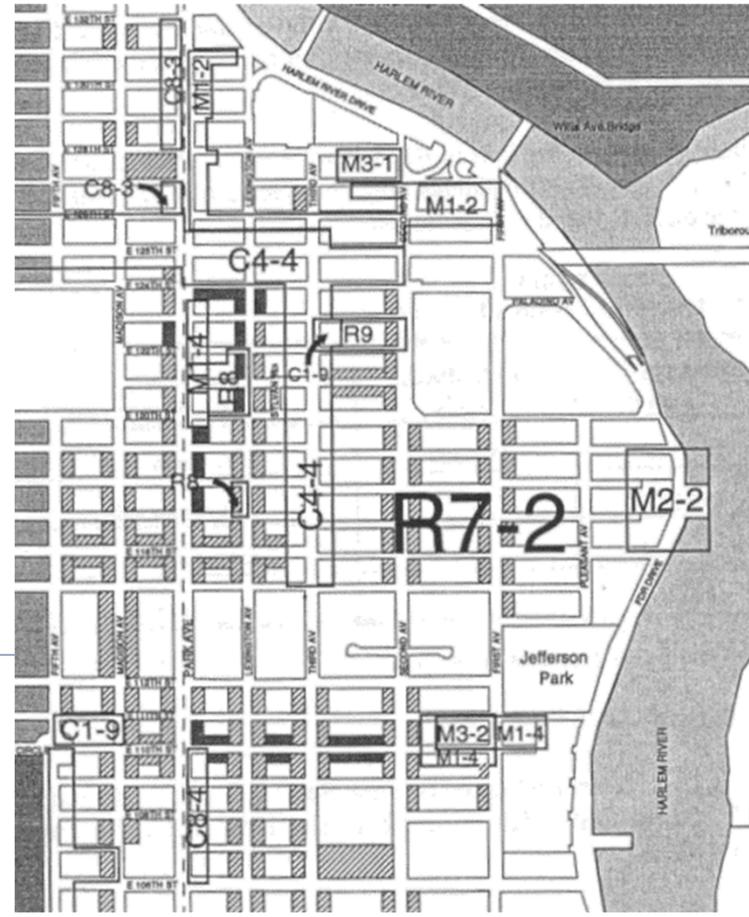


# Implementation and the Rare Variance



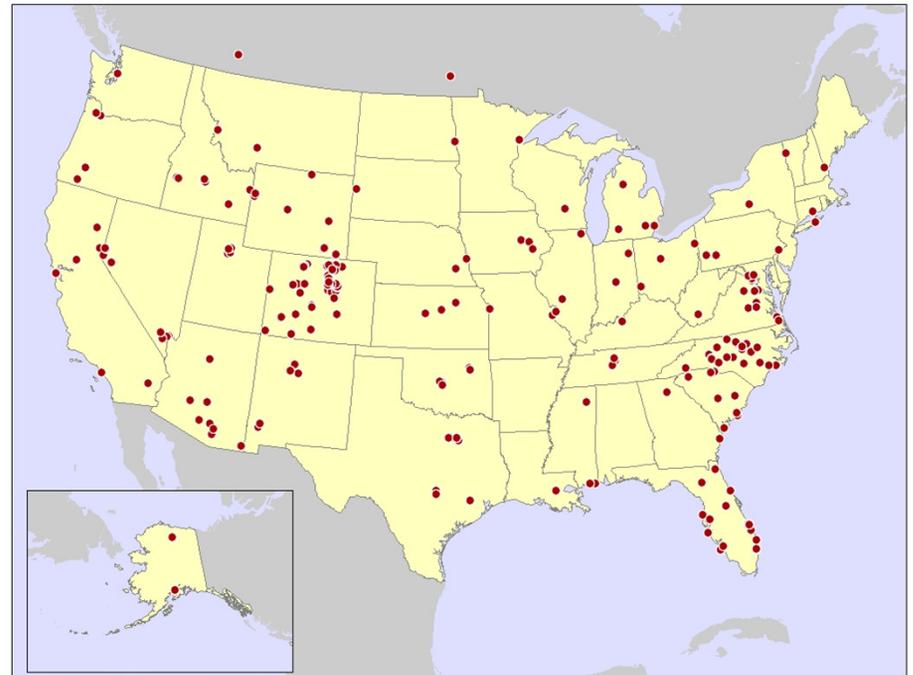
Don Elliott

Clarion Associates

Dec. 6 2013

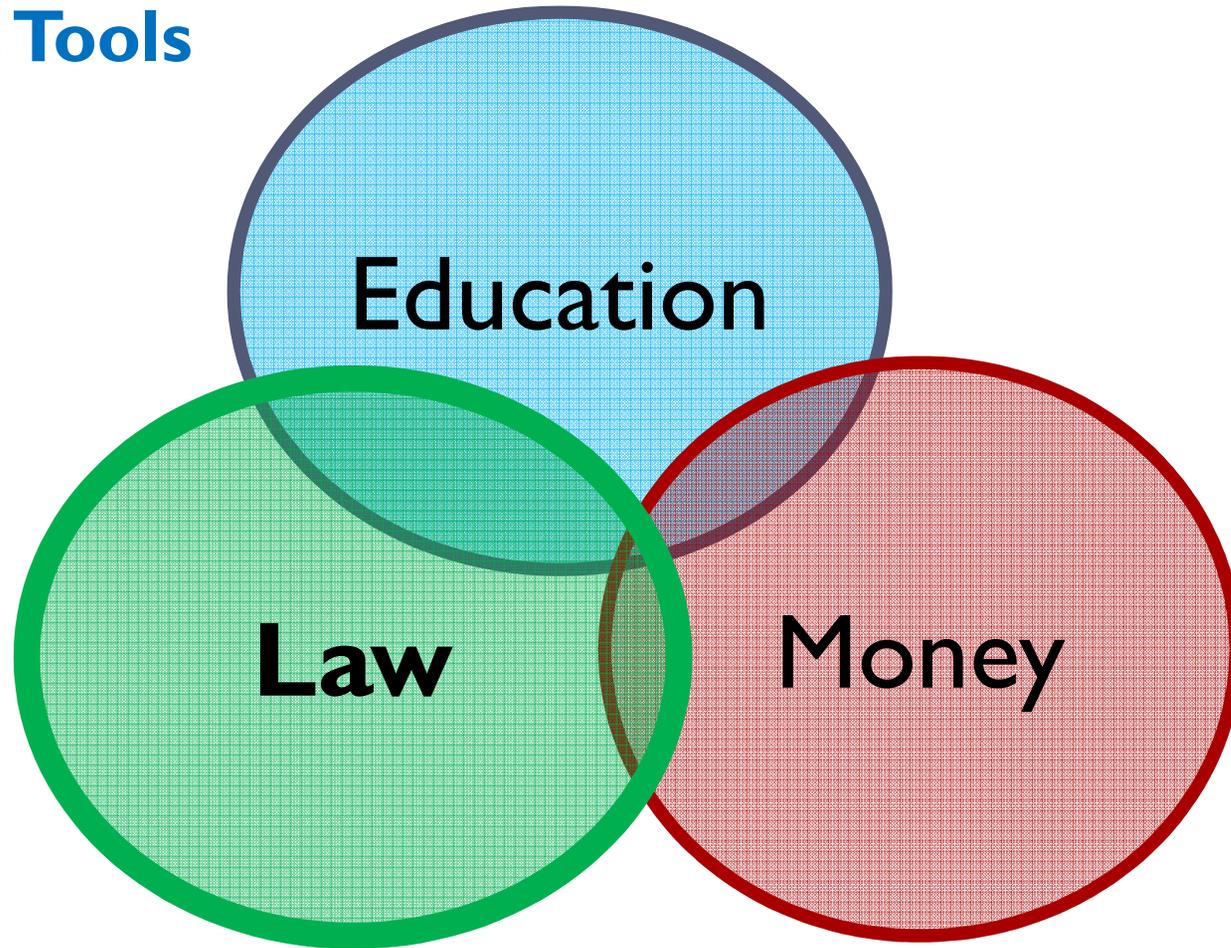
# Clarion Associates

- **17 lawyers, planners, landscape architects, and urban designers**
- **Form, use, and performance-based coding**
- **Community, corridor, neighborhood, and sustainability plans**
- **Leaders in hybrid codes and sustainable development practices**



# Implementation

## Three Tools



# Implementation

- Many parts of Comprehensive Plans can be implemented through zoning, subdivision, design standards, etc.
  - But many cannot
- The trick is parsing out those parts of the Comp Plan that are intended to be regulatory from those parts that are intended to be inspirational
  - Don't get carried away with purpose statements
  - The key question – “Is failure to meet this plan provision a grounds for denial or conditioning of a development application”
  - If so, it belongs in zoning



# Implementation

The goal of plan implementation runs into the goal of efficient development review

- Planners and citizens often would like the development to go through a hearing and be **subject to discretionary review** so the Comp Plan goals can be “considered” and used in negotiations, even if they are not reflected in zoning or subdivision standards.
- Developers and builders want to have most decisions **avoid discretionary review** hearings to reduce approval time and increase predictability.
- Moving towards more by-right development makes the community more competitive and improves self-discipline in the planning process.



# Implementation

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## Three Approaches (roughly in sequence)

### 1. Remove Barriers

- Gold-plated subdivision standards
- Unnecessary hearings
- Dual hearing requirements
- Obsolete use separation (ask the “why not” question)
- Obsolete parking requirements

### 2. Create Incentives

- Keep the list short -- what do you REALLY want them to do
- Long lists of incentives = few will get used
- Test them for economic reality
- Don't just add them to make an interest group happy

### 3. Add Regulations

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# Implementation

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## Three Approaches (roughly in sequence)

### 3. Add Regulations

- Tailor them to specific contexts – they are rarely universal
- Larger parcels? Specific areas? Only in discretionary review cases?
- Make them objective
- Think through how they relate to other regulations – avoid “whipsaws” and unanswered questions
- Build in administrative flexibility – allow the director to approve an equally good design if it meets objective, legislatively adopted criteria
- Avoid discretionary hearings if at all possible

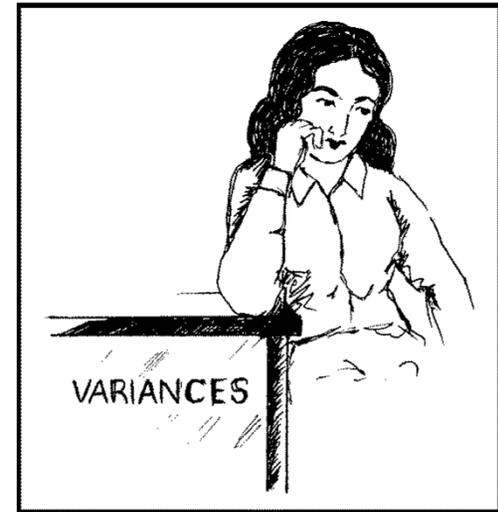
Take a look at [www.law.du.edu/RMLUI/Sustainable](http://www.law.du.edu/RMLUI/Sustainable) for lots of options

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# The Rare Variance

## The Theory

- Zoning rules will work the vast majority of the time, and variances will be rare.
- The process for getting a variance is somewhat time consuming (and/or expensive) AND staff intensive AND the “hardship” standard is high, but it doesn’t matter much because it won’t happen often



# The Rare Variance

## The Reality

- Variance applications are very common
  - Boston in 1980s – 600 per year
  - Winnipeg in 2000s – 1000 + per year
  - Philadelphia in 2000s – 3,000 per year (including conditional uses)
- Reasons
  - In older cities – trying to fit a zoning pattern (any pattern) over properties developed in 1800s and 1900s without a pattern
  - Deliberately “underzoning” land so that the neighbors always get a hearing
  - Failure to test zoning amendments for their impacts
  - Cumulative impacts of lots of amendments over time

# The Rare Variance

There's no need for this high volume of variances, because lots of good alternatives exist.

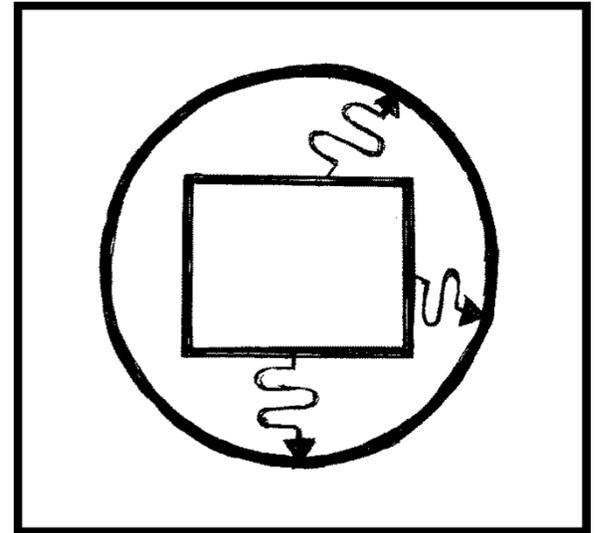
## I. Corrective Code Revisions

- When you get a high volume of similar variance requests, and they are normally approved, amend the code to make the conditions on that use or situation automatic and avoid the need for a variance
- The usual suspects are minor setbacks, minor parking, minor sign, and minor encroachments of dormers into bulk planes
- If the approvals are often subject to conditions, amend the code to make those conditions automatic.

# The Rare Variance

## 2. Administrative Adjustments

- Amend the code to give staff authority to adjust a short list of standards by a defined amount in response to site conditions
- Normal items are (again) setbacks, heights, bulk plane encroachments, parking spaces, landscaping locations
- Normal range of permitted adjustment is 5-20% -- with 10% the most common
- Document the reasons for the adjustment
- Don't allow mass adjustments

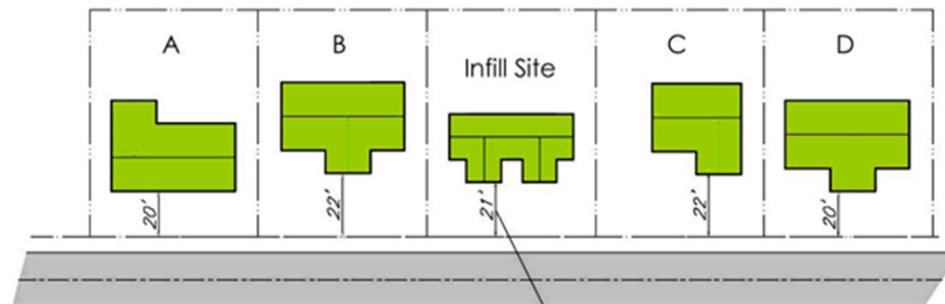


# The Rare Variance

## 3. Contextual Development Standards

- Amend the code to draft setback, height, yard, and on-site open space standards to reflect the common patterns on that block face.
- Example – front setback must be within 5 feet of the average of front setbacks on adjoining lots (and if there is no structure on the adjoining lot, then the following one)
- If there are lots of vacant lots on the block face, the contextual standard does not apply, but a default standard applies

Contextual Infill Street Setback



# The Rare Variance

## 4. Neighborhood Conservation Overlays

- Where an entire neighborhood (several blocks) were platted and developed in a pattern that does not meet the code standards, draft an overlay district crafted to reflect prevailing pattern
- Avoids the need to keep developing more and more base districts to reflect minor changes in dimensional patterns, especially in residential neighborhoods where the permitted uses do not change.
- **BEWARE** – do not let these proliferate – if there are many situations like this you need to instead use contextual standards



# The Rare Variance

## 5. Pattern Books

- Where developers are requesting variances because they are unfamiliar with new or preferred types of developments, draft a pattern book showing how new development can be accommodated on existing, typical lots without the need for variances.
- Usual suspects are Accessory Dwelling Units, Live-Work Units, the “Missing Middle” of the housing market (three-plexes, four-plexes), cottage developments, and zero lot line developments.

Chapter 10-05: Bulk and Use Standards Page 11

10-05-003-0001

G. **DUPLEX/TRIPLEX.** This is a single-family or multi-family unit that includes both duplex and triplex units where the units are designed to fit into residential neighborhoods very much as single-family units. Each building(s) is allowed a single driveway and parking is to be sheltered from the street by either a fence or landscaping. A duplex or triplex is permitted only in planned developments as per Section 10-03-001-0002 and conforming to the residential performance standards set forth in Section 10-04-002-0003 and Table 10-04-002-0003.

A = Minimum Area <sup>1</sup>	6,000 sq. ft.
Lot Area/Building	3,000 sq. ft.
Lot Area/Unit <sup>1</sup>	
B = Maximum Building Coverage	.44
C = Maximum Building Height	35 ft.
D = Minimum Lot Width	50 ft.

**Minimum Yards:**

E = From Lot Line to House	20 ft.
F = Side	10 ft.
G = Rear	15 ft.
H = Parking Lot to Dwelling	10 ft.

<sup>1</sup>Excluding required open space areas.

See Division 10-03-005 for accessory use regulations and Division 10-07-002 for off-street parking standards. Attached or detached garages or carports are required.

DUPLEX/TRIPLEX

# The Rare Variance

## 6. Use-specific Standards

- If specific uses are routinely ask for variances because the code does not fit their specific operating needs, draft use-specific standards that adjust those standards but mitigate the impacts of the adjustment.
- Example – Gas stations on urban lots that cannot design adequate while meeting bufferyard requirements, but are happy to install stronger alternative buffering of impacts.



# The Rare Variance

## 7. Alternative Equivalent Performance

- Amend the code to allow the Director to administratively approve landscaping, lighting, circulation, buffering and design sign standards if he/she determines that the alternative complies with the intent of the controls and achieves those purposes as well or better than the code standard as applied to that site.
- Example – adjustments of buffering to increase intensity on most sensitive boundaries and decrease it on others.
- Example – adjustments to commercial design standards that trade off façade materials for increased articulation and design interest.



# The Rare Variance

## 8. Prevention of the Cause

- Where requests for variances are caused by a poor fit of standard controls with unusual site topography, natural features, or drainage requirements, amend the code to avoid listed sensitive areas and allow automatic clustering of allowed density (or more) on the remainder of the site.
- Move to a “look at the land first” approach to subdivision design, but don’t penalize the property owner with an extra review process



# The Rare Variance

**We can never eliminate the need for all variances . . .**

because there will always be unanticipated combinations of lot/platting patterns and land user needs.

But we can dramatically reduce the number of variances, the private sector and public sector time and expense involved by periodically reviewing and fixing the causes of variance requests.

