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One House at a Time

Two kinds of governmental powers affect private rights to land: condemnation and police power. The latter refers to the right of the government to restrict personal freedom and property for the benefit of the general public. Most people don't think of "police power" as relating to real property. But restricting the speed limit in a school zone and restricting land use to residential are both encompassed by this definition.

Because surveyors work with land and with people who want to do something with their land, we confront manifestations of police power in many guises on a regular basis. There are ordinances mandating the number of square feet a particularly zoned lot must contain, regulations limiting maximum impervious surface on any given site, and rules defining what constitutes commercial, agricultural and residential uses of property. At times, being the focus of police power's exercise can make us feel like miscreants battling with our ethics for wanting to install a sidewalk that will bring the impervious surface of a lot five square feet over the allowance. Lately I've come to appreciate the cumulative effectiveness of police power in preserving quality of life, and how our neighborhoods change, one house at a time.

I live in a community with 300 years of recorded history. This is the site of the oldest continuously operating inn in the United States, which opened its doors to the public in 1709. Along our streams still stand some of the 18th and 19th-century mills from the start of the Industrial Revolution. Our roads with the name "ford" in them mean just that: you must ford the creek to cross them.



Obviously not all our buildings date from the earliest settlement. (My own house is just 98 years old.) Homes are a mix from pre-colonial, colonial, industrial, Victorian, and post World War II boom eras. Through the last 80 years of this growth, our local government has enacted zoning and land use ordinances to preserve the flavor of the community and its neighborhoods. Just how these regulations work or don't work in the 21st century is clearly seen through current events. Just how incrementally community transformations occur is also evident.

My immediate neighborhood consists primarily of houses about the same age as mine, although the oldest dates to the 1880s and the newest is just three years old. The lots all differ in shape due to the winding nature of our streets. One block from my home is a tax parcel 100 feet wide that the new owner, a developer, wants to subdivide so he can build a second house on it. This requires a variance to permit only 50 feet of

frontage for each of the two new parcels. The minimum frontage in that residential zone is 60 feet. Owner's Argument Number One is that these are already two separate lots and he should be able to sell them separately. The township rebuts this by saying that present use is spread over those two lots, and so they are to be treated as a single lot; there is no pre-existing condition warranting a variance. The owner counter-argues that the southerly 50 feet are open lawn and shrubs, not intrinsically part of the present house lot. Argument Number Two is that the owner has a right to do whatever he wants with his property. The phrasing has been a little less polite, but that's the gist of it.

While one more house on a built-out street may not seem like much, I started looking around at what else is happening in my community and realized that the cumulative effects are momentous. Tear-downs and infill are happening all over, erasing the face of history in the wake of

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modern construction. What is the effect of one extra house? It means at least one more car, probably two. It means a more crowded look to the street, rather than the openness of a hardwood tree-lined walking community. It means a new face on the block that probably will not blend with the homes in its immediate vicinity. My concern is not necessarily with this particular lot; rather it is that if one such variance is granted, others in less benign locations will have to be granted as well. But do I have a right to deny the property owner his windfall?

One block in the other direction from my house is a corner lot boasting a “newer” home (1920s) bought by two architects earlier this year. They applied to run their business from their home, with seven employees. The zoning board denied their request, but the architects proceeded with their plans anyway. With \$500 daily fines for each day of business, they have amassed about \$75,000 in penalties to date; their appeal is scheduled for mid-September. Vocal opponents to the infiltration of commercial use into our residential zone have kept us apprised of the juicy details. So what is the effect of one business enterprise? This one is more obvious. Seven employees drive seven cars, most of them parked on a one-way residential street (the other street on which the house fronts is a county road with no parking). Then there are the visiting clients.

Seven cars: is that a lot? It seems so when my dog and I walk by at closing time and everyone is zooming home from work. My dog is on a leash, but little kids living in the area are not so easily controlled and protected. Those seven cars take up a lot of curb space, too. What are the other considerations of having a business in the neighborhood? The noise level is not terribly different – architects are not usually rowdy folks. Once the architects move on, however, the next business moving into an existing non-conforming use may not be so tame. Definitely the amount of trash has increased; one cigarette butt or one bagel wrapper on the ground per day adds up. Mostly we worry that one business infiltration into the community can start the appeals ball rolling, as an “entitlement”.

One house at a time – that is all it takes to change the face of a neighborhood. One here, one there, gradually unraveling the fabric of a community, one variance at a time. 