118. Status and Operation of the Conditional Use Permit (CUP) System in U.S. Cities

- Study of Special or Exceptional Permit Systems under North American Zoning Control -

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Background and Purpose of Research

The Japanese building control system, inheres both “Laxity” and “Rigidity”
- Weak in accomplishing city planning goals
- Unable to cope with new type of unexpected use establishment

Use of “special or exceptional permit systems”
- Under more detailed and strict regulations
- Dealing individually with cases beyond or unexpected under this framework and permitting them exceptionally

Reference of Conditional Use Permit in USA
- Overseas literature lack information of situation and operations of systems in actual individual cities

This study aims to clarify the designation, judgment criteria and actual operations of the system in U.S.
Selection of System and Cities Under Study

Conditional Use Permit (CUP) System
- “Uses Treated as Exceptional” among use restrictions designated for each Zoning District defined under Zoning Codes
- Judged by individual reviews of the plans under predetermined criteria and if approved, with conditions attached.
- Called “Conditional Use Permit”, “Special Use Permit”, “Conditional Use Exception”, etc. and sometimes multiple types exist with different names within the same city.

Selection of Cities under Study
- 17 cities from four regions of the U.S. Census
- Visits in September 2007, in March and November 2008, and in March 2009
- Interviews with responsible officials in each City Government and receiving related documents.
- Gather documents using the internet
Composition of the Conditional Use Permit (CUP) System

Situation in the following Table 1 organized in each city

- Zoning Code name
- Composition of the system: applicable provisions, system name, type
- Review Criteria
- State of review: review organizations, meeting frequency, number of reviews, typical projects, etc.

Types of the System Under Study

- **Major**: relatively high degree of impact and of major significance
  - thorough reviews
- **Minor**: relatively narrow degree of impact and of minor significance
  - simple reviews

7 cities have both types

(our interviews were concentrated on the former type)

- another type called “**Limited Use**” (later mentioned)
Review Criteria

**General Purpose Review Criteria**: Applicable to all applications

rough qualitative regulations in the following four items mainly

- conform to the Overall Planning (ie. Comprehensive Plan)
- prevent problems with traffic, parking, population density, and the environment
- does not cause harmful impacts on health, safety, and welfare
- compatibility with neighborhood characteristics

**Individual Review Criteria**: Applicable to specified districts or uses

many cities separately stipulate individual review criterion to them

a) in case of specified Zoning Districts
   - for neighborhood commercial zones, business hour related restrictions etc.

b) in case of regulations to specified uses
   - Use : care facilities, parking facilities, liquor stores, cell phone antennae etc.
   - Regulation : operation or administration of the use, handling of traffic, form and size of buildings, etc.
Flow of Procedures plus Review Organizations and Methods

- **Collegial body such as a committee (10 cities)**
  - Planning Commission
  - Board of Adjustment
  - Consist of 5 to 10 members appointed by the Mayor or by City Council
  - More than half are residents groups or other non-specialists
  - In most cases, only the Chairman is a city planning professional

  Share responsibility for Major / Minor (2 cities)

- **Individual administrator (2 cities)**
  - Zoning Administrator
  - (the chief of the Zoning Administration Division)
  - In some extremely minor cases, no public hearing is held
  - In case of an appeal, the judgment is made by the above-mentioned Review Committee.

  Explanation of the plan, public hearing, and decision are done at once or at separate meetings.

  Sharing responsibility for Major/Minor (5 cities)
Staff report and Participation of Citizens

- **Staff report**
  - prepared by responsible staff (city planning professionals)
  - survey the contents of applications and findings
  - submit the results to the review organization for use as reference material for reviews

- **Findings and Advisory**
  a. an applicant’s agent (land use appraiser, etc.) performs certification based on documents
  b. findings only (no advisory)
  c. findings + granted/denied advisory

As for “compatibility with neighborhood characteristics” findings includes a wide range of matters: compatibility with size and design of buildings, environment in which the use is implemented, nature of the neighborhood, etc.

- **Hearing of nearby residents’ views**
  - Residents can air their views at review meetings
  - Residents’ views are reflected as part of fact-finding in staff reports; during preliminary explanations, nearby neighborhood planning units submitting their views, etc.
Permit conditions and Number of Reviews

**Permit conditions**
- necessary contents are attached to satisfy the review criteria
- the layout of building lots, size of buildings ∙ architectural planning, operation
  (number of people, time) etc.

**Number of Reviews**
- the number varies according to the way uses covered by the system are set and
  the size etc. of each city
- in many cities, more than 500 applications are handled each year
- in case of taking responsibility
  Collegial bodies: less / Administrator: more (refer to the judgments of the former)
  - exceptionally in Boston and Milwaukee, many reviews are handled only by collegial
    bodies for applications for renewals following the expiration of permit validity after 3 to 5 years
- cases with few points of contention (permission or refusal of permission) are
  dealt with as packaged consent agenda cases

**Tendency requested uses (from hearing)**
- drive through facilities (restaurant ∙ pharmacy ∙ bank)
- cell phone antennae • • • into consideration the views
- large churches • • • considering the range of believers gather
Relationship of Uses Designated by the System with Zoning Districts

Zoning District
- a usage restrictions table is placed on bylaws and targets are 12 cities where the designations are clear
- the basic zoning - residential, commercial, and industrial - are handled

Individual uses
- Conditional Use Permit = individual uses, which have symbols like C (conditional) and S (special) in a usage restrictions table, are abstracted
- uses are categorized and organized with reference to the Land-Based Classification Standards (LBCS) of the American Planning Association (APA)

How to determine the symbols

<table>
<thead>
<tr>
<th>Minneapolis Residential zoning district</th>
<th>R 1</th>
<th>R 1A</th>
<th>R 2</th>
<th>R 2B</th>
<th>R 3</th>
<th>R 4</th>
<th>R 5</th>
<th>R 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assisted living facilities</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community residential facility: 7-16 persons</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community residential facility: 17-32 persons</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hospitality residence</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supportive housing</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Ratio of C: 13/32 < 0.5
unbranded (except C) = disallowed
→ △ basically disallowed, but there are exceptions in some area

<table>
<thead>
<tr>
<th>Milwaukee Residential zoning district</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical treatment or nursing facility</td>
</tr>
<tr>
<td>Health Clinic</td>
</tr>
<tr>
<td>Hospital</td>
</tr>
<tr>
<td>Medical Service Facility</td>
</tr>
<tr>
<td>Nursing Home</td>
</tr>
</tbody>
</table>

Ratio of S: 19/28 > 0.5
Y (except S) = N is allowed = allowed > disallowed
→ ▼ mostly conditional permit, partly disallowed
### Characteristics of Designations by Type of Use

<table>
<thead>
<tr>
<th>Infrastructure</th>
<th>Residential Zone</th>
<th>Commercial Zone</th>
<th>Industrial Zone</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Transportation</strong></td>
<td>individual judgments for transit facilities, drive-through, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Communication</strong></td>
<td>individual judgments for communication use antennas</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/information</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Utilities</strong></td>
<td>individual judgments for electrical transmission and water treatment plants</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Waste (category)</strong></td>
<td>individual judgments for recycling facilities</td>
<td></td>
<td>stipulated according to the degree of danger of each</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Leisure</th>
<th>Residential Zone</th>
<th>Commercial Zone</th>
<th>Industrial Zone</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Entertainment facilities</strong></td>
<td></td>
<td>stadiums etc. are designated in limited districts</td>
<td>amusement arcades etc. are designated in a wide range</td>
</tr>
<tr>
<td><strong>Cultural facilities</strong></td>
<td>libraries, museums, etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Athletic facilities</strong></td>
<td>gyms, tennis courts, etc.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Public Welfare</th>
<th>Residential Zone</th>
<th>Commercial Zone</th>
<th>Industrial Zone</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Schools</strong></td>
<td>require exceptional permission in most districts</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Medical treatment or nursing facility</strong></td>
<td>designated in high density mixed use districts</td>
<td>designated in a wide range of districts</td>
<td>designated in light industry districts</td>
</tr>
<tr>
<td><strong>Children’s facility</strong></td>
<td>mainly designated based on individual judgments according to neighborhood characteristics</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Religious • Funeral facility</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Community facility</strong></td>
<td>permitted as exceptions in a wide range of districts</td>
<td>restricted to some districts</td>
<td></td>
</tr>
<tr>
<td>Characteristics of Designations by Type of Use</td>
<td>Residential Zone</td>
<td>Commercial Zone</td>
<td>Industrial Zone</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>------------------</td>
<td>----------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Residential</td>
<td>Assisted living facilities</td>
<td>permitted as special cases only in some high density districts</td>
<td>individual reviews are required in many districts</td>
</tr>
<tr>
<td></td>
<td>Ordinary residential</td>
<td>apartments &amp; combined units, etc. are permitted in some districts</td>
<td>apartments subject to individual reviews</td>
</tr>
<tr>
<td></td>
<td>Lodging facilities</td>
<td>B&amp;B are individually approved</td>
<td>hotels etc. are classified and judged according to their size</td>
</tr>
<tr>
<td>Commercial</td>
<td>Retail stores</td>
<td>a neighborhood convenience are treated as exceptions</td>
<td>liquor stores and adult retail stores</td>
</tr>
<tr>
<td></td>
<td>Eating/drinking establishments</td>
<td>providing liquor stores and fast food shops</td>
<td>mainly permitted as exceptions in districts where few problems occur</td>
</tr>
<tr>
<td></td>
<td>Parking facilities</td>
<td>designated in all the basic zones, and most require reviews</td>
<td></td>
</tr>
<tr>
<td>Industrial</td>
<td>Warehouses・Wholesalers</td>
<td>designated limited to districts where a high activity level</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Manufacturing・Processing plants</td>
<td></td>
<td>designated classified by size and types of material each handles</td>
</tr>
</tbody>
</table>
Characteristics of Designations in the Cities

■ Limitations on uses and districts designated

Greensboro: Limited to districts within zoning of the same type as the use. The use refined type

San Francisco: Designations are limited to the same type. Prescribed the distance to the nearest residential zone district and differences etc.

Saint Paul: The districts are limited and permission is given if designated elements satisfy the criteria. Based on the intention to minimize conditional permits.

■ Limitation of cases based on selective use of review types

Milwaukee: Limited Use accounts for half of the total number of designated elements and Special Use is changed to Limited Use.

San Jose: Designated under upper level zoning which adjoins the same zoning. Those which are not in opposition to district characteristics are assumed to be Special, which involves minor procedures.

Pittsburgh: Conditional, which involves complex procedures, is no more than 20% of total designations. In industrial zonings, designated a type of clear permission criteria and simple procedures.

■ Acceptance and implementation of mixed use

Minneapolis: Similar uses not designated are, overall, construction permits, and mixing of uses tend to permit. Designated uses are relatively broadly set so judgments are made carefully.

Portland: In order to promote mixed use, conditional permits are designated widely in residential and industrial zoning so that commercial uses can be located.
Summing up and Considerations

The structure of the system varies from city to city, but viewed overall, its characteristics include:

- Systems and procedures applied selectively according to degree of impact. (Major/Minor)
- Review criteria generally stipulated universally and qualitatively, but some cases could be stipulated individually.
- Major roles - making judgments or issuing advisories, etc. in minor cases - are played by specialist administrators.
- Reviews are performed by collegial bodies consisting mainly of non-specialists, and this process provides opportunities to reflect the views of residents.

In the process of review, guarantee both specialization and democratization and judgment criteria are qualitative to be shared by both specialists and residents.

Target of Composition of the Conditional Use Permit

- Assisted living facilities, parking facilities, general infrastructure uses, and medical treatment or nursing facilities are designated in many districts. (all are socially necessary, but may be disfavored)
- Boarding houses and community facilities (in residential zones) / Auto related business and warehouses (in commercial zones) / Processing plants and “waste” categories (in industrial zones)

Problems of accumulation and disharmony etc. with the surroundings can be caused (conform with the purpose of the zoning)
Reference Items Applicable to Japan

- This system will probably be applied as a method of following situations;
  - Reducing the occurrence of disputes concerning construction resulting from present lax usage regulations in.
    - an Urban full-service hot spring resort is to be located in an exclusively residential district
  - Dealing gradually and systematically with regions where land use is changing.
    - smoothing friction between newly built condominium apartment buildings and existing plants in quasi-industrial districts

- This research have suggested that the following two points must be studied in order to introduce this system into Japan
  - Building an environment permitting judgments without arbitrary action and misuse
    - preparing individual review criteria instead of only general purpose review criteria
    - having specialists prepare reports to support logical reviews which refer to these review criteria
    - limits on designated uses and shifting to review types involving little individual discretion
    - prepare more specific and more detailed city master plans so that they can be the grounds for judgment criteria
  - Support for the same system in regional societies
    - resident participation in reviews, publicizing reviews
    - holding numerous meetings
    - having neighborhood organizations submit their views
The Theme of Future

- Relationship between the state of use of the system and city policy goals
- Specific state of application cases in each city
- The specific state of application of review criteria
- Compared with advanced cases of Japan