

# ZONING PRACTICE

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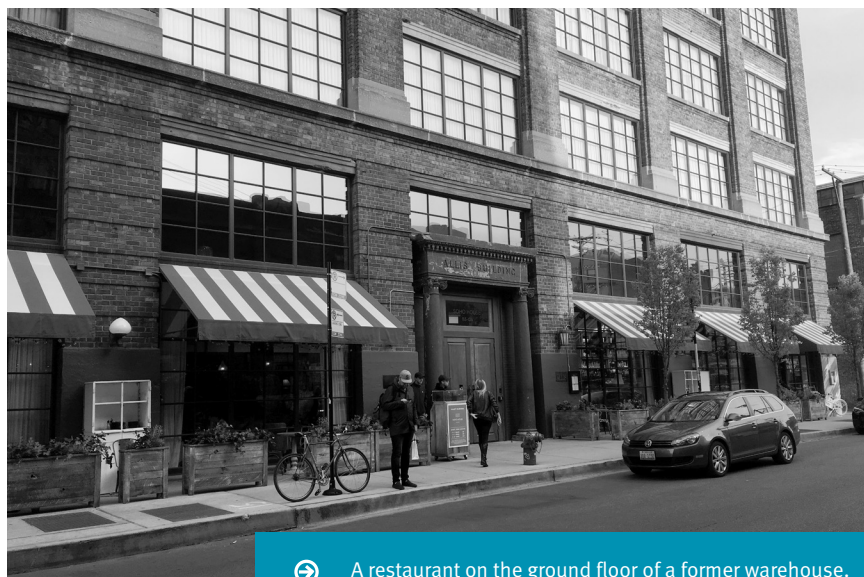
**PRACTICE SMALL BUSINESS SUPPORT**



# Zoning for Small Business

By Arista Strungys, AICP

Zoning often treats commercial districts as a singular land-use category, with little or no distinction in scale or intensity.



➔ A restaurant on the ground floor of a former warehouse.

In these instances, commercial districts generally seem the same on paper, with small differences in setbacks and use permissions. One of the problems with this approach is that it can create unintentional barriers for small businesses, businesses that have positive impacts on a community that go beyond direct economic benefits.

For example, successful small businesses enhance community character and create an identity that is unique to the municipality. Some municipalities become known for their local business environment. One community may attract visitors to its local craft brewery and restaurant scene. Another may have a successful downtown with small shops that sell the wares of local artists, which attract residents as well as visitors from neighboring communities. These communities become known for being hubs of these types of small businesses.

Small businesses also facilitate the adaptive reuse of existing structures. Small businesses are more flexible in location and space needs than larger scale businesses and chain

stores, which is something that can work to the community's advantage. Smaller businesses can locate in established smaller storefronts, and they can also take advantage of new development spaces. For example, if a community has large industrial buildings no longer able to support manufacturing, these can be renovated into smaller spaces and leased to small local businesses.

By acknowledging the place and role of small businesses in the community within development regulations, these potential benefits can come to fruition. Small businesses have specific regulatory needs, so it is important that zoning ordinances do not create unintentional barriers instead of opening up opportunities for entrepreneurship. This article discusses two key areas of zoning regulation that affect small businesses: 1) use classification and permissions and 2) development standards.

## CAN YOUR ZONING ORDINANCE BE 'USED' FOR SMALL BUSINESSES?

An out-of-date approach to classifying and

permitting uses is one of the biggest barriers to small businesses and, quite frankly, can negatively impact commercial development throughout a community regardless of scale. Use classification and permission schemes that are too specific, too narrowly drawn, and contain obsolete uses pose significant barriers. Meanwhile, a modern approach to use classification and permission builds in flexibilities that can address emerging uses over time without discretionary approvals.

### Principal Uses

Older ordinances often build inflexibility into commercial use permissions in two ways: 1) by taking a specific use approach and 2) by organizing permissions in a cumulative or pyramid system of uses. Combined, these approaches can frustrate potential new small businesses by requiring lengthy and expensive special approvals, complicating interpretations of permissions, and discouraging emerging uses.

The specific use approach has become disfavored in modern practice because of its length and inability to respond to new and emerging uses. Inherent in a specific use-based approach is the requirement that every possible use desired by the municipality must be included in the use list or, by virtue of exclusion, it is prohibited.

One approach that better addresses the control and administration of uses within an ordinance is to adopt a categorical use approach, where specific uses are grouped into larger "generic" categories. Modern practice has moved toward this approach because of two main benefits. First, it eliminates the need for exhaustive lists; hence, the sections of the ordinance detailing use permissions become shorter and easier to understand. Second, the categorical use approach provides the municipality with flexibility to review and permit those uses that may be desirable for the community within the broad context of the use definitions, without worrying about whether or not the use is specifically listed.

For example, by converting to a categorical use approach, the generic use category “retail goods establishment” replaces specific uses such as convenience store, bookstore, record store, clothing store, etc. As new types of retail emerge, the “retail goods establishment” can accommodate them without requiring a text change to the ordinance. For example, an incubator retail use that rents space to vendors and artisans to sell their wares, with a rotating schedule of vendors, would not need to apply for separate permissions as users switch in and out, because they are all “retail.”

The second issue is the use of a cumulative or pyramid permissions structure, which accumulates permitted and special uses by district. Under this approach, each zoning district permits all of the uses allowed in the next lowest intensity district, plus additional uses not permitted in that less-intense district. To illustrate, a pyramidal zoning ordinance would say that all uses permitted in the B-3 District are also permitted in the B-4 District, with the addition of several other uses listed specifically. This approach creates a confusing structure where the ordinance user must rely on the listing of uses in other districts in order to determine what is permitted as-of-right or by special approval in each district. Permitted and special uses should be tailored specifically to each district.

### New Types of Uses

While the categorical use approach goes a long way to improving an ordinance’s ability to accommodate emerging uses, there is still a need to monitor permissions and make sure that innovative new uses don’t slip through

the cracks. Sometimes these uses need to be singled out because we are just coming to understand their impacts, and conditions may be needed. Other times, designating these uses within the ordinance specifically indicates that the community welcomes them and is actively working toward a creating a vibrant and diverse

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small business environment. This attracts new residents and businesses that prefer to live and work where there is a diverse economy, innovation, and a unique identity.

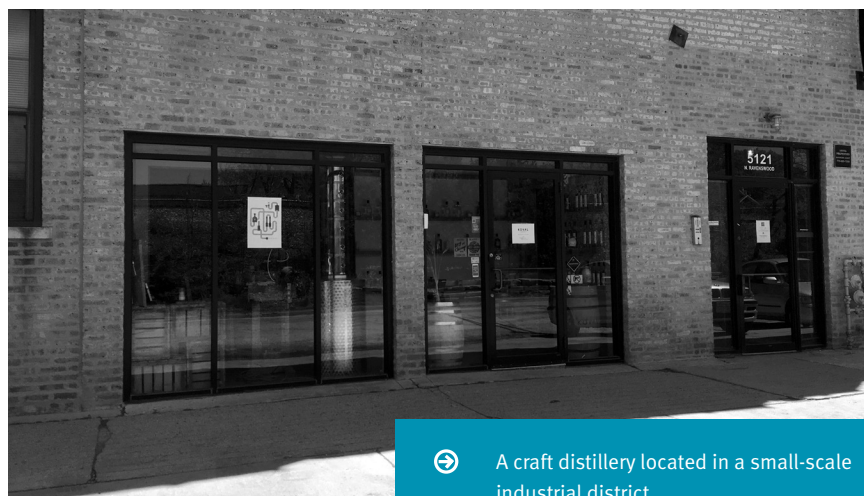
Some recent examples of these types of small business uses include the following:

**Specialty food production.** This categorical use includes businesses that specialize in the preparation or processing of select food products, such as a bakery, candy maker, butcher, catering business, cheese shop, coffee roaster, or fishmonger. What is distinct about this use is that it often offers ancillary retail sales or food service for the products made on-site. Standards should allow for the preparation, processing, canning, or packaging of food products on-site, so long as all processing is completely enclosed and there are no external impacts.

**Industrial design.** This categorical use includes businesses engaged in the design, marketing, or brand development of various products that integrate the fields of art, business, robotics, science, and engineering. It is important that industrial design establishments be allowed to create prototypes and products, but not mass manufacture products on the premises. This use cannot be classified as an office use because the standard office definition does not allow for prototype creation. Further, the scale of an industrial design establishment does not match the large-scale nature of a research and development facility, which is typically permitted only in heavy commercial or industrial districts. Therefore, a unique definition is needed.

**Artisan industrial.** This categorical use includes creative businesses involving more intensive crafts, such as small-scale metalworking, glassblowing, furniture making, pottery, leathercraft, screen printing, and related activities. As such, it is on the more intense side of small business, but it is important to distinguish these establishments from large-scale manufacturing since they don’t have the same function or degree of impact. Depending on the type of craft, there may be issues with noise, odor, fumes, or dust. Consequently, this use is best suited for higher intensity commercial or industrial areas. Artisan industrial uses are often a good fit for older industrial buildings that do not meet current manufacturing needs but provide character to neighborhoods, and these establishments are ideal for areas with a mix of heavy commercial and light industrial uses.

**Local alcohol production facilities.** This categorical use includes businesses that brew or distill beverages for sale and consumption on the premises, with or without accessory retail sales of beverages produced on-site for off-site consumption. With the popularity of craft brews and spirits, the small business



A craft distillery located in a small-scale industrial district.



Arista Strungris

➡ A food truck park in a large parking area.

environment has seen the proliferation of small local breweries and distilleries that incorporate a tasting room, bar, or restaurant to showcase their products. In commercial areas, where bars are allowed, these types of facilities should be permitted.

On a related note, ordinances may also want to distinguish microbreweries and microdistilleries, which are larger-scale operations that produce and package beverages for wholesale distribution, usually defined by a threshold of capacity (barrels or gallons per year) so that they can be distinguished from a traditional industrial use. Because they are not a large-scale industrial use, these can be permitted in select commercial areas that allow more intense uses, rather than being restricted to industrial districts only.

**Food truck parks.** Food trucks provide a chance for chefs to hone their craft without having to invest in a permanent location. Successful food trucks may eventually become brick-and-mortar restaurants and help build up the small business environment. A food truck park as a principal use creates a space where a group of food truck vendors can offer food or beverages to the public as the primary use of the property, which may include seating areas, on a more permanent basis. This is something that works well in commercial areas, especially where there are vacant lots or underused parking lots. Food trucks don't require a lot of space, and basic use standards in the ordinance can control the impacts such as hours of operation, controlling litter and food waste, and public safety concerns in terms of water and electric hook-up and health department licensing.

**The Corner Store**

In some municipalities, especially older cities, commercial uses are often integrated into residential neighborhoods, and because they are in residential zoning districts, they are non-conformities. Their status as a nonconformity hurts these uses in two ways. While existing neighborhood commercial uses are legally nonconforming uses, business owners typically cannot reestablish a commercial use in the structure by right after a period of vacancy. In addition, many corner stores are constructed as nonresidential buildings in a residential district. Therefore they are often nonconforming structures as well.

Because these uses are already there and often a valued part of the neighborhood fabric,



Arista Strungris

➡ A corner salon in a residential neighborhood.



➔ A periodic outdoor flea market.

it is recommended that ordinances directly address them. Proper controls must be put in place to ease neighboring residents’ concerns in regard to living next door to a commercial use and also to allow for easier reuse of existing structures, rather than a default variance process. These small storefronts are optimal for new, low-intensity small businesses.

One way to handle these is to create a distinct categorical use called “neighborhood commercial establishment.” It would be defined as “a commercial use established within a residential neighborhood that is nonresidential in its construction or original use.” These can then be allowed as a special use within select residential districts. If considering such a use, it is important to include conditions. Because these structures are historically part of the residential fabric, conditions should be tied to the surrounding residential area. Here are some suggestions:

- The existing structure must be nonresidential in its original construction.
- The dimensional standards of the district still apply.
- No additional off-street parking is required.
- Drive-through facilities are prohibited.
- Outside storage or display is prohibited.
- All sales, servicing, processing, and storage must be located within the structure.
- Signs must be restricted to small-scale wall, projecting, or awning signs.

Because “neighborhood commercial establishment” is a categorical use, vari-

ous designated uses can locate within that structure. This allows the uses to change over time so long as the neighborhood commercial establishment use is permitted in the relevant zoning district and the use-specific conditions are met. The following nonresidential uses are typically allowed within a neighborhood commercial establishment:

- Art gallery
- Arts studio
- Day care center
- Office
- Personal services establishment
- Restaurant
- Retail goods establishment
- Specialty food establishments

New Orleans recently adopted a new zoning ordinance, and corner stores were a key issue since the historic predominantly residential areas in the city have a light mix of uses. However, the prior code made many neighborhood commercial establishments nonconforming. By allowing this use within the historic residential neighborhoods, the small businesses that were a key part of these neighborhoods could continue, and the nonresidential structures that may have been sitting vacant would be able to house new businesses.

#### Temporary Uses, Permanent Investments

New business owners often start small through temporary uses. In this way, temporary uses encourage entrepreneurship and can offer a

means to grow into a brick-and-mortar business. The temporary use section of an ordinance should include a comprehensive set of temporary uses that are oriented toward this goal. Temporary uses that encourage the growth of small business include temporary outdoor sales events, temporary outdoor entertainment events, pop-up businesses, farmers markets, and food trucks.

Like other uses, the ordinance should include controls on their function—identifying permissible locations, time frames of operation, siting standards, and management or operational plans as appropriate. A temporary use permit requirement should be included so that uses can be regulated for impacts and to ensure that a temporary use isn’t functioning, in fact, as a permanent use. This allows easier enforcement as well.

For example, temporary outdoor sales events, such as a flea market, can have traffic, noise, and security impacts. The permit can stipulate mitigation measures as part of the permit approval, control the duration of the event, and enforce violations more effectively and efficiently. Temporary use permits are also important because these uses may begin with little or no impact, then grow over time to a point whereby they should have a permanent base.

#### Growing Home Occupations

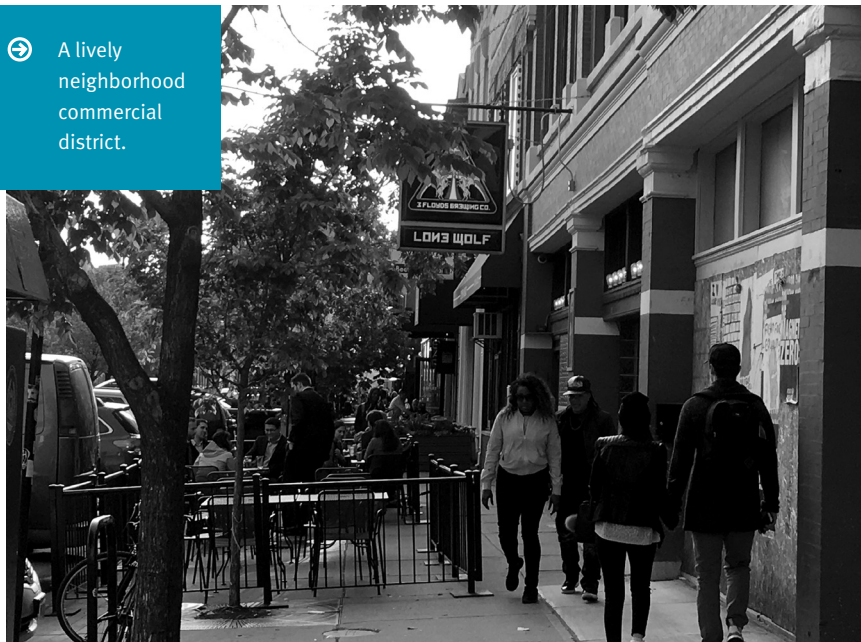
Like temporary uses, home occupations can also encourage the growth of small businesses. Home occupations allow new businesses to save money at the start and establish their name before investing in a physical space and adopting a more traditional business model. Therefore, regulations on home occupations should be flexible, in particular as new technologies become more affordable and the scope of what can be a home occupation expands. For example, 3-D printing allows for the creation of prototypes at home, and some small-scale specialty food production and packaging activities may also be compatible with a residential environment. Consequently, home occupation standards that prohibit manufacturing and production need to be more refined to allow for low-impact cottage industries.

#### THE RIGHT SET OF DEVELOPMENT STANDARDS

The term “small business” usually implies that the structure itself will be smaller in scale than other businesses. For this reason, it is important that the ordinance have a district

➔ A lively neighborhood commercial district.

Artista Strungis



or districts that function as a home for them, with the understanding that they may locate within other commercial districts within the community.

Commercial districts, including mixed use districts, should be tailored to their form and function, including regulations controlling development bulk, use mix, functionality (related to whether the commercial district serves the local community or the larger region), and street frontage types. The standards for districts should recognize that the physical character of the sites within districts vary, from small, shallow lots occupied primarily by small businesses in local commercial districts, to larger sites for multitenant retail development in regional commercial areas.

Again, while small businesses can find their way into most commercial districts, ordinances should have a district that is tailored to the smaller form of small business clusters. In many communities these are the original main streets that served the surrounding neighborhoods, and there may be one or more of these areas within a municipality. Local, or neighborhood-serving, commercial districts are appropriate for small businesses, based on their smaller overall form.

Standards for commercial clusters or main street corridors should be crafted to ensure compatibility between these commercial areas and neighboring residences, maintain the proper scale of commercial use, and address the unique issues related to smaller

commercial sites structured as a walkable commercial environment.

The standards for [commercial] districts should recognize that the physical character of the sites within districts vary, from small, shallow lots occupied primarily by small businesses in local commercial districts, to larger sites for multitenant retail development in regional commercial areas.

Dimensional and design standards for these areas should have standards that are attractive to small businesses. This means maintaining a small scale and pedestrian

orientation in local commercial areas to encourage visitors to interact with multiple small businesses. Dimensional and design standards that accomplish these goals include the following requirements:

- Establishing small setbacks to bring buildings close to the street
- Requiring windows along street frontages to create a safe and welcoming pedestrian environment
- Requiring public entrances to be oriented toward primary streets or important corners
- Limiting stand-alone parking lots and structures to community parking facilities that reinforce a pedestrian environment by making it convenient for visitors arriving by car to park in a central location
- Minimizing curb cuts and size of driveways
- Establishing proper transitions to and buffering of residential uses, which typically include smaller landscape buffer yards

It's also important to consider the impacts of sign regulations and parking requirements. Businesses of any size rely on signs to advertise their presence. If a sign code does not allow for sufficient signage, it causes difficulty for business owners. Therefore permitted sign types and sizes should be keyed to the general scale of the district.

In addition, the number of sign types and the size of these signs allowed should be appropriately scaled to buildings. Smaller projecting signs are appropriate, as are wall signs. While projecting signs can be limited to a smaller square footage per establishment, wall signs should be proportional to the facade, typically using a "sign square footage per linear foot of facade" control. For wall signs in particular, this is important because small signs on large facades can look just as out of scale as large signs on small facades.

The small, shallow, and narrow lots that are often found in small-business-oriented districts create considerable encumbrances on lots because of lack of space for required off-street parking. Therefore, parking exemptions may be needed for certain districts or areas where on-site parking is difficult or impossible to accommodate. Local commercial districts may be exempted from parking requirements entirely. Other areas may exempt based on the size of the business—for example, exempting the first 3,000 square feet from parking calculations—in order to provide relief to new devel-

opments on small lots without a variance.

Further, the ordinance can provide relief for off-street parking to existing structures that would greatly unburden new small business owners by exempting existing structures entirely from parking when the structure does not have space. When current structures do not provide any parking due to lack of sufficient lot space, they are exempted from all off-street parking requirements regardless of any change in intensity or use. This exemption remains valid until the principal building is demolished or the lot area is expanded (e.g., the adjoining lot is purchased).

### KNOWING ZONING'S ROLE

Zoning isn't the panacea to all the issues faced by small businesses, but it is an important component. To that end it is important to understand what zoning can and cannot do. The following provides an understanding of the importance and limitations of development regulations.

What are zoning's strengths when it comes to supporting small businesses?

- Zoning can incorporate a flexible use structure that welcomes innovation in new businesses.
- Zoning provides a way to sort uses into appropriate districts, where certain uses are more acceptable than others. For example, not all neighborhood commercial districts may be appropriate for a proliferation of brew pubs and microbreweries. Close proximity to residential neighborhoods may cause conflicts with neighbors. Therefore, a community may want to create two types of neighborhood commercial districts—one that allows primarily retail and service uses, and a second that also allows local alcohol production and service.
- Zoning can control the off-site impacts of a use through selectively designating special uses and including conditions for certain uses if they wish to locate within an area.
- Zoning can include districts that make it easier for small businesses to cluster. The standards for these districts should encourage a building form that maximizes exposure to pedestrian traffic. There should be a clear distinction in physical form and hierarchy between a local commercial district, where the siting of the structure would be oriented more toward the pedestrian, and the regional commercial district, where buildings

would be set back further from the street and parking may dominate the site.

- Zoning can incorporate flexible development standards, such as parking exemptions, to avoid requiring special approvals, such as variances.

## Zoning isn't the panacea to all the issues faced by small businesses, but it is an important component. To that end it is important to understand what zoning can and cannot do.

What is outside of zoning's control?

- Zoning does not regulate the quality of a use or operator. This must be enforced through other regulations, such as licenses and nuisance ordinances. Sometimes residents' concerns are that they like a certain use when run by Operator A, but not Operator B. Zoning cannot make this distinction.
- It is important to note that while zoning can allow for a range of uses, there must be a market for those uses in order for small businesses to succeed. It may take other initiatives, such as economic incentives, to spur this type of investment. And even in such cases, there may be insufficient demand for the product or service, though this is a risk all businesses take.
- Zoning does not override regulations from higher authorities, such as those permits, licenses, and regulations related to occupancy limits, alcohol service, and public health requirements for food production.

To realize the benefits of small businesses in a community, the municipality must eliminate the roadblocks within its zoning regulations.

When a zoning ordinance permits a range of uses, it can facilitate small business innovation, make it easier for small businesses to

establish themselves and take root, and send a message that small businesses are welcome within the community.

Then, when zoning acknowledges the physical form of small businesses and does not force standards upon them that they cannot meet, the community becomes more business friendly. By taking a look at their current ordinances and evaluating them through these lenses, communities can ensure that their zoning regulations encourage the growth of new—and the success of existing—small businesses.

### ABOUT THE AUTHOR

**Arista Strungys, AICP**, is a principal at Camiros, Ltd. Her area of expertise is zoning and development regulations, and she has worked with communities across the country of all sizes in drafting development regulations. She is experienced in all types of regulatory techniques, including traditional controls, form-based coding, design guidelines, and sustainable development.

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