QUINLAN™ June 10, 2017 | Volume 11 | Issue 11

Zoning Bulletin

in this issue:

THOMSON REUTERS®

Mat #41945596

Nonconforming Uses—After college derecognizes fraternity, town says fraternity house use as student residence violates zoning ordinance

Fraternity argues student residence use is grandfathered or otherwise meets the requirements

Contributors

Corey E. Burnham-Howard

Zoning Bulletin is published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. For subscription information: call (800) 229-2084, or write to West, Credit Order Processing, 620 Opperman Drive, PO Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

THOMSON REUTERS®

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-229-2084
email: west.customerservice@thomsonreuters.com
ISSN 0514-7905

of the zoning ordinance

Citation: *Dartmouth Corporation of Alpha Delta v. Town of Hanover, 2017 WL 1346944 (N.H. 2017)*

NEW HAMPSHIRE (04/11/17)—This case addressed the issue of whether, upon the derecognition of a fraternity as a student organization, the use of the fraternity's property as as a student residence violated a zoning ordinance that required that student residences in a particular zoning district operate "in conjunction with another institutional use."

The Background/Facts: Dartmouth Corporation of Alpha Delta ("Alpha Delta" or the "fraternity") had been a fraternity for students at Dartmouth College ("College") since the 1840s. In 1911, Alpha Delta began housing students who were members of the fraternity. In 1920, Alpha Delta built its current housing structure (the "Fraternity House"). Since then, Alpha Delta had used the Fraternity House to house approximately 18-22 College undergraduate students who were members of the fraternity.

In 1976, the Town of Hanover (the "Town") enacted its current zoning ordinance (the "Ordinance"). Under the Ordinance, the Fraternity House was located within the "Institution" zoning district. A student residence in the Institution district is allowed only by special exception. The Ordinance defines a "student residence" in the Institution district as "[a] building designed for and occupied by students and operated in conjunction with another institutional use, which may include individual living units with social rooms and kitchen facilities for any number of students." Alpha Delta had never sought a special exception for the use of the Fraternity House.

On April 13, 2015, the College notified Alpha Delta that, "due to the fraternity's violation of the school's standards of conduct, it had revoked recognition of the fraternity as a student organization." The College had discovered that Alpha Delta had a practice of branding new fraternity members with the Alpha Delta fraternity letters. Among other things, the College's "derecognition" of Alpha Delta as a student organization revoked from Alpha Delta certain privileges including: "recognition as a 'college approved' residential facility; use of College facilities or resources; . . . and provision of insurance coverage." The College also notified Alpha Delta that it "would no longer be under the jurisdiction or protection of the College's department of safety and security."

Ten days later, the Town's zoning administrator notified Alpha Delta that, because the College had derecognized Alpha Delta, Alpha Delta's use of the property violated the zoning Ordinance. The zoning administrator cited the fact that the Ordinance required that student residences in the Institution zoning district be operated in conjunction with another institutional use. Here, because Alpha Delta had been derecognized by the College, the zoning administrator determined that the Fraternity House was "no longer operated in conjunction with an institutional use," and that

therefore "[t]he continued use of the property as a residence [was] . . . a violation of the zoning ordinance." The zoning administrator informed Alpha Delta that "[t]he continued occupancy of the property [by at least 18 individuals] must cease immediately."

Alpha Delta appealed to the Town's Zoning Board of Adjustment ("ZBA"). The ZBA also concluded that, as a result of derecognition, Alpha Delta's Fraternity House was no longer "operated in conjunction with another institutional use" and its use of the property as a student residence violated the zoning ordinance.

Alpha Delta again appealed. On appeal to the superior court, Alpha Delta argued that the Fraternity House use was a grandfathered use and therefore was not in violation of the Ordinance. More specifically, Alpha Delta argued that because its "use of its property as a fraternity pre-existed all zoning ordinances and [Alpha Delta] ha[d] never sought or obtained a Special Exception to operate as a Student Residence," it had proven that its use "legally existed prior to the adoption of a zoning provision prohibiting the use." Alpha Delta also argued that the "in conjunction with" requirement was met because the residents in the Fraternity House were all students of the College.

The superior court rejected Alpha Delta's arguments and affirmed the ZBA's decision.

Alpha Delta again appealed.

DECISION: Judgment of Superior Court affirmed.

The Supreme Court of New Hampshire held that, upon the College's derecognition of Alpha Delta as a student organization, Alpha Delta was not "operating in conjunction with" the College, and thus, its use of the Fraternity House as a student residence violated the Town's zoning Ordinance.

In so holding, the court rejected Alpha Delta's argument that the use of its Fraternity House as a student residence was grandfathered as a legal nonconforming use. The court explained that "[a] nonconforming use is a lawful use existing since prior to the adoption of a zoning ordinance prohibiting such use, and that does not conform to the requirements of the ordinance." The court noted that nonconforming uses are protected by state statutory law, RSA 674:19, and by Part I, Articles 2 and 12 of the New Hampshire Constitution. Here, the court explained that, in order to prove that the Fraternity House was grandfathered from the Ordinance's requirement that student residences in the Institutional zoning district operate in conjunction with another institutional use, "Alpha Delta . . . needed to show that it operated [the property] in a manner that was not 'in conjunction with another institutional use' at the time the 'in conjunction with' requirement was adopted" (in 1976).

The court found that when the zoning Ordinance was adopted in 1976, Alpha Delta's use of its property as a student residence was conforming with respect to the requirement that the residence be operated in conjunc-

tion with a College. Alpha Delta, concluded the court, had "failed to present any evidence that the fraternity ever operated in a manner which was not 'in conjunction with' [the] College, prior to the adoption of that zoning requirement." "Because Alpha Delta was lawfully operating a student residence 'in conjunction with' the College in 1976, it was not until the College derecognized the fraternity in 2015 that Alpha Delta's use of the property violated the Town's zoning requirement that a student residence operate in conjunction with another institutional use."

The court also rejected Alpha Delta's argument that term "in conjunction with" was being misconstrued or was an "unconstitutionally vague" term. Finding the phrase "in conjunction with" was not defined in the Ordinance, the court looked to its "plain and ordinary meaning." The court concluded that to meet the Ordinance's requirement that the Fraternity House use as a student residence be "in conjunction with another institutional use," Alpha Delta's Fraternity House had to have "some union, association, or combination with the College." Alpha Delta had maintained that it was still meeting the "in conjunction with an institutional use" requirement of the Ordinance because the residents in the Fraternity House were all students of the College. The court rejected that argument, and concluded that following the College's revocation of its recognition of Alpha Delta as a student organization, Alpha Delta had "no association with the College and thus [was] no longer 'operating in conjunction with' the College," and thus was in violation of the zoning Ordinance.

Case Note:

Irrelevant to the outcome here, the appellate court did find that Alpha Delta's use of its property was lawfully nonconforming with respect to the requirement that it obtain a special exception (which it never had), since it was using the property as a student residence prior to enactment of the special exception requirement.

Rezoning—Town rezones land to open space designation

Property owner, who wanted to construct hundreds of residential units on property, argues township's rezoning of land amounts to illegal spot zoning

Citation: *Golf Enterprises, Inc. v. Newberry Township Board of Supervisors, 2017 WL 1465120 (Pa. Commw. Ct. 2017)*

PENNSYLVANIA (04/25/17)—This case addressed the issue of whether a rezoning of land in a Township amounted to invalid spot zoning and/or "arbitrary and irrational" zoning.

The Background/Facts: Golf Enterprises, Inc. ("GEI") owned 100 acres of land (the "Property") in Newberry Township (the "Township"). On the Property was a public golf course with a clubhouse and restaurant. Prior to 2006, the Property was zoned Commercial Recreation ("C-3"). A C-3 district allowed for recreational uses such as parks and forestry, as well as conditional uses such as commercial recreational facilities and golf courses. In 2006, the Township rezoned the Property to Open Space ("OS"). In addition to the Property, the only other parcel zoned OS was a 10-acre parcel to the west of the Property that was not owned by GEI. The OS zoning designation allowed for by-right uses such as agriculture, open space, as well as conditional uses including golf courses. The properties surrounding the new OS District were zoned Residential Growth ("RG"). An RG designation allowed for by-right uses such as forestry and various single-family and two-family dwellings, parks and municipal uses, as well as uses by special exception including multi-family dwellings and schools.

In 2012, GEI filed an application for a curative amendment, along with a proposed amendment to the Township zoning ordinance and a "sketch plan" proposing 336 residential units on the Property.

Pursuant to Pennsylvania's Municipalities Planning Code, "[a] landowner who desires to challenge on substantive grounds the validity of a zoning ordinance or map or any provision thereof, which prohibits or restricts the use or development of land in which he has an interest may submit a curative amendment" along with site-specific plans for the property. (53 P.S. § 10609.1(a); Section 916.1(c)(2) of the MPC, added by Act of Dec. 21, 1988, P.L. 1329, as amended, 53 P.S. § 10916.1(c)(2).) If the governing body determines that the substantive validity challenge has merit, the governing body then considers the site-specific plans submitted by the landowner and considers "the impact of the proposed amendment on the natural resources and natural features of the municipality, other land uses within the municipality and the public resources of the municipality, including roads and sewer facilities." (53 P.S. §§ 10609.1(c), 10916.1(c)(5).) "The governing body 'may accept a landowner's curative amendment, with or without revision, or may adopt an alternative amendment which will cure the challenged defects.' " (53 P.S. § 10609.1(c).)

Here, GEI argued that the 2006 rezoning of the Property in the OS district created "an island of preserved open space" and constituted invalid spot zoning. "Spot zoning is the 'singling out of one lot or a small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or to his economic detriment.' " GEI pointed to the RG zoning of the surrounding properties, and contended that the Township had failed to justify why it had treated the Property differently than the land surrounding it. GEI argued that spot zoning occurred here because the physical characteristics of the Property, which was zoned OS, were indistinguishable from the surrounding properties, which were zoned RG. GEI contended that, here, the Township forced GEI to bear the burden of the community's desire to preserve a tract of open space for the surrounding developed land.

Eventually, the Township's Board of Supervisors (the "Board") denied GEI's application. The Board determined that GEI's substantive validity challenge to the rezoning of the Property lacked merit. The Board concluded that GEI had not met its burden of showing that the OS zoning designation of the Property was "unreasonable, arbitrary or not substantially related to the Township's police power interest the Ordinance serve[d]." The Board concluded that preserving the Property as open space under an OS zoning designation was "compatible with the Township's comprehensive plan and [was] in accordance with the previous golf course cluster development approvals that GEI received prior to the 2006 rezoning." The Board also rejected GEI's argument that the OS zoning classification of the Property was "arbitrary and irrational."

GEI appealed to the trial court, which affirmed the Board's decision.

GEI again appealed.

DECISION: Judgment of trial court affirmed.

The Commonwealth Court of Pennsylvania agreed with the trial court and the Board that GEI "did not meet its heavy burden of demonstrating that the Property was [invalidly] spot zoned." The court found that the Property was not an undeveloped parcel in a sea of surrounding development. Rather, much of the surrounding property was forest, agriculture, or open space. Thus, the court found that the rezoning of the OS district was not intended to "freeze" one parcel in order to serve the public interest of "green space." Furthermore, the court found that the OS zoning district was "consistent with and complimentary to the RG district that it borders," and that the two districts shared several overlapping uses. The court also concluded that the rezoning of the Property as OS was "consistent with the Township's comprehensive plan."

The court also rejected GEI's argument that the rezoning of the Property was arbitrary and irrational. The court concluded that the rezoning was "not arbitrary or irrational because [the] rezoning was in accordance with the Township's comprehensive plan, which was the result of a lengthy, considered process, involving input from professionals and residents." Here, the court concluded that the comprehensive plan "provided a reasonable justification for including the Property as part of the [OS] District, including the need of the community for open space and recreational areas within the township and concerns regarding road access to the Property. Furthermore, the OS zoning designation was consistent with the conditional use approvals incorporating the Property in the golf course cluster developments that GEI obtained under the Ordinance prior to the 2006 amendments."

Accordingly, the court affirmed the conclusion that the Board did not abuse its discretion or commit an error of law in rejecting GEI's substantive validity challenge to the Ordinance. In light of that determination, the court did not address GEI's proposed curative amendment to the Ordinance or the site-specific plans that GEI submitted with its application.

See also: *In re Realen Valley Forge Greenes Associates, 576 Pa. 115, 838 A.2d 718 (2003).*

Signs/Standing—City sues property owner for failure to remove sign that violated off-site sign prohibitions in the city's zoning code

Property owner challenges as unconstitutional the "selective enforcement" of the zoning code and the "overbroad" language of the prohibition

Citation: *City of Cincinnati v. Fourth National Realty, LLC, 2017-Ohio-1523, 2017 WL 1491028 (Ohio Ct. App. 1st Dist. Hamilton County 2017)*

OHIO (04/26/17)—This case addressed the issue of whether a city selectively enforced a sign ordinance in violation of equal protection rights. It also addressed whether a sign owner had standing to challenge the city zoning code's off-site sign prohibitions as unconstitutional on free speech grounds.

The Background/Facts: Fourth National Realty, LLC ("Fourth National") had a sign (the "Sign") on the east face of its five-story real property in a Downtown Development ("DD") zoning district in the City of Cincinnati (the "City"). The Sign was approximately 45 feet tall, 40 feet wide, and 1,800 square feet in total area. The Sign promoted the products of the John Morrell Company and several local sports teams, none of which were found on the property. The Sign had not been allowed by any permit from the City. The City had previously issued to Fourth National a permit for a much smaller sign to advertise John Morrell products based on its understanding that the sign pertained to businesses conducted in the building. Fourth National never installed that approved sign, and instead installed the un-permitted larger Sign.

At some time, the City received a complaint about the Sign. The City notified Fourth National that the Sign violated the City's zoning code, including: (1) Cincinnati Zoning Code 1411-39(a)(1), which expressly prohibits outdoor advertising signs, a type of off-site sign, in the DD Zoning District; and (2) Cincinnati Zoning Code 1427-17, which excludes the DD Zoning District from the list of zoning districts in which off-site signs are permitted. Fourth National did not dispute this non-compliance. Fourth National applied for a variance for the Sign. The variance was denied, and Fourth National did not appeal.

Fourth National then requested a permit for the Sign. The City found that the copy on the Sign did not pertain to the business conducted on Fourth National's property and was therefore an "off-site sign." The City

denied the permit, concluding that the Sign was an "off-site sign" not permitted in the DD district, and that the sign was an "outdoor advertising sign" prohibited in the DD district.

After the variance denial and Fourth National's failure to remove the Sign, the City filed a legal action against Fourth National. The City sought injunctive relief, asking the court to order the removal of the Sign for violation of the City's Zoning Code's prohibition on off-site signs in the DD District.

Fourth National argued that the City was "selectively enforcing" the Zoning Code in violation of its equal protection rights under the Fourteenth Amendment to the United States Constitution. Fourth National also argued that the City's off-site sign prohibitions violated freedom of speech rights guaranteed by both the federal and Ohio Constitutions. It asked the court to declare the off-site prohibitions of the Zoning Code to be unconstitutional because they "defined what is permissible commercial speech based on the content of the message: a sign advertising a business or activity located on the property is allowed but a sign of the same size and appearance advertising a business or activity off-site is prohibited." Fourth National further argued that "the off-site sign provisions were constitutionally defective because they favored commercial speech over noncommercial speech."

Finding no material issues of fact in dispute, and deciding the matter on the law alone, the trial court ultimately granted summary judgment to the City and ordered Fourth National to remove the illegal sign. The trial court also dismissed Fourth National's declaratory-judgment counterclaim on the freedom of speech constitutionality issues for lack of standing (i.e., the legal right to bring the claim). Fourth National then dismissed its remaining counterclaims and appealed.

DECISION: Judgment of trial court affirmed in part, reversed in part, and matter remanded.

The Court of Appeals of Ohio, First District, Hamilton County, first agreed with the trial court that Fourth National failed to present a prima facie (i.e., based on first impression) case of selective enforcement. The court explained that in this "class of one" selective-enforcement claim, Fourth National had a "heavy burden" to show that it was treated differently than those "similarly situated in all material respects." Here, the court concluded that Fourth National failed to meet this burden because Fourth National failed to identify "any other individual or business maintaining an illegal off-site sign in the DD district that the [C]ity continue[d] to allow, *despite a complaint*." (Emphasis added.) Although Fourth National could point to various other off-site signs in the DD district that had not come under City enforcement for zoning violations, Fourth National failed to establish that the City had received complaints about those other signs and yet failed to take enforcement action. The court highlighted the fact that the City's enforcement of the Zoning Code "is complaint-driven, meaning that [C]ity enforcement officials do not actively search for violations of the [Z]oning [C]ode."

The Court of Appeals also affirmed the the trial court's determination that Fourth National lacked standing with respect to its free-speech challenge as a defense to the City's enforcement action on the existing Sign. Fourth National, found the court, could not meet the redressability requirement of standing (i.e., that its injury could be redressed through litigation). In other words, Fourth National "failed to show that it could keep its oversized sign in place even if its free-speech challenges were successful."

However, the appellate court reversed the trial court's decision to the extent that it dismissed for lack of standing Fourth National's request for a declaration that the challenged City Zoning Code sign provisions were unconstitutional on free speech grounds. The appellate court found that Fourth National did, in fact, have standing to bring both an as-applied challenge (i.e., challenging the constitutionality of the Zoning Code sign provisions as applied to Fourth National) and a facial challenge (i.e., challenging the constitutionality of the Zoning Code on the face of its language).

The appellate court concluded that Fourth National, which represented that it desired a permit to install a smaller sign in the event that the off-site sign provisions were found unconstitutional, "established an injury-in-fact and had standing to challenge the provisions as applied to its desired commercial signage." The court found that if Fourth National "were to succeed on the merits of its free-speech challenge as applied to its desired commercial signage, resulting in a declaration that the provisions were unconstitutional and void as applied, Fourth National would likely be able to obtain a permit for and install [a smaller sign]," since the City's denial of a permit for the existing Sign was based on the off-site sign prohibition provisions, and not size restrictions. The appellate court concluded that Fourth National met the "minimum requirements of constitutional standing to bring this as-applied claim with respect to the desired [and smaller] sign."

The court also concluded that Fourth National had standing to proceed on its facial challenge to the off-site prohibition provisions of the City's Zoning Code. Fourth National had asserted standing under the "overbreadth doctrine." The court explained that the overbreadth doctrine "serves as an exception to the prudential standing requirement and allows a party to bring a facial challenge to a provision of a law that causes the party an injury, regardless of whether the provision's regulation of the party's conduct in particular was constitutional." Fourth National had argued that the "overbroad restrictions" of the Zoning Code's off-site sign prohibitions inhibited both noncommercial and commercial speech because they contained "content-based restrictions that provide a greater degree of protection to certain forms of commercial speech than noncommercial speech, and they provide a greater degree of protection for on-site versus off-site advertising that does not pass [scrutiny.]"

Noting that the overbreadth doctrine "does not apply to commercial speech," the court concluded that Fourth National could not present a facial challenge on overbreadth grounds to assert the commercial-speech

interests of others. However, the court found that Fourth National did have standing here to the extent it claimed the off-site sign provisions unlawfully restricted protected noncommercial speech. The court explained that "if an ordinance restricts both types of speech, 'a party whose purely commercial speech has been sanctioned may assert the non-commercial speech rights of others by using the overbreadth doctrine' when it brings its as-applied challenge." "Ultimately," noted the court, "the prohibitions on off-site commercial advertising may be unenforceable if the challenged provisions are found unconstitutional due to the impact on noncommercial speech."

Thus, the court held that, under those circumstances, Fourth National had standing to challenge the off-site sign provisions as applied to a smaller commercial sign that it represented it wished to install, and also facially to the extent that Fourth National claimed those same provisions unlawfully restricted protected noncommercial speech.

See also: *Village of Willowbrook v. Olech, 528 U.S. 562, 120 S. Ct. 1073, 145 L. Ed. 2d 1060, 30 Envtl. L. Rep. 20360 (2000).*

See also: *XXL of Ohio, Inc. v. City of Broadview Heights, 341 F. Supp. 2d 765 (N.D. Ohio 2004).*

Case Note:

The City had argued that the off-site sign prohibitions were not unconstitutionally overbroad because other provisions of the City's Zoning Code allowed sufficient protection for noncommercial speech. The court noted that argument addressed the merits of the facial challenge, and not Fourth National's standing to bring that challenge. The merits are to be addressed on remand.

Zoning News from Around the Nation

IDAHO

A new law (signed by Gov. Butch Otter in April) now "forbids cities or counties in Idaho from banning short-term vacation rentals, which are home rentals for 30 days or less." Reportedly, the law does "allow local governments to regulate them with regard to health, safety and welfare; requires zoning ordinances to recognize them as a residential use; and also requires collection of state sales and lodging taxes."

Source: *The Spokesman-Review*; www.spokesman.com

OHIO

House Bill 175, which is pending in the state legislature, would report-

edly prohibit municipalities from banning the keeping of chickens. Under the bill, municipalities would only be allowed to limit the quantity of animals in the community. More specifically, the bill explicitly would "to allow an owner of residential property to keep, harbor, breed, or maintain small livestock on the property, and . . . prohibit zoning authorities from regulating certain agricultural activities conducted on residential property for noncommercial purposes." The bill has been referred to the House's Agriculture and Rural Development Committee.

Source: *Ohio Legislature*; *https://www.legislature.ohio.gov/legislation/legislation-status?id=GA132-HB-175*

WASHINGTON

Several bills affecting Washington's Growth Management Act have been introduced this year. Reportedly, HB 1017, which allows building of new schools outside of designated urban growth areas "has been partially signed into law," with Governor Inslee vetoing a section that would allow extending new sewer lines to the schools. HB 1504, which allows land designated as agricultural or forest next to the state's smaller railroads to be rezoned industrial if it is for a rail-dependent use, arrived on the Governor's desk on April 23; the Governor had 20 days to act on it. HB 1683, which was also awaiting the Governor's action, would "allow properties that use septic systems to be excused from the state's push to get all property connected to a sewer, as long as the property cannot be redeveloped, already has a non-polluting septic system and the septic system is periodically tested to ensure it is well maintained." Also awaiting action by the Governor, SB 5790 would allow "small counties with populations below 75,000 to override part of the Growth Management Act if they meet the state's criteria for being in 'economic deterioration.' " It would let them prioritize economic growth over environmental protection and sustainable development.

Source: *Crosscut*; *http://crosscut.com*

ZONING PRACTICE JUNE 2017

AMERICAN PLANNING ASSOCIATION

ISSUE NUMBER 6

PRACTICE PARKING REFORM

6

Eliminating Parking Minimums

By Ben LeRoy

For decades, many American planners unquestioningly applied minimum off-street parking requirements to projects of every conceivable size, type, and context.

Whether drawn from the quasi-scientific findings of the Institute of Transportation Engineers' *Parking Generation* report or simply borrowed whole cloth from other cities' zoning codes, minimum parking requirements continued to grow more onerous and complex. Communities across the nation watched as formerly walkable neighborhoods were hollowed out by parking. Even as planners crafted complete streets policies and rejiggered tax incentives for infill redevelopment, minimum parking requirements were largely ignored, taken on faith as a necessity for any well-planned city.

But many planners have woken up. A wealth of data-oriented research—from *Parking Reform Made Easy* by Richard Willson, FAICP, to the work of Chuck Marohn, AICP's Strong Towns organization, to the seminal *The High Cost of Free Parking* by Donald Shoup, FAICP—has produced a growing consensus within the planning profession that the traditional approach to requiring automobile parking produces more harm than good. In response, cities and counties have begun chipping away at their parking requirements with a variety of techniques, offering urban-minded developers the opportunity to reduce their parking burden through shared parking, payments in lieu of parking, and smarter management of the public parking supply.

While these incremental steps have generally proven popular with developers, relatively few communities have taken the bolder step of eliminating parking requirements in part or in full. The following sections lay out the case for parking reform, profile recent reform efforts in three cities, and present a series of strategies to help planners make the case for eliminating off-street parking requirements to residents and elected officials.

THE CASE FOR PARKING REFORM

The case for parking reform is not self-evident in our auto-dominated society, especially to those not trained as urban planners. Residents and business owners alike have legitimate concerns about ever-increasing congestion levels. Accordingly, a discussion of *how* to achieve parking reform would be lacking if it did not include a summary of the top reasons *why* parking reform is a worthwhile goal. Although parking requirements are well-intentioned, they raise housing prices, induce automobile traffic, and degrade the built environment.

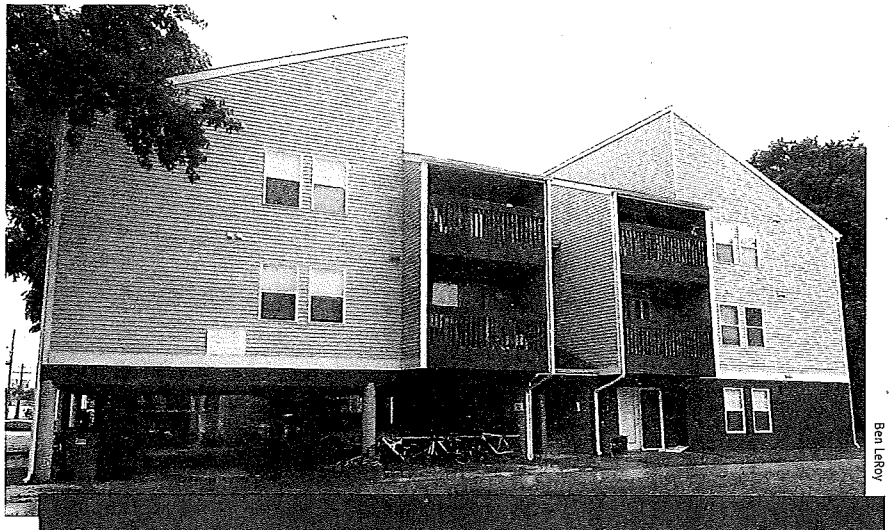
Increased Housing Prices

Because Americans often park for free, they could be forgiven for thinking that parking is free to build and maintain. Unfortunately, nothing could be further from the truth. It turns out that parking—and more specifically, parking produced as a result of minimum parking requirements—is a significant contributor to unaffordable housing.

The construction of parking carries substantial costs. Surface parking consumes valuable land that could otherwise be used for productive buildings, while structured parking costs average nearly $19,000 per space (Cudney 2016). With parking requirements elevating parking supplies beyond what the market would normally produce, parkers often do not directly cover the cost of their own parking. Instead, the cost of parking is tucked into rent, hiding the true allocation of the burden. Non-parkers often end up subsidizing parkers, producing a more expensive and less fair result than allowing developers to build only as much parking as parkers are willing to pay for.

Induced Automobile Traffic

Intended to mitigate congestion, minimum parking requirements have unfortunately produced the opposite effect. By hiding the true cost of automobile ownership and spreading out destinations, minimum parking requirements create the very traffic burden they were created to contain. A recent analysis by the



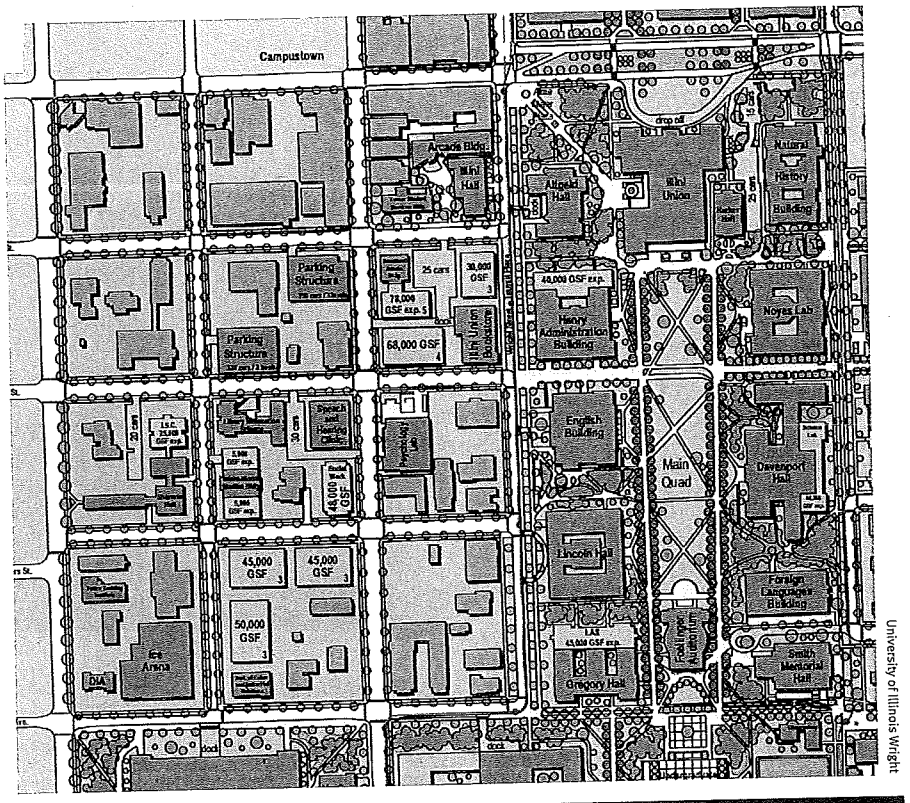
Ben LeRoy

In dense urban areas with high land values, many developers choose to build parking at surface level and elevate the building on stilts. The effect at street level is unpleasant, especially for pedestrians.

State Smart Transportation Initiative and the University of Connecticut found substantial association between increases in a city's parking supply and subsequent increases in car commuting (McCahill 2016). Planners are unable to conduct a controlled experiment to test this phenomenon in the real world, but a wealth of evidence suggests that the relief that parking requirements supposedly buy from traffic congestion is temporary at best.

A Degraded Built Environment

Ask the residents of your community whether they would prefer to spend their time in the city's most walkable district or its largest parking lot, and you will hear nearly unanimous acclaim for the former (a few people are born contrarians). Julie Campoli's excellent *Made for Walking* examines 12 unusually walkable neighborhoods across North America. While these neighborhoods vary in many respects, they share the theme of possessing a limited and carefully managed parking supply. As the author notes, "Rather than feeding auto-dependency, smarter parking policies help initiate a cycle of urban pedestrianism. . . . Replacing surface lots and street-level garages with homes or businesses improves the quality of the street and encourages trips by bike or on foot."



The University of Illinois *Campus Master Plan* shows several potential future buildings (denoted by lighter coloration and anticipated GSF), some of which are sited on existing private land that the University does not currently own.

PARKING REFORM IN PRACTICE

While many cities have eliminated nonresidential minimum off-street parking requirements in their central business districts, very few have removed parking minimums entirely. For communities contemplating more dramatic reform, the cities of Champaign, Illinois; Fayetteville, Arkansas; and Buffalo, New York, illustrate three distinct models.

Champaign, Illinois

The college town of Champaign, Illinois, has seen substantial reinvestment in its core neighborhoods over the past 15 years. Spurred on by growing enrollment at the University of Illinois, local developers have engaged in a building boom in the high-density residential neighborhood (known as the University District) adjacent to campus. At the same time, a greater number of all sorts of residents—graduate students, young professionals, empty nesters, and even families—have driven a smaller boom in Champaign's vibrant downtown. With space at a premium and walkability in high demand, developers have frequently sought (and been granted) relief from the generally applicable parking requirements.

Over the same period, Champaign's policy makers have recognized a change in community attitudes toward transportation. Between 2000 and 2012, nearly a dozen text amendments reduced parking requirements for particular land uses or overlay zones. The *Champaign Tomorrow* comprehensive plan, adopted in 2011, acknowledges the importance of balancing the parking supply against other transportation and urban design concerns to enhance walkability in core neighborhoods. With a comprehensive update to the zoning ordinance following on the heels of *Champaign Tomorrow* and Champaign's minimum parking requirements experiencing death by a thousand cuts, the city's planning staff began to consider the possibility of taking a bold step: eliminating parking requirements in the core neighborhoods of the community.

A quirk of geography and demography made Champaign's University District an attractive test case. Surrounded by railroad tracks to the east, a busy arterial street to the north, and the University of Illinois campus to the east and south, the University District is almost an island of student housing. These barriers largely prevent the commingling of student housing with nearby neighborhoods composed of home owners, a typical source of NIMBY sentiment in many college towns. Furthermore, the University District's robust transit network, its proximity to campus, and the lack of on-campus student parking combined to keep daily driving demand among the University District's (mostly student) residents at a minimum. Extensive interviews of University District landlords confirmed staff observations that the residential parking supply was experiencing a vacancy rate of approximately 30 percent. At study sessions with the plan commission and city council, elected and appointed officials expressed their openness to further reductions in parking requirements. With no opposition arising from home owners (who were indifferent) or the development

community (which was eager for parking reform), Champaign staff anticipated smooth passage of a proposal to eliminate all parking requirements within the University District.

However, the proposal hit an unexpected speed bump at the plan commission meeting. The University of Illinois sent a representative to the meeting to register the university's opposition. Citing the university's master plan, the university's director of real estate planning and services expressed concern over the impact the proposal would have on privately held surface parking lots adjacent to campus: "Once this law is eliminated those parking lots will become the hottest commodity in Champaign County for high-density development. It turns out that some of those that are preserved right now for parking for the private sector are locations where we have proposed future academic buildings" (Champaign 2015). The commission was unmoved by this line of dissent, but nevertheless continued the hearing to another date. At that meeting, the university abandoned its original argument, suggesting instead that a tightening of the residential parking supply could lead to overflow and enforcement impacts on the university's parking supply. Staff countered, noting that the university's parking supply is largely controlled by a combination of meters and permits, making it highly unlikely that University District residents would try to use university parking as long-term parking.

Ultimately, both the planning commission and city council approved the proposal, and in October 2015 Champaign eliminated parking requirements within the University District. As predicted, a number of student housing developments submitted permit applications shortly afterwards, as developers were waiting to make use of the lower parking requirements. These developments all provide parking at different rates, but none of them provides as much parking as was previously required. As the Fall 2017 semester approaches, these developments will be opening their doors for the first time. Others are in the pipeline right now. In the meantime, the city expanded parking reform to the nearby Midtown and Downtown areas, eliminating parking requirements in core areas that serve a much less student-oriented population. It is possible—even likely—that some of the developments built in the wake of this reform will find that they have underbuilt or overbuilt their parking supply, and the city plans to monitor private parking demand and pricing over the coming years. Staff anticipates that the findings will show that any concerns were largely unfounded: The market will value parking appropriately for the first time in decades, and Champaign's core neighborhoods will continue to mature into more walkable areas as the effects of a one-size-fits-all parking policy begin to fade.

Andrew Garner, City of Fayetteville

The second floor of Fayetteville's Nelson's Crossing Shopping Center sat vacant for years as it was "underparked" according to the city's parking requirements table. Once nonresidential parking requirements were repealed, businesses could occupy the second floor, improving the development's financial productivity.

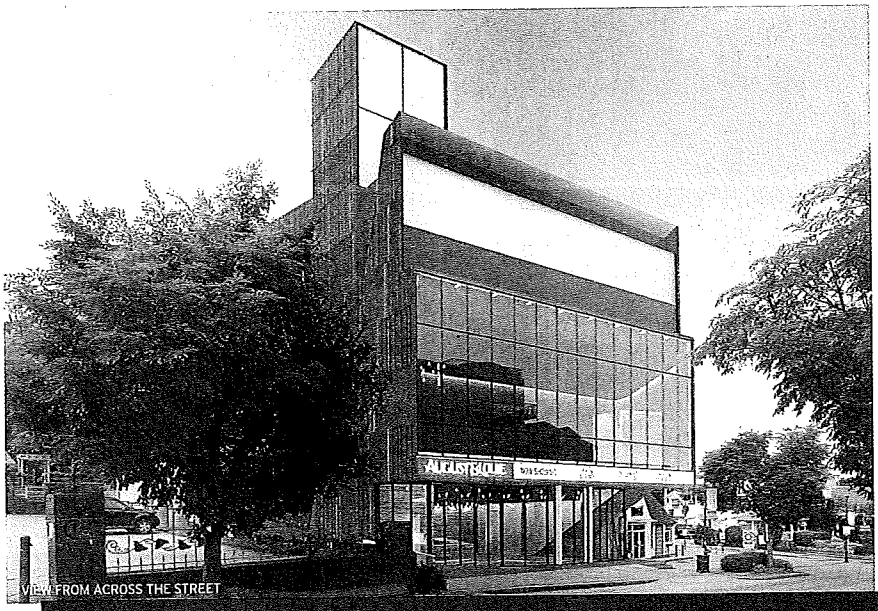
Fayetteville, Arkansas

Fayetteville, Arkansas, is similar to Champaign, Illinois, in many ways. Both are college towns with approximately 80,000 residents. Both host a flagship state university. Both recognized a problem with their existing parking regulations. While Champaign has eliminated all parking minimums in select areas, in 2015 Fayetteville eliminated all nonresidential parking requirements citywide, leaving parking requirements for residential uses in place.

As in Champaign, Fayetteville's parking reform efforts were built on the foundation of a comprehensive plan commitment to reducing automobile dependence. The *Fayetteville Downtown Master Plan* expanded on this idea, recommending a "Smart Parking" approach including the adoption of shared parking standards and revised minimum parking requirements. But change began slowly. While the city amended its downtown parking regulations to allow changes in land use without the provision of new parking, new construction and building expansion still triggered the standard parking requirements. A separate amendment allowed bike parking spaces to be substituted for automobile parking spaces. Nevertheless, most projects in downtown Fayetteville (and everywhere else) were still subject to minimum parking requirements.

The impetus to completely eliminate nonresidential parking requirements came from the community's commercial real estate brokers. Planning staff noted the frustration many brokers expressed in trying to fill vacant commercial spaces with new uses required to provide more parking than the original use. This issue was not limited to downtown, but extended even into the city's most automobile-oriented districts. Noting the constraining effect parking requirements were having on the local economy, staff proposed cutting all nonresidential parking requirements.

To the surprise of many, the adoption of such sweeping parking reform went relatively smoothly. Fayetteville's planning director, Andrew Garner, AICP, recounts that staff framed the proposal to tick many boxes for both liberal and conservative community members and elected officials. Parking reform in Fayetteville found bipartisan support in its projected sustainability improvements, reduced burden on small business owners, and individual property rights. While some mild opposition arose, enthusiastic support from several planning commissioners assured passage. Tracy Hoskins, a businessman and developer who sits on the planning commission, acknowledged that while the parking reform experiment might create a few negative



Andrew Garner, City of Fayetteville

The proposed Lumiere Theatre in downtown Fayetteville would not provide any parking of its own, relying instead on the private and public supply on surrounding streets and lots.

impacts, "the question is does this cure more problems than it creates? And absolutely, it does" (Gill 2015).

As Fayetteville's parking reform approaches its second anniversary, Garner reports that results have been as expected so far. In more auto-oriented districts, businesses continue to provide ample parking. Some sites exceed the old minimum requirements, while others have made use of the increased flexibility to fill spaces previously kept vacant due to code requirements. Meanwhile, downtown Fayetteville is making room for a pair of theater projects that planners anticipate will make the area even more vibrant. One of the theaters proposes no parking at all, while the other (which includes a small number of on-site dwelling units) proposes a small lot for staff and residents. No matter the location, Fayetteville businesses are now free to provide as much—or as little—parking as they need to become successful contributors to the community.

Buffalo, New York

Parking reform in Champaign and Fayetteville may seem like a leap to planners in communities still nipping and tucking their parking codes, but their partial parking repeals are downright modest compared to Buffalo, New York. That city closed out 2016 by adopting a sweeping new unified development ordinance that, among other things, eliminated parking requirements almost universally.

Having grown to over 550,000 residents before World War II, Buffalo has spent the last several decades shrinking to approximately half its peak population. Buffalo's population decline has been accompanied by a hollowing out of its many prewar neighborhoods by parking lots. As one civic booster quipped about downtown Buffalo in 2003, "If you look very closely, there are still some buildings that are standing in the way of parking progress" (Shoup 2005).

Not content to idly watch the city continue to slide, the city's strategic planning office launched the Buffalo Green Code planning effort in April 2010. This project stripped the city's existing unified development ordinance down to the studs, replacing its standard use-based zoning with a form-based code, retooling street design standards, and severely curtailing parking requirements. As one project consultant put it, the Green Code represents "a radical reimagining of how they were going to do every facet of the development controls in the city of Buffalo" (Strungys 2017).

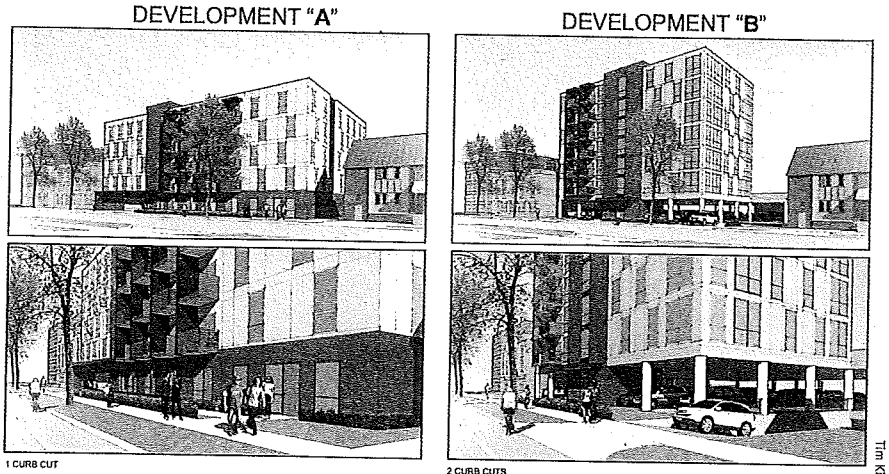
The sheer scope of the Green Code project necessitated an extremely robust public input process, with over 240 community meetings attracting over 6,500 participants. With every element of the development control process up for review, parking received substantial emphasis during these meetings but did not lead the agenda. As project manager John Fell, AICP, recalls, "parking was probably a top five important issue to the public," but people were equally or more concerned with building height and materials, site design, and the redevelopment of large vacant institutional sites. The project also recruited a citizen advisory committee, composed of representatives from every city neighborhood, to both act as a sounding board and recruit neighbors to public meetings.

The input process gave the planning team opportunities to urge concerned residents to consider a more comprehensive transportation demand management (TDM) approach to congestion, rather than clinging to an outdated system of parking requirements that had only managed to degrade the urban environment while doing little to mitigate congestion. Under the new code, projects consisting of (a) 5,000 square feet of new construction or (b) 50,000 square feet of a renovation involving a change of use must prepare a TDM plan. While each project must accommodate the travel demand it generates, developers may employ a host of demand management tools ranging from bicycle parking to subsidized transit passes to alternative work schedules.

The full impact of Buffalo's parking reform will not be felt for several years, but things are already starting to change. Staff members report fielding interest from a few developers in adding dwelling units without additional parking to small projects already under way. Though many of Buffalo's walkable neighborhoods currently bear the scars of required parking lots, look for these areas to mature and thrive as the city's residents rediscover the value of urban-style developments in their urban neighborhoods.

STRATEGIES FOR SELLING PARKING REFORM

The context for parking reform in each of the preceding examples was unique, as it is for every community. The elected officials and citizens in these cities may have shared a willingness to listen, learn, and experiment with parking reform in a way that other communities are not quite ready for. Nevertheless, some of the strategies employed are transferrable to municipalities of every type and size. Consider trying the following strategies when pursuing parking reform in your community.



Two projects, one profit margin: A developer expects the same return from either building, but the one granted parking flexibility presents a much more welcoming face to the street.

Employ Scenarios and Alternatives

Parking requirements have been the law of the land for so long that many people have trouble envisioning how a newly constructed building with little or no parking might function in their city. The local development community can show the impact of parking requirements on both the design and finances of a proposed project.

In Champaign, architect Tim Kirkby, AICP, demonstrated to the plan commission how one of his projects would change if parking requirements were eliminated (Champaign 2015). Kirkby presented two alternatives side by side. While both alternatives projected an expected return of 7.5 percent, their form and finances differed dramatically. The "required parking" alternative was two stories taller than the "flexible parking" alternative, and was largely lifted up on stilts to accommodate ground-floor parking. In contrast, the "flexible parking" alternative had one fewer curb cut and presented ground-level dwelling units facing the street. Perhaps more compelling was the financial comparison of the two buildings. The cost of building required parking was projected to increase rents by approximately 33 percent! This real-life example of a building that would be made both more attractive and more affordable was very compelling evidence of the wisdom of eliminating parking requirements in the University District.

The development community is already a natural ally of any planner seeking to ease parking requirements, although care must be taken to avoid stirring up legitimate concerns that parking reform is simply a giveaway of the city's regulatory power to enhance the private sector's bottom line. Asking developers to compare "required" and "flexible" parking alternatives that project the same profit margin can mitigate these concerns.

Put the Focus on Residents, Not Drivers

Many parking reform efforts are stalled by neighboring residents and businesses sounding the alarm about parking congestion. Even if these concerns are overblown (as they are in many cases), parking congestion proves to be a difficult ground on which to do battle. Instead, consider shifting the conversation to the positive impact that parking reform has on the wallets of residents.

As discussed above, overly burdensome parking requirements raise the cost of construction and building maintenance. These costs are tucked into the rent and purchase price of building, needlessly raising the price on every activity conducted within those buildings. Invite concerned neighbors and elected officials to speculate on what it could mean for the city coffers if residents, no longer tied up by unnecessary parking costs, found themselves with a greater disposable income.

A common rejoinder to this argument raises the specter that developers will simply keep rents the same and pocket the cost savings as extra profit. Fortunately, a couple of rebuttals address this line of attack. First, in a competitive housing market tenants will generally select the housing option with greater amenities (including parking) if rent is the same, providing a strong economic incentive for landlords with less parking to lower their rents to remain competitive. Additionally, even if prices do not drop for some reason, it is hard to argue in favor of forcing tenants to waste money on unused parking simply to spite developers and reduce their profits.

Fairness arguments can be very powerful in these situations. Is it good city policy to make people pay for parking they don't use? Depending on the community, appealing to housing affordability can be a powerful argument.

Substitute Local Examples for National Studies

The field of parking policy research has produced extensive data about nearly every aspect of parking, from vacancy rates to supply/demand models to land consumption. Unfortunately, these studies may be of limited use in front of elected officials disinclined to look to national trends for local decisions. Instead, generate your own local data and examples to create a compelling narrative that parking reform is a unique solution for your unique city's unique problems.

In Fayetteville, planners could point to buildings in otherwise busy commercial districts that were being left vacant due to excessive parking requirements. In Buffalo, staff successfully argued that residential parking requirements were excessive in a community where 30 percent of households did not own a single car. In Champaign, questionnaires sent to landlords revealed that most apartment buildings had parking occupancy rates of only 60 to 80 percent, even at reduced rental rates. These findings mirrored numbers from the city's own public parking permits in the area, which had cut rates in an attempt to preserve the 70 percent occupancy rate. In all these cases, the local story told the tale of why parking reform was important.

Remember, too, that the story does not end upon the successful adoption of new parking regulations. As the built environment changes over the years, consider tracking building permits to see how much parking developers are providing. In Champaign, staff projected that most future buildings would likely provide parking at 50 to 75 percent of

the rate formerly required, promising to return to the plan commission with an update in a few years. One and a half years later, this projection has been borne out by the building permits received for review. Tracking data both before and after adoption of parking reform reassures elected officials that they can always change the rules back if an unforeseen negative trend arises.

SHARING THE STORY

Perhaps your community will be the next to make waves in the planning world by adopting sweeping parking reforms. Or perhaps your community is still testing the waters with incremental tweaks to the system. Whatever position you find yourself in, remember to share the story with the world! Parking reform is still a relatively nascent movement, and practitioners around the country benefit from seeing what their colleagues in other cities and states have accomplished.

Strong Towns maintains a user-updated map of communities that have or are considering reducing their parking requirements. Visit this site to gain ideas for your community, and update the map once you have made progress toward your goals. The planning trade press is also very receptive to stories about parking reform.

Explore the Strong Towns parking reform map (strongtowns.org/parking) to see how communities around the country are updating their parking requirements.

Don't hesitate to contact publications like *Planning* magazine, *Streetsblog*, *CityLab*, or your favorite planning blog. You may be surprised at their willingness to shine a spotlight on your unique efforts.

Finally, consider submitting a session proposal to a conference. Parking sessions are often standing room only at APA conferences, but other connected professional organizations such as the International City/County Management Association, the American Public Works Association, and the Government Finance Officers Association can benefit from learning about parking reform as well.

It is an exciting time to be working in the field of parking reform. Most cities employed the same parking policy playbook through much of the 20th century, but cities are beginning to experiment with individualized solutions.

No single parking policy will be the right choice for every city, but the examples recounted in this article may provide a road map for your community to rethink how parking fits in with other planning goals.

REFERENCES

Campoli, Julie. 2012. *Made for Walking: Density and Neighborhood Form*. Cambridge, Massachusetts: Lincoln Institute of Land Policy. Available at tinyurl.com/k3557tq.

Champaign (Illinois), City of. 2015. "Champaign Plan Commission Meeting, May 9." Available at tinyurl.com/mwygock.

Cudney, Gary. 2016. *Parking Structure Cost Outlook for 2016*. Available at tinyurl.com/khqo8am.

Gill, Todd. "Fayetteville considers eliminating minimum parking standards." *Fayetteville Flyer*, August 10, 2015. Available at tinyurl.com/mwey2l3.

McCahill, Christopher T., Norman Garrick, Carol Atkinson-Palombo, and Adam Polinski. 2016. "Effects of Parking Provision on Automobile Use in Cities." *Transportation Research Record, 2543: 159–165*. Available at tinyurl.com/mpx650d .

Shoup, Donald C. 2005. *The High Cost of Free Parking*. Chicago: American Planning Association. Available at planning.org/publications/book/9026730.

Strungys, Arista. 2017. Telephone interview with author, February 6.

ABOUT THE AUTHOR

Ben LeRoy is an associate planner for Champaign, Illinois, and a 2013 graduate of the University of Illinois at Urbana-Champaign. His master's capstone analyzed the impacts of minimum parking requirements on the city's rental housing supply. He has also drafted new infill-friendly zoning districts in the city's core neighborhoods and rewritten the planned development ordinance.

Cover: 1343024/Pixabay.com, CCo

Vol. 34, No. 6

Zoning Practice is a monthly publication of the American Planning Association. Subscriptions are available for $95 (U.S.) and $120 (foreign). James M. Drinan, JD, Chief Executive Officer; David Rouse, FAICP, Managing Director of Research and Advisory Services. Zoning Practice (ISSN 1548–0135) is produced at APA. Joseph DeAngelis and David Morley, AICP, Editors; Julie Von Bergen, Senior Editor.

Missing and damaged print issues: Contact Customer Service, American Planning Association, 205 N. Michigan Ave., Suite 1200, Chicago, IL 60601 (312-431-9100 or subscriptions@planning.org) within 90 days of the publication date. Include the name of the publication, year, volume and issue number or month, and your name, mailing address, and membership number if applicable.

NON-PROFIT ORG
U.S. POSTAGE
PAID
APPLETON, WI
PERMIT NO. 39

ZONING PRACTICE
AMERICAN PLANNING ASSOCIATION

205 N. Michigan Ave.
Suite 1200
Chicago, IL 60601–592

580
41

*************AUTO**ALL FOR ADC 553
TIM GLADHILL
CITY OF RAMSEY
7550 SUNWOOD DR NW
RAMSEY MN 55303-5137

DOES YOUR ZONING STILL REQUIRE OFF-STREET PARKING?

6