



## vantage point

# Pop-Ups and Zoning

The term “pop-up” has several meanings, but is not widely known outside of urban areas. As I’ll use it today, it will not be the compact expandable camper. It also will not refer to adding a story to crown a row house (currently the source of a great zoning battle in Washington, DC where living space is at a premium). Instead, it will be as popularly used in the land use world to mean a temporary use in a space, possibly consistent with zoning but possibly not.

Pop-up parks are a fun change from the norm. The most creative of these is “PARK(ing) Day”, an event that began in San Francisco in 2005 and traveled to my side of the continent in 2008. On the third Friday of every September, about 50 successful Philadelphia applicants each create a temporary public park in just one parking space, 170 square feet of pavement turned into an imaginative rest area, playground, woodland, picnic area, miniature farm—pretty much anything in the effort to bring attention to the need for open space. (For cool images from past Days: [www.parkingdayphila.org/photos-media-coverage](http://www.parkingdayphila.org/photos-media-coverage)) Philadelphia has other pop-up parks in larger spaces intended for longer periods of time, like the 2015 summer transformation of an underutilized parking lot in the middle of the busy Benjamin Franklin Parkway into a sandy beach-like area, complete with palm trees.

Around the country, not all pop-ups are recreational. Pop-up businesses commonly use empty or under-used spaces to test the waters for business viability or for location, but they may also be a means of reaching a different audience. Such businesses have been restaurants, clothing stores, sports



and fitness centers, non-profit offices, instructional clinics, or more. What they all have in common is that they are time-limited (with specific beginning and ending dates) and designed for easy removal (when discontinued or moved to another site).

Doesn’t this temporary use aspect make a mess of what we understand about land use and zoning? How do we work with clients who may request our help in starting their pop-up businesses? In fact, most of us have experienced seasonal examples of pop-ups for years before that name became popular, often subject to regulations for the specifically named activity: Christmas tree lots, carnivals, community fairs, civic or public benefit events, and temporary event parking. The difference between pop-up businesses and the more usual “bricks and mortar” enterprises is that for the latter the

duration is generally significantly longer and more physically durable.

Many communities don’t have land use regulations flexible enough to accommodate the more recent kinds of pop-up temporary uses. Even recognizing that temporary uses allow property owners rental income and provide services to the community, existing ordinances may be clumsy and burdensome to accommodate. Most do not distinguish between temporary and more permanent uses. It can take many months to acquire the necessary license to operate a business and certificate of occupancy, possibly longer than the intended duration of operation (the cost for permits can also be a stumbling block). The question of consistency with current land use zoning may require additional hearings.

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The vitality of our urban and suburban areas can suffer when land use regulations are rigid and aging, reflecting older ideals that may differ from current preferences. Because the process of completely rewriting zoning is a long and difficult process (primarily because it involves human beings as property owners, and humans do speak up), communities use several flexible techniques, sometimes as interim measures but other times lasting for many years.

The first of these is the floating zone, a district with identified conditions to be met before that zoning district can be approved for an existing tract. These zones are not on the zoning map like traditional zones, but are written into the ordinances as

amendments. The zoning floats until the development applications are approved, and then it will be added to the zoning map. This differs from spot zoning, in which a specific site within an existing land use zone is allowed significantly different use from the rest of the zone, often a contentious situation when the use is not for the public benefit and instead is perceived as preferential and for private benefit. Floating zones are useful when the direction of a community's development is uncertain, but they do introduce an element of unpredictability, as they don't appear on public zoning maps.

Overlay zones are different in that they add additional or stricter standards for properties within an existing zone. They can

be used to protect some features, such as steep slopes, wetlands, or historic buildings. They also promote specific development projects, such as waterfront development or affordable housing.

When it comes to pop-ups, none of our existing zoning techniques may fit perfectly. But their increasing prevalence means that many of our communities should re-examine how they regulate land use. ■

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**Wendy Lathrop** is licensed as a Professional Land Surveyor in NJ, PA, DE, and MD, and has been involved since 1974 in surveying projects ranging from construction to boundary to environmental land use disputes. She is a Professional Planner in NJ, and a Certified Floodplain Manager through ASFP.