in their zoning codes and other policies to allow community residences to be located in any residential district.

FHA rules for compliance

The very nuanced 1988 FHAA law allows jurisdictions to adopt specific

zoning for community residences. It starts with the zoning code's definition of “family.” If a proposed community residence comes before your zoning board seeking a special-use permit and it meets any of these three criteria, you are obligated by law to approve it with no restrictions:

1. Your zoning ordinance's definition of “family” allows any number of unrelated people to live together (pretty rare).
2. Your ordinance does not define “family” at all (very rare).
3. Your ordinance caps the number of unrelated people allowed to live together, and the number of occupants in the proposed community residence falls within that cap (the most common approach).

In all three situations, a community residence for people with disabilities is legally considered a “family” and must be treated the same as any other family. This means that a zoning code that requires a special-use permit, spacing distance between community residences, or even

a license is “facially discriminatory,” meaning it treats people with disabilities differently than other “families.” Equally important, your zoning code may not exclude community residences from its definition of “family.”

Tips for reasonable accommodation

Under the third, and most common, approach listed above, your town must make a “reasonable accommodation” for community residences proposing a number of unrelated people that exceed the cap. That means using the least drastic means possible needed to achieve legitimate government interests, such as preventing the clustering of community residences on a block (undermining the ability of community residences to achieve their purposes, function properly, and possibly alter the neighborhood's character) or ensuring occupants of community residences are protected from incompetent care, exploitation, fraud, and abuse.

The legal way to make this reasonable accommodation is to allow proposed community residences that exceed the cap on unrelated people as permitted uses in all zones where residential uses are allowed when the following standards are met:

1. The proposed residence must be located at least a city block (usually 660 feet) from any existing community residence.
2. The residence must be eligible for (and actually receive) state licensing or certification.

Requiring a special-use permit in any other circumstance runs afoul of the FHA as well as sound planning and zoning principles.

Lauber is a planner and attorney who introduced the use of spacing distances in PAS Report No. 300, Zoning for Family and Group Care Facilities. He is also the author of model zoning for community residences for APA and the American Bar Association. For more, see www.grouphomes.law.

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