




FILLING THE GAPS BETWEEN ZONING ORDINANCES AND THE UNIFORM CONSTRUCTION CODE

Presented by

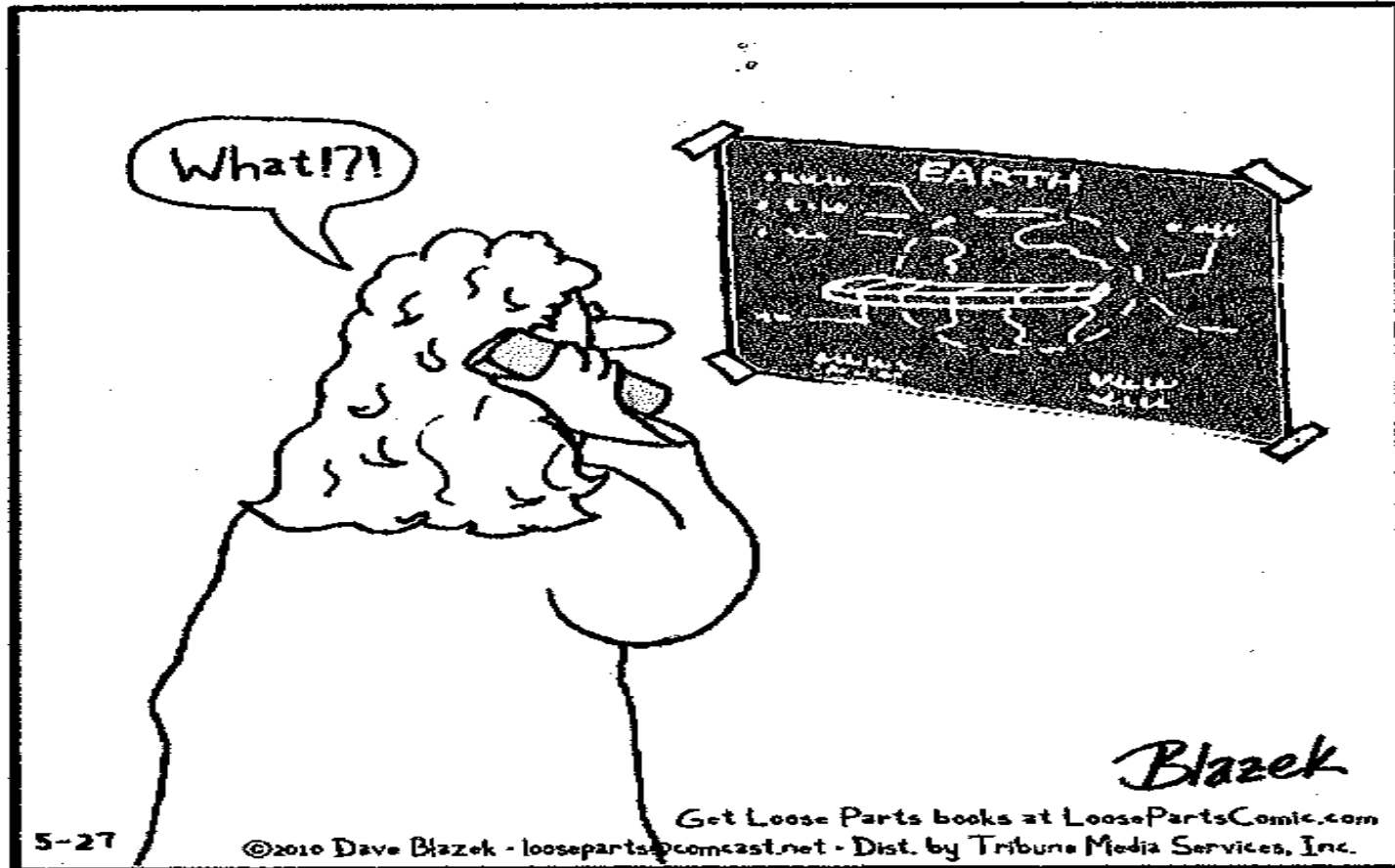
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The information contained in this presentation should not be construed as legal advice. As always, one should check with their own legal counsel or solicitor for specific legal advice


LOOSE PARTS

DAVE BLAZEK




Before God double checked with Zoning,
Earth was going to have a really cool deck.

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- Although the previous slide and cartoon is intended for humor, the fact remains there are many regulations involving building and land use.
 - Previously , zoning was considered “the Swiss Army Knife” of local regulations over buildings and land.
 - Many zoning ordinances contain provisions which are rooted in building codes.




All of that has changed and the codes have become more specific to the activity which is regulated. These include:

- Zoning Ordinances
- Building Codes
- Flood Zone Regulations
- Property Maintenance Codes
- Property Nuisance Ordinances



In this presentation, we will discuss the first two; zoning and building codes and how they connect with each other.

It is important that we as zoning and planning officials know the relationship of the two codes and how to fill in those gaps with clear and concise administration and enforcement.



With the enactment of the Pennsylvania Uniform Construction Code in 1999 came new regulations, definitions, administrative duties and enforcement activities.

To avoid confusion, conflict and possible ambiguity within your zoning ordinance and the building code, it is advised you consider some of the following.



Building Permit?

Zoning Permit?


Zoning Certificate?

Certificate of Occupancy?


Are we speaking the same language ?



The importance of definitions is the avoidance of ambiguity



Many legal challenges to zoning ordinances have been successful due to vagueness and ambiguity



An ordinance is unconstitutionally vague when it “requires persons of common intelligence to guess at its meaning.”

Fisher v, Viola A.2d 782, 787 Pa Commonwealth 2001



Robert Glance and Melissa Pytel

v.

Fairview Township Zoning Hearing Board,
Fairview Township (Erie County, Pa)

Erie County Court of Common Pleas
No. 15383-2009

- **When are permits required?** (zoning permits; “when required” v. always required)
- **ZHB attempted to “manufacture” clarity** (in their ruling)
- **Use of term “Special District”** (to which there were none)
- **“A person is left to guess when he/ she is required to get a permit”**
- **Township and ZHB held position that property owners should call Zoning Office if they had a question** (admits ambiguity exists)

Municipalities Planning Code

Section 107. Definitions.

(a) The following words and phrases when used in this act shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

International Building Code

DEFINITIONS

201.1 Scope. Unless otherwise expressly stated, the following words and terms shall, for the purposes of this code, have the meanings shown in this chapter.

201.2 Interchangeability. Words used in the present tense include the future; words stated in the masculine gender include the feminine and neuter; the singular number includes the plural and the plural, the singular.

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the International Fuel Gas Code, International Fire Code, International Mechanical Code or International Plumbing Code, such terms shall have the meanings ascribed to them as in those codes.

201.4 Terms not defined. Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

International Building Code


To be more specific, here is what it says regarding the word “Permit”

PERMIT. An official document or certificate issued by the authority having jurisdiction which authorizes performance of a specified activity.




Is the term “Zoning Officer” defined in the MPC?


Is it defined in your local zoning ordinance?



Building Code Official -- A construction code official, or the building code official's designee, who manages, supervises and administers building code enforcement activities under § 401.7(a)(18) (relating to certification category specifications). Duties include, but are not limited to: management of building code enforcement activities; supervision of building inspectors or plan examiners; authorizing issuance of certificates of occupancy; issuance of building permits, violation notices and orders to vacate; and the initiation of prosecutions.



Construction Code Official -- An individual certified by the Department in an appropriate category established under section 701(b) of the act (35 P. S. § 7210.701(b)) to perform plan review of construction documents, inspect construction or administer and enforce codes and regulations in that category under the act or related acts under section 103 of the act.


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- Important definitions to remember and amend to your zoning ordinances:

- Zoning Permit
- Zoning Certificate
- Building Permit
- Certificate of Occupancy


Zoning Permit:

A permit issued by the Zoning Officer pursuant to the *zoning ordinance* adopted by the municipality. A Zoning Permit is issued upon application compliance with provisions of the *zoning ordinance*. Issuance of the Zoning Permit shall not be construed as a building permit for projects which are under the purview of the Pa Uniform Construction Code Act 45 of 1999.

(Suggested definition)



The importance of the previous slide is the applicant should not think he has been issued a *building permit* when it is actually a *zoning permit* that has been issued



Zoning Certificate: A certificate of approved, conforming, nonconforming or appropriate land or building use issued by the Zoning Officer. The Zoning Certificate shall refer only to conformance or non conformance with the enacted zoning ordinance and shall not imply compliance with any building or property maintenance code.




A Zoning Certificate should contain the following:

- Property address and other relevant parcel identification
- Zoning Classification
- Conforming / Nonconforming Use
- The ordinance in which the use was established under
- If nonconforming, the specific reasons for such determination

Building Permit:

A permit issued by the *Building Code Official* which allows the applicant to commence construction pursuant to the Pa Uniform Construction Code Act 45 of 1999.

FPN: In communities which have adopted a zoning ordinance, the general assumption is that the proposed project has been approved for zoning and or land development compliance. The issuance of the building permit is the next step and allows construction to proceed.



Certificate of Occupancy -- A
certificate issued by a building code
official allowing occupancy of a
building or structure under the
Uniform Construction Code.

35 P.S. §§ 7210.401.1 (definitions)

§ 403.46. Certificate of Occupancy.

(a) A building, structure or facility may not be used or occupied without a certificate of occupancy issued by a building code official.

(b) A building code official shall issue a certificate of occupancy within 5 business days after receipt of a final inspection report that indicates compliance with the Uniform Construction Code. The certificate of occupancy shall contain the following information:

(1) The permit number and address of the building, structure or facility.

(2) The permit holder's name and address



Cont'd

(3) A description of the portion of the building, structure or facility covered by the occupancy permit.

(4) The name of the building code official who issued the occupancy permit.

(5) The applicable construction code edition applicable to the occupancy permit.

(6) The use and occupancy classification under Chapter 3 (Use and Occupancy Classification) of the "International Building Code," when designated.



Cont'd

7) The type of construction defined in Chapter 6 (Types of Construction) of the "International Building Code," when designated.

(8) Special stipulations and conditions relating to the permit and board of appeals' decisions and variances for accessibility requirements granted by the Secretary.

(9) The date of the final inspection

Cont'd


(c) A building code official may issue a certificate of occupancy for a portion of a building, structure or facility if the portion independently meets the Uniform Construction Code.

(d) A building code official may suspend or revoke a certificate of occupancy when the certificate was issued in error, on the basis of incorrect information supplied by the permit applicant or in violation of the Uniform Construction Code. Before a certificate of occupancy is revoked, a building owner may request a hearing before the board of appeals under § 403.122 (relating to appeals, variances and extensions of time).

(e) A building code official may issue a temporary certificate of occupancy for a portion or portions of the building or structure before the completion of the entire work covered by the permit if the portion or portions may be occupied safely. The building code official shall set a time period during which the temporary certificate of occupancy is valid.

Exemptions to UCC compliance

- Detached garages under 1000 sq. ft.*
- Sheds
- Carports
- Greenhouses
- Agricultural buildings (agricultural uses)
- Recreational Cabin (see definition in UCC)
- Recognized religious sects
- Fences
- Retaining walls



Although the preceding slide listed exemptions, compliance with zoning regulations still applies. *A zoning permit* would be the standard method for permitting such activities.

International Building Code

406.1 Private garages and carports.

406.1.1 Classification. Buildings or parts of buildings classified as Group U occupancies because of the use or character of the occupancy shall not exceed 1,000 square feet (93 m²) in area or one story in height except as provided in Section 406.1.2. Any building or portion thereof that exceeds the limitations specified in this section shall be classified in the occupancy group other than Group U that it most nearly resembles.

Cont'd

406.1.2 Area increase. Group U occupancies used for the storage of private or pleasure-type motor vehicles where no repair work is completed or fuel is dispensed are permitted to be 3,000 square feet (279 m²) when the following provisions are met:

Cont'd

(condition)

1. For a mixed occupancy building, the exterior wall and opening protection for the Group U portion of the building shall be as required for the major occupancy of the building. For such a mixed occupancy building, the allowable floor area of the building shall be as permitted for the major occupancy contained therein.

Cont'd

(Condition)

2. For a building containing only a Group U occupancy, the exterior wall shall not be required to have a fire-resistance rating and the area of openings shall not be limited when the fire separation distance is 5 feet (1524 mm) or more.

International Building Code

406.1.3 Garages and carports.

Carports shall be open on at least two sides. Carport floor surfaces shall be of approved noncombustible material. *Carports not open on at least two sides shall be considered a garage and shall comply with the provisions of this section for garages.*



International Building Code / ANSI 117

Accessibility requirements

Does your municipality allow the construction of handicap access ramps for dwellings?

If not why?



Questions / Comments
Experiences