

THE USE OF SPECIAL EXCEPTIONS
IN ZONING PRACTICE

by

OWEN W. BURNHAM
B.S. Utah State Agricultural College, 1949

and

MORRIS E. JOHNSON
B.S. Utah State Agricultural College, 1949

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER IN CITY PLANNING

at the

MASSACHUSETTS INSTITUTE OF TECHNOLOGY
1951

Signatures of Authors _____

Department of City and Regional Planning

Certified by _____

Thesis Supervisors

Head, Department of City and Regional Planning



ABSTRACT OF THESIS

TITLE: The Use of Special Exceptions in Zoning Practice

AUTHORS: Morris E. Johnson and Owen W. Burnham

Submitted for the degree of Master in City Planning in the Department of City and Regional Planning, May 18, 1951.

A study of the use of special exceptions in zoning was made to determine the extent of use, administrative procedure, and kind of uses allowed as special exceptions to the zoning ordinance. There is no agreement among zoners concerning how and when these exceptions should be used.

Sixty-seven zoning ordinances were analyzed by means of check sheets. The results of these sheets were assembled and tabulated on two charts to make possible a comparison of the ordinances studied. These charts show how special exceptions are granted, for what uses, who grants them, and into which zones they are allowed. Questionnaires were sent to the zoning boards of appeals of the ordinances analyzed, in an attempt to learn their opinions and experience concerning these questions and to determine how these ordinances, in effect, function.

This analysis showed a wide variation in the concept of what a special exception is and what its function should be. For the most part no distinction was drawn between a special exception and a variance, few vaguely defined them and twenty-six actually made an effort to distinguish between them.

The board of appeals was the agency most frequently given authority to grant special exceptions. Some ordinances give authority to as many as three separate agencies, which leads to administrative conflicts.

Uses listed as special exceptions are those which are needed to serve a neighborhood and occur only in small numbers. It is difficult to provide for such uses as public buildings, cemeteries, airports, etc., in the ordinance itself by general statements and they are therefore listed as special exceptions to be granted by and at the discretion of the board of appeals. Qualitative and locational restrictions can thus be attached to meet the needs of each special exception.

It is recommended that a clear distinction be made as to the function a special exception and variance are to serve. This is necessary to avoid confusion in administration of the ordinance. Special exceptions can be an important part of zoning if there is a clear understanding of their use. This can be brought about by carefully defining in the ordinance the uses to be allowed, limitations to be applied, and procedure for granting. The jurisdiction of the board of appeal must be clearly set forth.

The only body that should perform this function is a board of appeals created for that purpose. Neither zoning administrators nor legislative bodies should have this power since they are not set up for this purpose. A board of appeals can serve to make the ordinance more flexible and can adjust the ordinance to community needs. Action of the board can be reviewed by the courts and constructive adjustment made.

Massachusetts Institute of
Technology
Cambridge, Massachusetts
May 18, 1951

Professor Frederick J. Adams, Head
Department of City and Regional Planning
Massachusetts Institute of Technology
Cambridge, Massachusetts

Dear Professor Adams,

In partial fulfillment of the requirements for the
degree of Master in City Planning, we jointly submit this
thesis entitled, The Use of Special Exceptions in Zoning
Practice.

Respectfully,

Owen W. Burnham

Morris E. Johnson

ACKNOWLEDGMENTS

We wish to extend our appreciation to all those who gave valuable and enlightened guidance to the orientation of this thesis and who offered many helpful and constructive suggestions throughout the course of this study. Especially we would like to acknowledge Professor Roland B. Greeley and Professor Burnham Kelly of the City Planning Department of M.I.T. who have given freely of their time and efforts. We also express our appreciation to Professor John T. Howard of the M.I.T. City Planning Department for his many valuable suggestions.

To all of those who responded so willingly to the many letters sent out, without which this thesis would have been impossible, we again extend our thanks.

TABLE OF CONTENTS

	page
PART I. INTRODUCTION.	1
PART II. METHODOLOGY	3
Purpose	3
Definition of Variance and Special Exception	4
Forms and Questionnaire	6
PART III. FINDINGS.	9
General	9
Who Grants Special Exceptions?.	11
Uses Allowed as a Special Exception	13
Response to Questionnaire	16
Summary of Findings	20
PART IV. RECOMMENDATIONS	22
Distinction Between Special Exceptions and Variances	22
Should Special Exceptions be Used?.	23
How Should the Ordinance Deal with Special Exceptions?	25
Who Should Grant Special Exceptions?.	29
Future Research Indicated	31
APPENDICES.	32

PART I
INTRODUCTION

Special exceptions, as used in zoning practice today, are subject to wide variation in definition and usage. There is no clear agreement of what the function and purpose of allowing special exceptions to the zoning ordinance should be and little agreement among drafters of zoning ordinances as to just how these special exceptions should be used. No one particular method of using special exceptions in the ordinance is evident in zoning practice today.

In the early days of zoning, variances were introduced to provide relief from the strict application of the district height and area regulations. Its' purpose was to relieve undue hardship and to provide that no person would be deprived of the reasonable use of his property without compensation. The variance was intended to lift the burden of the regulations only enough to allow some reasonable development of the land, and was not intended to accomplish what an ammendment to the map would do.

Special exceptions to the zoning ordinance were first included to allow some flexibility in the application of the district regulations. These special exceptions were not intended to relieve hardship but were utilized to allow some specific uses in zones where such uses might be troublesome if allowed as a right by the terms of the ordinance. In allowing these specific uses as a special exception rather than as a right, more control of features that might have been

detrimental to surrounding property and in conflict with the general zoning plan was possible. Certain specified protective conditions could be applied in addition to the district regulations. By giving the ordinance such flexibility, it was possible to allow uses necessary for the public convenience and welfare in districts where they were needed but where they might have caused trouble if allowed without restrictions.

In zoning practice, confusion has arisen as to what the purpose of the special exception should be. There is confusion over the distinction between a special exception and a variance with the resultant lack of agreement as to just what function each should serve. For the purpose of examining the use of the special exception in zoning practice today this study was undertaken. We felt that a study of this part of the zoning ordinance might shed some light on this problem and possibly reveal the potentialities underlying the use of special exceptions.

PART II
METHODOLOGY

Purpose. Such a study should determine, among other things, degree of use of special exceptions, how the intent of special exceptions has worked out in practice, the reasons for confusion of special exceptions and variance, and whether or not special exceptions are really needed in the zoning ordinance.

To answer these questions, this study was directed toward an analysis of the zoning ordinances only with no reference being made to state enabling legislation. It is recognized that a limitation to a comprehensive investigation of the use of special exceptions by reference only to the zoning ordinance rests in the fact that state enabling legislation is the source from which power to grant special exceptions stems. The state enabling legislation influences the general form special exceptions assume in the ordinance. Therefore a complete analysis of the zoning ordinance would require a study of the enabling legislation and also a study of interpretation and court decisions. Due to limitations of time, we felt that the most productive effort would be that which was directed toward analysis of the ordinance insofar as obtaining direct answers to the questions set forth previously.

To analyze every zoning ordinance in the country is clearly a task beyond the scope of this study. A method of selection that would give a fair cross-section of zoning practice today was employed. Letters describing briefly the

intentions and purposes of this study were sent to men prominent in the field of zoning requesting recommendations as to ordinances that should be considered.¹ An effort was made to choose ordinances representing a wide geographical distribution and a range in size from large to small. Thirty-nine letters were written and thirty-one replies were received containing suggestions of ordinances that should be considered in the study. From these suggested ordinances, sixty-seven were chosen for analysis in this study.²

Definition of variance and special exception. From a preliminary study of the ordinances selected, it was found that there existed great variation in the concept of what special exceptions and variances should accomplish and how they were used. Because of this wide variety of treatment in the ordinances a definition of a special exception and a variance was needed to serve as a basis of comparing one ordinance to another. These definitions are to serve as a standard by which the provisions dealing with special exceptions and variances contained in the ordinance may be classified and tabulated. We made use of these definitions to permit a separation of the provisions allowing special exceptions and variances regardless of what such variations or exceptions were called in the ordinance.

For analyzing the ordinances, we defined special exceptions as those uses specifically listed in the ordinance

¹See appendix A.
²See appendix B.

that could be allowed, at the discretion of a body given authority to grant these exceptions to the ordinance, in districts where they would otherwise be excluded. Any exception for use, granted at the discretion of such a body was considered a special exception regardless of the name given it in the ordinance. We did not consider the granting of variations to minimum yard requirements, building height and density as special exceptions, in terms of this definition. This definition does not coincide in all ways with that recommended later in the study.³ However, to take into consideration all the differences in the ordinances analyzed, this arbitrary definition was necessary.

For the purpose of tabulating special exceptions and variances as used in the different ordinances, we defined a variance as an exception to or variation of the terms of the ordinance, not granted for use, but granted at the discretion of a body having authority to vary the application of the terms of the ordinance. Exceptions to yard requirements, height and density regulations were found to be the ones most often granted as a variance by this definition. In applying these definitions for a special exception and a variance, any exception granted for use was called a special exception and not a variance. Although this arbitrary definition may have labeled as a special exception some variance that was rightly granted for use, such cases are so few that for the purpose of this study we felt that any exception for use should be

³See pages 22-23.

called a special exception. While there may be a very few cases when a use variance could be granted due to unnecessary hardship, most use variances are actually special exceptions in disguise.

Forms and questionnaire. Two forms were used in analyzing each ordinance.⁴ The first consisted of questions relating to general background and the method of granting special exceptions. These questions were designed to be answered from the ordinance itself and to show how special exceptions are treated and whether or not they are clearly distinguished from variances.

The second form was a list of uses most commonly granted as special exceptions with space provided to add others which an ordinance might use. The form was set up to show in which zone these uses were allowed as a special exception and in which zone they were allowed as a right.

To designate the zone a use was allowed in would be meaningless without the definition of which uses that zone allowed as a right. To solve this problem, five zones were defined for the needs of this study: three residential, one commercial and one industrial. The zones of each ordinance were then classified and grouped according to these definitions regardless of the designation given by the ordinance. This permitted a standard by which ordinances could be compared to each other even though a designation such as R-1 in one ordinance might correspond to an A-3 zone in another ordinance.

⁴See appendix C.

The definitions given for this purpose are:

1. Single family residential districts.
2. Two family residential districts.
3. Multi-family residential districts.
- C. Commercial and business districts.
- I. Industrial and manufacturing districts.

In a few cases it was difficult to get a clear idea of the use of special exceptions from a literal interpretation of the zoning ordinance by the method of analysis used. Local interpretation of some ordinances may differ from the interpretation given in answering the questions on the check sheets used. However, the check sheets, as designed, gave a clear picture of most of the ordinances tabulated.

The results of the analysis of zoning ordinances by the use of the two check sheets were tabulated on charts to show a summary of results and a comparison of ordinances. One chart showed the zone in which a certain use was allowed and whether it went there as a right or as a special exception.⁵ When the ordinance was unclear as to the district in which a use was allowed or method of granting that use, this was noted on the chart. This chart also showed the total number of times a use was allowed as a special exception and the number of different uses each ordinance permitted as a special exception. The second chart was a compilation of information dealing with general background and method of granting special exceptions.⁶

⁵See appendix D.

⁶See appendix E.

Following this a questionnaire was sent to the chairmen of the zoning boards of appeal in the sixty-seven cities whose zoning ordinances were used for analysis in this study. Questionnaires were also sent to thirty-three additional cities, making a total of one hundred. We felt this procedure to be a useful way to close the gap between the literal interpretation of the ordinances by us and the interpretation applied by the various boards of appeal. The questions sought to bring out the experience of the boards by getting their opinions on matters relating to purpose and method of granting special exceptions.⁷

Accompanying these questionnaires was a letter briefly giving the definitions previously stated.⁸ This allowed those receiving the questionnaire to base their reply on the same definition so that there would be some consistency in the answers.

Out of a total of one hundred questionnaires sent out, fifty-five percent were filled out and returned.⁹ Of those returned, only two were not useful due to an apparent misunderstanding of the questionnaire.

⁷See appendix G-2.

⁸See appendix G-1.

⁹See appendix G-3.

PART III

FINDINGS

General. In tabulating the provisions of ordinances studied, it was found that special exceptions were granted in almost all cases. Out of the sixty-seven zoning by-laws analyzed, only three had no provisions for allowing a special exception. Of the three by-laws which did not allow special exceptions--Cook county, (Ill.), Bensenville, (Ill.), and Ottawa, Canada--only in the Bensenville ordinance was there definite evidence that a special exception would not be allowed. In the other two, the wording of the ordinance was such that use exceptions could have been granted as a variance, depending on the interpretation of the variance provision of the ordinance. However, these provisions were not sufficiently clear to have been classed as special exceptions by the definitions previously set forth.¹⁰

At the outset of the study, we had thought there might be a correlation between size of city, number of use districts and number of special exceptions provided for in the zoning ordinance. For this reason, the cities were listed on the tabulation charts according to population.¹¹ From the information tabulated, there seemed to be no such correlation evident. In New York City, which was the largest studied, there were nine use districts and only six specific special exceptions allowed. In Winston-Salem, a medium sized city,

¹⁰See page 4.

¹¹See appendix D and E.

there were eleven use districts and twenty-three special exceptions were allowed. In Middletown, (R.I.), a small town, there were six use districts and thirteen special exceptions allowed by the terms of the ordinance. Such variation as above existed throughout the sample of sixty-seven zoning ordinances studied. Some of the small cities had more use districts than large ones and allowed more special exceptions. Even if there had been a correlation between size of city, number of use districts and number of special exceptions allowed, the assumption that this would indicate the extent of granting of special exceptions may not be valid because of differences in the enabling legislation, interpretation of the ordinance by the board of appeal and by the courts and other factors which were beyond the scope of this study.

In some of the ordinances studied, such as Detroit, Seattle, and Rye, (N.Y.), there was no clear distinction made between a special exception and a variance as defined in this study. This indicated that it would have been possible to grant a special exception for use under the guise of a variance or vice versa. An attempt was made to determine which ordinances made a clear distinction between a variance and a special exception, both in definition within the ordinance and in procedure for granting. The tabulation showed that twenty-six of the ordinances studied made this clear distinction.¹²

Tabulation showed that there was not much uniformity in the terms used in the ordinances studied to define a

¹²See appendix E.

special exception. Such terms as "variation of the provisions of the ordinance," "determine and vary the application," "variation," and "conditional use" were commonly used. The specific term "special exception" was the most common term.

Who grants special exceptions? The power to grant special exceptions to the terms of the ordinance was given to several bodies in the municipalities studied. In thirty-four of the sixty-seven ordinances analyzed the power to grant special exceptions was given only to a board of appeal provided for that purpose by the terms of the ordinance. In ten of the cities, special exceptions were granted only by the legislative body, usually upon recommendation of the zoning commission or planning board. In only one city, San Francisco, was the authority to grant special exceptions given to the planning agency. None of the ordinances studied gave the zoning enforcement officer, usually the building inspector, the sole power to grant special exceptions although in two cities he could grant certain special exceptions. In four of the cities, the sole power to grant special exceptions was given to some person or commission other than the above. This function was performed by the board of public service in St. Louis, by the board of public works in Seattle, and by the president of the Board of Trustees in Oak Park, (Ill.). The granting of special exceptions was done by more than one body in twelve of the cities studied. In Los Angeles, for example, certain special exceptions could be granted by the city council and certain special exceptions

by the planning board while others could be granted by the building inspector. In some cities there was overlapping jurisdiction. In other words, the same special exception could be granted by any one of two or three bodies. Despite these variations, the board of appeal was the one most often given the power to grant special exceptions.

There was wide variation in the matter of planning agency participation in the procedure of granting special exceptions. Besides San Francisco, which gave jurisdiction over special exceptions to the planning agency, there were eight cities that required planning board approval for some or all uses before a special exception could be granted. Sixteen cities required that the opinion of the planning agency be obtained before special exceptions could be granted. This was referral for an opinion only. In fourteen cities the planning agency was represented by one member on the board of appeal. This was a statutory requirement. This member was usually a member of the planning commission and was not one of the technical planning staff.

The number of members appointed to the board of appeal ranged between three and five in most cases where board of appeal membership was mentioned in the ordinance. The vote required to grant a special exception varied from a majority to a unanimous vote of the board of appeal. Forty of the ordinances did not mention the number of members on the board of appeal or the vote required to grant a special exception. A three-fifths vote was required in eight of the twenty-seven

ordinances mentioning this and thirteen required a four-fifths vote of the board of appeal to grant a special exception. In some of the cities a special exception could be granted by a certain vote (three-fifths or four-fifths) if there were no objections filed at the public hearing. In the event that enough objections were filed by neighboring property owners or others, a unanimous vote was required by the board of appeal to grant the special exception.

In eleven cities, it was not clear in the terms of the ordinance whether or not a public hearing was required before a special exception could be granted. All except these eleven ordinances contained specific reference to procedure for conducting the required public hearing. The eleven ordinances having no reference to a public hearing may have neglected to include it because of this being provided for in the state enabling legislation.

Uses allowed as a special exception.¹³ Tabulation of specific uses allowed as special exceptions showed two fairly distinct types of uses. In one group, those uses which are necessary for the public convenience and welfare are evident such as hospitals, schools and colleges, public utilities, public buildings and airports. This type of use is one that is usually needed only in limited numbers in a city and which may cause undesirable conditions such as traffic congestion and nuisance if allowed as a right in certain districts. At the same time, the community convenience and welfare may be

¹³See appendix D and F.

better served if these uses are allowed in restricted districts. This indicates that the need has been recognized for allowing these uses by special exception so that certain qualitative restrictions can be applied which would not be possible if such uses were allowed as a right in a whole district.

In the other group of special exceptions are uses such as group dwellings, conversions, gasoline service stations, tourist and trailer camps, light industry and parking lots which may be desirable for public convenience if some restrictions beyond the district regulations are placed upon them. This group of uses may also cause traffic congestion, noise or other undesirable conditions if allowed to locate as a right anywhere in certain districts. Also in this group might be included certain noxious industry that could be allowed as a special exception in industrial districts if certain conditions were met that would safeguard surrounding property.

Aside from the pattern of types of uses allowed as special exceptions mentioned above there were few other similarities evident in uses allowed as special exceptions. Some cities had peculiar situations such as many large single family houses which could be more efficiently used if converted to two or more dwelling units. These were often taken care of by special exceptions. Special industrial requirements or other problems may have influenced the special exception uses granted in a city.

The list of uses tabulated on the chart as special exceptions were used for the purposes of this study after analysis of many ordinances to determine which special exceptions occurred most frequently.¹⁴ None of the ordinances used for this study granted all of the uses listed as special exceptions. In comparable zones, a use was found to have been allowed as a right in some cities and as a special exception in others. Tabulation and comparison of the various zoning by-laws studied revealed no correlation or apparent pattern in practice for uses allowed as special exceptions.

Thirty-six of the sixty-seven ordinances allow for a definite time limit to be placed on certain special exceptions. Some placed a time limit only on temporary uses such as a construction shed in a residential zone, a carnival, earth removal and certain uses in undeveloped areas of the city. Some placed a time limit on a special exception regardless of whether it was of a permanent or a temporary nature. Only ten of the ordinances provided for a time limit on permanent uses as special exceptions. These time limits were placed on the special exceptions to allow the board of appeal to review the case at a later date when the character of the surrounding area may have changed enough to make desirable the termination of the special exception. In most cases where there was a time limit, the board of appeal could grant an extension if it found that the surrounding property would not be adversely

¹⁴See appendix F.

affected.

In forty two of the ordinances, the petitioner for a special exception was required to meet certain specified conditions stated in the ordinance before the board of appeal could grant the permit. These required conditions were usually of a general nature stating that a neighborhood must not be adversely affected by the use and that the convenience of the neighborhood must be served. Some ordinances stated more specific requirements such as the use of shrubbery and landscaping, nuisance abatement, and standards for vehicular entrances and exits.

Response to questionnaire. For the purpose of finding out how the special exceptions provisions of zoning ordinances have operated in actual practice, a questionnaire was sent to boards of appeal in one hundred cities throughout the United States. With a fifty-five percent return of the questionnaire, a compilation of the answers received is included in appendix G-2. The experience of the boards of appeal who responded to the questionnaire showed that variances are granted more frequently than special exceptions. The answers to this question gave only a comparison of frequency of granting and no actual numbers were obtained.

In questions II through VI of the questionnaire, we made an attempt to obtain opinions regarding special exceptions from boards of appeal who have been actively engaged in processing requests coming before them. Thirty-nine of the respondents felt that special exceptions were either an important

part of the ordinance or a useful accessory. A few indicated only that the special exception was considered troublesome and some thought it was troublesome in addition to being important. None considered them unimportant.

The response to the questionnaire showed that most of the boards of appeal felt that special exceptions should be allowed only when carefully controlled and defined in the ordinance itself. Few felt that the board of appeal should have wide discretionary power as to which uses should be allowed as special exceptions and where these uses should go. The boards of appeal themselves did not want the responsibility of making decisions without a clear limitation in the ordinance itself.

In the matter of planning agency powers relative to granting special exceptions there was more difference of opinion in the questionnaires returned. About equal numbers thought that the planning agency should have only the right to express an opinion at the public hearing or to act as an advisory body to the board of appeal when an opinion was requested or the planning agency should have one member on the board of appeal. Only six of the boards responding felt that the planning agency should be given the right to deny any special exception request.

We considered some of the additional comments received from the boards of appeal to be valuable in giving an insight into their thinking on the matter of special exceptions.

Some of the comments were:

Statements checked from II through V are based on the checker's opinion of an optimum zoning ordinance for a city which has virtually exhausted its supply of buildable area. Such an ordinance should recognize that the character of districts designated under the same general zoning classification, may vary sufficiently to warrant specific exceptions of a different nature in each, or in some districts no exceptions. If these "specific exceptions" are found to be justifiably applicable to any district in the land use analysis, preceding the drafting of the ordinance, they should be defined in the ordinance with specific regulations controlling them.¹⁵

The board of appeals has wide power to grant variances. What in many cities would be classified as special exceptions are here thrown in with the variances. No special exceptions are provided for in the ordinance. All cases are handled on appeal from decision of building inspector--"hardship" is so broadly defined as to be almost meaningless. We are preparing a new zoning ordinance.¹⁶

The special exceptions are very useful. They give a clear authority to the Board in those special cases. Variances are always debatable, frequently cause neighborhood arguments, and the Board often finds that whatever decision it makes will hurt someone. I would like to see special exceptions expanded, and the use of variances curtailed.¹⁷

Note that no distinction is made between variations and special exceptions, as the ordinance is applied by our board. Therefore practically all applicants claim hardship, and the above questionnaire does not have any meaning in our case. . . .

The questionnaire recently sent to us has no application to conditions in Memphis. Our board grants variations as it pleases.

Paragraph 8 of the section on jurisdiction states that the board may "interpret the provisions of this ordinance in harmony with their fundamental purpose and intent where practical difficulties or unnecessary hardships occur."

The board members realize that spot zoning is not desirable, yet they frequently grant, with a rather wry countenance, variations which amount to the same thing. They do make some effort to restrict such uses to one, two or three years whenever circumstances permit.¹⁸

¹⁵Rochester, New York.

¹⁶Greensboro, North Carolina.

¹⁷Raleigh, North Carolina.

¹⁸Memphis, Tennessee.

The power to grant special exceptions is frequently abused, and should be used sparingly, and only when specifically authorized by ordinance. This has not always been the case with our Board of Adjustment, who, like most citizen boards are prone to exceed their authority, and has caused considerable trouble in the past.¹⁹

The Cook County zoning ordinance, covering about 500 square miles of unincorporated area, was so written as to exclude all "Special Exceptions". Such "Exceptions" as appear (see marked copy enclosed) are clearly to be acted upon by the Enforcing Officer. However provision is made for review of his order, decision or interpretation, by the Board of Appeals. It was and is believed that most, if not all, so-called "Special Exceptions" should be the subject of either Amendment of the Map, or Variation.²⁰

With respect to Special Exceptions (Special Permits) I think they are a useful accessory, limited as much as possible.

With respect to Question III, I feel that wherever Special Exceptions (Special Permits) are involved they should be by way of an amendment to the ordinance, as our ordinance provides.

In regard to Question IV, in my language the power should rest with the legislative body, the Board of Trustees, on recommendations, after a public hearing, by the Zoning Commission or a Committee appointed for the purpose. . . .²¹

Such a use exception as allowing living quarters in garages as presently being heard and approved by our Board of Zoning Adjustment should be use exceptions granted for a temporary use only. On the other hand, it is believed that granting a permanent use exception for off-street parking for retail business in adjoining residential areas can be a permanent approval if granted with sufficient conditions.²²

Under the existing Zoning Ordinance here in Tacoma "special exceptions" are not known nor granted as such. Special permits are sometimes given for utilities necessary in residential districts. Churches and schools require special permits to go in residential districts and thus their locations are controlled.

The feeling here is that "special exceptions" are dangerous. A few specified uses may, in our revised ordinance, be allowed by a special permit from the City Council if such a use is considered necessary to the public welfare in a

¹⁹Tulsa, Oklahoma.

²⁰Cook County, Illinois.

²¹Oak Park, Illinois.

²²Kansas City, Missouri.

district where otherwise such a use is prohibited; all other "exceptions" must be variances and brought to the consideration of the Board of Adjustment.²³

Summary of findings. Our study of the use of special exceptions in zoning practice showed, first of all, that a wide variation exists as to how they are granted, who grants them, and for what uses special exceptions are granted. Just as great a variation exists when the basic purpose of a special exception in each ordinance is analyzed.

In some of the ordinances the purpose in granting a special exception seemed to be for the convenience of any property owner. If there seemed to be any reasonable demonstration that property could be put to more profitable use through a special exception, without causing obvious harm to surrounding property, the granting of a special exception was provided for in the ordinance. In other ordinances the intent in granting special exceptions seemed to be that they should not be allowed unless there was definite evidence of community need and that the use would not be harmful to surrounding property. Where a community need was established for a use, in a district from which it was otherwise excluded, the special exception was used to place additional qualitative restrictions on that use not possible in the more general terms of district regulations.

An analysis of ordinances alone does not always give a true picture of the way special exceptions provisions operate

²³Tacoma, Washington.

in actual practice. The makeup of the board of appeal, administration and enforcement of the ordinance, and the interpretation by the courts in different jurisdictions all serve to influence the application of zoning regulations to a particular city.

PART IV
RECOMMENDATIONS

Distinction between special exception and variance.

In drafting the zoning ordinance, it is essential that a clear distinction be made between a variance and a special exception. These two elements of the zoning ordinance should serve two different functions and therefore a clear separation is needed. This distinction between a special exception and a variance can best be drawn by carefully defining the function each is to serve in the ordinance.

A special exception should serve to make the ordinance more flexible, within carefully defined limits, so that the needs of the community may be more fully served. It should serve as a device to give a board of appeal authority to grant permits for certain uses subject to qualitative restrictions and requirements that may be thought necessary. Some of these restrictions may be specifically stated in the ordinance with others left to the discretion of the board of appeal. Special exceptions should not be used to vary the application of the district regulations where there is hardship due to unusual conditions which apply to only one or two pieces of property.

The variance should serve as a means whereby the ordinance may be varied in cases where there is unnecessary hardship and the owner will be deprived of reasonable use of his property due to a strict application of the district regulations. This function is important in that it serves as

a relief valve for those unusual cases which cannot be provided for in the district regulations. The variance should be used only to relieve hardship that arises from a condition unique to the particular property in question and not to accomplish the same thing an amendment to the ordinance would do. Under this definition of function, the variance would serve to provide adjustment to the height and area regulations of the zoning ordinance. It would not be used to vary the use regulations, except in rare cases.

Should special exceptions be used? We think that special exceptions can be an important and useful part of the zoning ordinance if used correctly. It is improbable that a zoning ordinance could be written that would meet all possible situations and requirements which might arise. The need for flexibility in the zoning ordinance must be met in one of several ways. (1) The ordinance must be amended each time a new situation arises that requires adjustment, (2) the zoning enforcement officer must have discretionary power to vary the provisions of the ordinance, (3) the ordinance must be so written as to allow a board of appeal to issue special exceptions permits subject to appropriate conditions and safeguards. Of these alternatives, the third is the only one which lends itself to proper administration and which would not destroy the intent of the ordinance. Too frequent amendment, besides being a time consuming and cumbersome process, would tend to meet each situation from a short range point of view without taking into consideration an integrated, long range land use

plan for the community. Such frequent amendments would tend to destroy the intent of the ordinance or at best would result in spot zoning.²⁴

It is clearly not desirable to vest wide discretionary power in the zoning enforcement officer who is supposed to make decisions based only on the provisions of the ordinance. The zoning officer performs an administrative function and should not have the power to perform the quasi-legislative and quasi-judicial function of granting special exceptions.

At the time of adoption of a zoning ordinance, it is often difficult to assign certain uses to specific districts, where they may be needed, without undesirable results. There are bound to be a few uses the community will need but which should not be assigned to a specific district when the ordinance is drafted. These uses are such that it would not be desirable to let them go in anywhere in the city or to let them locate indiscriminately in any one particular district. Since the district regulations are a more or less general means of applying equal restrictions to similar uses throughout a whole district, some method of getting more control over some specific uses is needed. Special exceptions are a means of getting this qualitative control and a means of controlling location within a district. Some uses that fall into this category are: sanitariums, hospitals, cemeteries, airports, public buildings, public utilities, and schools.

²⁴Basset, Edward M., Zoning, Russel Sage Foundation, New York, 1940, page 22.

All these uses are not likely to occur in great numbers and could cause undesirable conditions in certain districts if allowed uncontrolled as a right. When needed, uses such as these should be allowed as special exceptions in residential districts. They would probably be incompatible with residences if developed indiscriminately. Most of them generate some traffic and noise and require accessory uses which could be offensive to a neighborhood. By carefully controlling the location and by providing adequate space, etc. the undesirable features could be eliminated and at the same time community needs would be served adequately.

Certain industries may be objectionable because of noise, smoke, odor or appearance and are often troublesome no matter where they are located. However, rather than complete exclusion of these uses they could be allowed as special exceptions under necessary restrictions that would ameliorate these undesirable characteristics.

Each case should be considered on its' own merits and acted on accordingly, by and at the discretion of a board of appeal. This allows for greater flexibility in the administration of the ordinance and at the same time the ordinance does not become unwieldy.

How should the ordinance deal with special exceptions?
Various rules of conduct and procedure dealing with granting exceptions to the ordinance, as set forth in the state enabling legislation, must be incorporated in the ordinance. Simply copying parts of the enabling legislation into the ordinance

would not be satisfactory since any change in the enabling legislation would require an ordinance amendment. However, the required procedures for such things as public hearings, notices, and appointment of a board of appeal must be followed. Failure to do this invalidates action taken in carrying out terms of the ordinance. Adequate and clear limits of the jurisdiction of the board of appeal must be stated in the ordinance so that there will be no question about which cases the board may act upon.

It is necessary that all special exceptions be specifically enumerated in the zoning ordinance. This should be done by naming each use and the district it may go in as a special exception. In some cases it may be desirable to permit certain classes of uses in this way. This would apply particularly to certain industrial uses. An example of this, as used in the Cleveland zoning ordinance would be:

"The granting body may, after public notice and hearing and subject to appropriate conditions and safeguards, permit the location of a use authorized in a Heavy Industrial District on a lot in a Commercial District which adjoins a railroad right-of-way."

In this case any use allowed as a right in the Heavy Industrial zone may be allowed as a special exception in a certain place in the Commercial zone.

Since the power to grant special exceptions is actually a limited delegation of legislative power, its use must be subject to clear limitation in the ordinance. Besides enumerating specific uses, the ordinance should include standards to be followed by the board of appeal. These standards

would include certain findings to be made in each specific case such as: the public welfare and convenience will be served, the proposed location will not adversely affect sound community development, and neighboring property will not be injured by the proposed use. In addition, the board of appeal should be given authority to require any additional qualitative conditions it may deem necessary to insure proper development. Such conditions might be for side yards, fire-proof construction, landscaping, architectural design, and nuisance abatement. Courts have upheld the validity of such additional requirements by the board of appeal.²⁵ It is emphasized that unnecessary hardship should not be considered a criteria for granting a special exception.

When considering the problem of applying time limits as one of the conditions under which a special exception can be granted, the uses are divided into two categories, permanent and temporary. No effort should be made to impose time limits on permanent uses. This would in effect make a permanent use temporary and would discourage sound development.

On the other hand there are a number of temporary uses which should be granted with time limitations. These temporary uses should be explicitly enumerated as special exceptions in the ordinance and the board of appeal given power to attach the specific time limit according to the problems in each case.

²⁵People ex. rel. Beinert v. Miller. New York Supreme Court. 188 A.D. 113, 176 N.Y.S. 398; Reed v. Board of Standards of New York. New York Court of Appeals 177 N.E. 301, 255 N.Y. 126; Buckminster v. Zoning Board of Review of Pawtucket. Rhode Island Supreme Court 33 Atl (2) 199.

The case could be restudied at the end of the time limit and if conditions warrant, an extension could be given, at the discretion of the granting body. Uses which could be treated under this provision are: shed incidental to residential construction, highway sales stands, carnivals, circuses, etc.

It is recommended that special exceptions be used with caution and only when necessary. The ordinance should be so drawn as to exclude the need for granting special exceptions as much as possible and thereby the ordinance will be much more effective and administration will be more positive. There are some who think special exceptions should not be used at all. While we do not agree with this all-inclusive rejection of the use of special exceptions, there have been some interesting points raised. Mr. Robert Kingery, General Manager of the Chicago Regional Planning Association had this to say:²⁶

First, a zoning ordinance should be so clear in its wording as to leave the least possible area for interpretation. That is axiomatic. However a number of older ordinances and some of the newer or revised ordinances appear to be more involved than is desirable.

In the fourth paragraph of your recent letter you indicate that in your study "there is almost always some provision for granting permits for such uses as churches, schools, public and private utilities, conversions of single houses to more than one dwelling unit, commercial uses and temporary uses in districts where they are excluded." Generally our suburban communities are much more rigid. They expect and require churches and schools to comply, almost without exception. Usually they prescribe definitely for the location of public and private utility installations where technological requirements indicate they are needed. Almost without exception they do not permit conversion of a single family residence into more than one dwelling unit, have battled this issue repeatedly in Court and have generally been sustained. They do not allow commercial uses except by

²⁶Personal letter written by Robert Kingery to Owen Burnham on May 1, 1951.

reclassification, and temporary uses are permitted sparingly and by action of the enforcing officer under clear language.

Almost all such items as you list can be provided for where appropriate without resort to exceptions.

You suggest that method for achieving a "degree of flexibility not easily obtained otherwise." We believe such provisions are apt to be misused with the result that too great flexibility is too easily obtained.

A zoning ordinance is, or should be the clear and definite plan for future uses of land. If it is lazily drawn, leaving much for interpretation, exception or variation it is less clear, less definite, less stable than it should be. I suspect you have found a number of that type. Your document would be most constructive if you were to conclude that much of the matter so treated should be regulated more exactly.

This view stresses again the need for clear and careful definition of special exceptions and the power of the board of appeal relative to granting exceptions to the ordinance.

Who should grant special exceptions? Special exceptions, as outlined above, should be granted by and at the discretion of a board of zoning appeals. The results of this study of zoning practice and the use of special exceptions showed a number of different bodies given this power. In some cities as many as three different groups were given this power and in some cases, there was overlapping jurisdiction. This situation makes for difficulties in administration and control of the zoning ordinance. The dangers of allowing city councils or other legislative groups to pass on special exceptions rests in the fact that such action is legislative and recourse to the courts is then valid only on ground of constitutionality. The situation can be remedied only by declaring the legislative act unconstitutional. When a special exception is granted by the board of appeal, the powers of the court may be used for

constructive adjustment. The courts can modify the rulings and requirements of a zoning board of appeal.²⁷

It is not desirable to give the zoning enforcement officer, who is an administrative officer, the discretionary power to grant or deny special exceptions to the ordinance. Only chaos would result if the enforcement officer sometimes followed the strict letter of the ordinance and other times made an exception at his own discretion.²⁸

There is a clear need for a separate board of appeal to exercise the necessary function of hearing and deciding special situations and seeing that justice is done. The ordinance must set forth clearly their powers and their specific jurisdiction. These powers would include:

(1) Review on appeal the actions of the administrative officer who enforces the ordinance and to interpret the meaning of the ordinance in case of uncertainty.

(2) Grant variances from the strict letter of the ordinance in instances of unnecessary hardship.

(3) Permit special exceptions which are specified in the zoning ordinance and placed under the jurisdiction of the board of appeal.

A special exception, in the past, has generally been considered to fall within the original jurisdiction of the board of appeal and a variance has been within the appellate jurisdiction. However, for the sake of simplifying procedure

²⁷Basset, *op. cit.*, p. 158.

²⁸*Ibid.*, p. 121.

we can see no good reason why all requests for either special exceptions or variances should not go first to the zoning enforcement officer. He can then classify the cases and send it on to the board of appeal. As a matter of common practice, this is what actually happens and the ordinance should recognize it by having all requests for special exceptions go to the zoning enforcement officer. Justice would not be impaired, since his decision can be appealed to the board of appeal.

Special exceptions are primarily land use problems and they directly influence the land use pattern. They should therefore be located and controlled with a view toward effectuating a comprehensive land use plan for the community. To accomplish this, each proposed special exception should be referred to the planning agency for study and report. This should be a statutory requirement for all special exceptions and would thereby bring to bear the technical competence of the planning staff in making these decisions which are going to influence the community plan.

The final decision of whether to grant or deny a special exception should still fall within the discretionary power of the board of appeal. The assumption is made that the board of appeal will be attempting to do a conscientious job on all requests coming before it and they will probably accept and act on the advice of the planning agency, which should be based on adequate and complete information. This leaves the planning agency in the position of a recommending

body and assures that their views will be heard on these special exceptions.

Planning agency participation in granting special exceptions will be more effective by way of reports and recommendations than by having one member of the planning commission on the board of appeal. In the report procedure, the t~~h~~echnical planning staff will have an opportunity to indicate its views, while placing a member of the planning commission on the board of appeals may eliminate the advice of the trained planner.

Future research indicated. In the process of completing this study, several problems came to our attention on which future research might prove valuable. These became apparent early in our research due to the lack of published material on them.

(1) Analysis of state enabling legislation under which zoning is operating.

(2) Types of conditions the ordinance should set forth under which special exceptions can be granted.

(3) Types of conditions the board of appeal should attach before granting a special exception.

(4) Legislative and judicial background for using special exceptions for establishing performance standards for zoning rather than having specific restrictions in the ordinance.

APPENDICES

APPENDIX A

1. Copy of Letter Sent to Persons in the Field of Zoning

Massachusetts Institute of Technology
Department of City & Regional Planning
Cambridge, Massachusetts
March 5, 1951

Dear Sir:

As a joint thesis we are undertaking a study of the general provisions of zoning ordinances with particular reference to the use of Special Exceptions. Knowing that you have been active in the field of zoning and have had first hand experience with the problems of Special Exceptions, we would appreciate your referring us to ordinances you have worked on and which you would consider valuable to this study. It would seem desirable to use a number of ordinances which run the gamut of variations as they exist in different parts of the country and in different ordinances.

We have in mind a rather comprehensive analysis of as many zoning ordinances as time will permit. The tentative plan of our study is to tabulate the provisions of each ordinance as it relates to such things as: administration of the ordinance, number and types of zones, appointment and procedure of the board of adjustment, municipal officer responsible for enforcement, provisions for variance, and other characteristics which can be tabulated, together with the provisions of Special Exception.

We hope to be able to produce a broad framework in the general analysis upon which to base a more thorough study of the problems of the Special Exception. There seems to be considerable variation in its treatment and we hope to produce some conclusions and recommendations as to how this problem should be treated.

We would appreciate your opinion concerning ordinances which should be considered in this study and any suggestions as to where they may be obtained. Any other ideas you have about this problem would be most welcome.

Very truly yours,

Morris E. Johnson
Owen W. Burnham

2. Persons Responding to Letter

Edmund N. Bacon, Planning Director, City Plan Commission,
Philadelphia, Pennsylvania

Charles W. Barr, Assistant Professor of Urban Planning,
Michigan State College, East Lansing, Michigan

Harland Bartholemew, Planning Consultant, St. Louis,
Missouri

Ernest R. Bartley, Professor of Political Science, Univ-
ersity of Florida, Gainesville, Florida

Charles B. Bennett, Director of Planning, Los Angeles,
California

Russell VanNest Black, Planning Consultant, Pennsylvania

T. Ledyard Blakeman, Executive Director, Regional Planning
Commission, Detroit, Michigan

Walter H. Blucher, Executive Director, American Society
of Planning Officials, Chicago, Illinois

Robert D. Bugher, Michigan Municipal League, Ann Arbor,
Michigan

Edwin S. Burdell, Director, The Cooper Union, New York,
New York

Stuart F. Chapin Jr., Dept. of City & Regional Planning,
University of North Carolina, Chapel Hill, North
Carolina

Frederich P. Clark, Planning Director, Regional Plan
Association Inc., New York, New York

Elmer R. Coburn, Director, Research and Planning Division,
Connecticut Development Commission, Hartford, Conn.

Arthur C. Comey, Planning Consultant, Massachusetts

E. G. Faludi, Managing Director, Town Planning Consultants
Limited, Toronto, Ontario, Canada

Andre Faure, Town Planner, F.H.A., San Francisco, California

H. Kennon Francis, Principal Planning Technician, State
Planning Board, Montgomery, Alabama

2. Persons Responding to Letter (Cont.)

Herbert S. Hare, Planning Consultant, Kansas City,
Missouri

Robert C. Hoover, Executive Secretary, Broome County
Planning Board, Binghamton, New York

Robert Kingery, General Manager, Chicago Regional Planning
Association, Chicago, Illinois

Philip Nichols, Attorney, Boston, Massachusetts

Francis A. Pitkin, Executive Director, State Planning
Board, Hamsburg, Pennsylvania

Hugh R. Pomeroy, Westchester County Department of Planning
White Plains, New York

Ira S. Robbins, Executive Vice President, Citizens Housing
and Planning Council, New York City, New York

Ladislav Segoe, Planning Consultant, Cincinnati, Ohio

Lawrence V. Sheridan, Planning Consultant, Indianapolis,
Indiana

Flavel Shurtleff, Attorney, Marshfield Hills, Massachusetts

Sulo J. Tani, Executive Director, New Hampshire State
Planning & Development Commission, Concord, New Hampshire

Norman Williams Jr., Attorney, New York City, New York

APPENDIX B

Selected Zoning Ordinances Analyzed

1. Austin, Texas
2. Baltimore, Md.
3. Bensenville, Ill.
4. Brookline, Mass.
5. Cambridge, Mass.
6. Charleston, West Va.
7. Chicago, Ill.
8. Cincinnati, Ohio
9. Cleveland, Ohio
10. Cook County, Ill.
11. Detroit, Mich.
12. Denver, Colo.
13. Des Moines, Iowa
14. District of Columbia
15. Dothan, Alabama
16. East Lansing, Mich.
17. Englewood, Colo.
18. Fayetteville, N.C.
19. Gary, Ind.
20. Greensboro, N.C.
21. Hartford, Conn.
22. Highland Park, Ill.
23. Hunting Valley, Ohio
24. Jackson County, Mo.
25. Kansas City, Mo.
26. Ladue, Mo.
27. Leavenworth, Kan.
28. Little Rock, Ark.
29. Los Angeles, Calif.
30. Madison, N.J.
31. Madison, Wisc.
32. Manchester, Conn.
33. Memphis, Tenn.
34. Middletown, R.I.
35. Minneapolis, Minn.
36. Montgomery, Ala.
37. New Orleans, La.
38. New York, New York
39. Newton, Mass.
40. Oakland, Calif.
41. Oak Park, Ill.
42. Omaha, Neb.
43. Pelham Manor, N.Y.
44. Phoenix, Arizona
45. Pittsburgh, Penn.
46. Princeton, N.J.
47. Providence, R.I.
48. Raleigh, N.C.

Selected Zoning Ordinances Analyzed (Cont.)

49. Rolla, Mo.
50. Rye, N.Y.
51. Sacramento, Calif.
52. Salt Lake County, Utah
53. San Francisco, Calif.
54. Seattle, Wash.
55. Solano County, Calif.
56. Stamford, Conn.
57. St. Louis, Mo.
58. Stockbridge, Mass.
59. Tacoma, Wash.
60. Tucson, Ariz.
61. Vancouver, B.C.
62. Washington Maryland Reg. Dist.
63. West Hartford, Conn.
64. Winnetka, Ill.
65. Winston-Salem, N.C.
66. A Model Zoning By-Law, Nat'l Research Council of Canada,
Ottawa, Canada
67. Proposed Zoning Code For the Communities Forming the
Regional Planning Authority of South Central Connecticut

APPENDIX C

1. Samples of the Questions Answered Directly
From Each Zoning OrdinanceGENERAL BACKGROUND

- A. Town or County Cleveland, Ohio
- B. Population 878,336 3. Date of ordinance 12/28/49
- C. No. of use districts: Residential 1, 2, 3, 4
Commercial 5, 6
Industrial 7, 8, 9
Others _____
- D. Residence allowed in industrial zone? no
- E. Are variances granted? yes X, no ___
By whom? Board of Appeals
Number of members 5. Vote required 3/5
Optional conditions? yes X, no __. any desired
Necessary conditions? yes X, no __. carefully defined in
ord.

SPECIAL EXCEPTIONS

- F. Are they granted? yes X, no ___.
- G. Distinguished from a variance? yes X, no __ (clearly,
vaguely)
Is there a distinction in procedure? yes X, no ___.
- H. What are they called? Special Exceptions
- I. Who grants them? Board of Appeals
Is planning board represented? yes X, no __ Staff member
Vote required? 3/5 is sec. of B. of A.
- J. Who may appeal? Any person, officer, dept. etc.
- K. Is special exception request referred to the planning bd?
yes X, no __, some cases X. Action required? P.B. staff is
Others referred to? available for help when desired by
B. of A.
- L. Public hearing required? yes __, no __. Notice required __
- M. Are time limits put on special exceptions? yes X, no __.
Which uses? Any use in an undeveloped area.
- N. Conditions attached to special exceptions.
Optional conditions? yes X, no __. Any necessary
Necessary conditions? yes X, no __. Must conform to
specific conditions in ordinance.

Cleveland, Ohio (Cont.)

2. Uses Allowed As Special Exception

	By Rt.S.E.Zone			By Rt.S.E.Zone	
1. Conversion	X	3	*15. Residence, dwell- ings	X	7,8,9
2. Group dwellings (less than 6 units)	X	3	16. Rail & bus sta. (passenger)	X	6
3. Cemeteries, funeral homes	X		17. Earth removal		
4. Hospitals, sanitarium	X	4	18. Hotel or Inn	X	4
5. Schools, colleges parks, playgrounds	X	1 2	19. Amusements	X	6
6. Churches	X	1	20. Warehouse		
7. Rooming houses, Fraternities dorms	X	4 2	21. Gen. categories		
8. Gas stations	X	5	Others		
9. Public buildings Public utilities museums	X	2 1	22. Tourist park or camp	X	6
10. Parking lots	X	5 2,3,4	#23. General Ind.	X	8 7
11. Parking garages			24. Temporary permits in undeveloped area (any use)	X	any zone
12. Repair garages	X	5 1,2,3,4	25. Non-conforming use changed to other N.C. use	X	any zone
13. Industry					
14. Junk & storage yard must be over 125 ft. from res. zone	X	8 7			

* For caretakers and operating personnel

When it adjoins a railroad right of way

3. Samples of the Questions Answered Directly
From Each Zoning Ordinance (Cont.)

GENERAL BACKGROUND

- A. Town or County Detroit, Michigan
(1940)
- B. Population 1,623,452 3. Date of ordinance 2/1/49
- C. No. of use districts: Residential R1, R2, RM, RMA, RM4, RMU
Commercial B2, B6, BL, BC, C6
Industrial ML, ML6, MH
Others Pl (parking)
- D. Residence allowed in industrial zone? no
- E. Are variances granted? yes X, no ___.
By whom? Board of Zoning Appeals
Number of members 5. Vote required 2/3
Optional conditions? yes X, no ___. any deemed necessary
Necessary conditions? yes X, no ___. "hardship & difficulties"

SPECIAL EXCEPTIONS

- F. Are they granted? yes X, no ___.
- G. Distinguished from a variance? yes X, no ___. (clearly, vaguely)
Is there a distinction in procedure? yes ___, no ___.
- H. What are they called? Special Exceptions
- I. Who grants them? Board of Appeals, City council, Plan. Comm.
Is planning board represented? yes ___, no X.
Vote required? 4/5.
- J. Who may appeal? Any person aggrieved, any officer dept. etc.
- K. Is special exception request referred to the planning bd?
yes ___, no X, some cases X. Action required? May grant some
Others referred to? _____
- L. Public hearing required? yes X, no ___. Notice required ___
- M. Are time limits put on special exceptions? yes X, no ___.
Which uses? Any not detrimental in undeveloped area (2yrs)
- N. Conditions attached to special exceptions.
Optional conditions? yes X, no ___. proper safeguards taken
Necessary conditions? yes ___, no ___. _____

Detroit, Michigan (Cont.)4. Uses Allowed As Special Exception

	By Rt.S.E.Zone			By Rt.S.E.Zone	
1. Conversion			15. Residence, dwell- ings		
2. Group dwellings Planning Comm. approval (may be appealed to council)	X	R2	16. Rail & bus sta. (passenger)		
3. Cemeteries, funeral homes			17. Earth removal		
4. Hospitals, sanitararia	X	RM4	18. Hotel or Inn	X	RM4
5. Schools, colleges (non profit)		X R1	19. Amusements		
6. Churches	X	R1	20. Warehouse		
7. Rooming houses, Fraternities dorms	X	RM	21. Gen. categories		
8. Gas stations	X	B2			
9. Public buildings Public utilities	X X	R1 any			
10. Parking lots	X	R1			
11. Parking garages					
12. Repair garages	X	B2			
13. Industry light mfg.		X B2			
14. Junk & storage yard	X	C6			

Change from one non conforming use to another of similar character allowed by special exception.

5. Samples of the Questions Answered Directly
From Each Zoning Ordinance (Cont.)

GENERAL BACKGROUND

- A. Town or County Solano County, California
- B. Population _____ 3. Date of ordinance Jan. 1942
- C. No. of use districts: Residential A1, A2, A3, A4
Commercial C, D, E
Industrial G
Others K-agriculture A-catch all
- D. Residence allowed in industrial zone? yes
- E. Are variances granted? yes X, no ___
By whom? Board of County Supervisors
Number of members _____ . Vote required _____
Optional conditions? yes X, no ___ . any necessary
Necessary conditions? yes X, no ___ . hardship etc.

SPECIAL EXCEPTIONS

- F. Are they granted? yes X, no ___.
- G. Distinguished from a variance? yes __, no X. (clearly, vaguely)
Is there a distinction in procedure? yes __, no X.
- H. What are they called? variances
- I. Who grants them? Board of County Supervisors
Is planning board represented? yes __, no X.
Vote required?
- J. Who may appeal? Any person
- K. Is special exception request referred to the planning bd?
yes X, no __, some cases __. Action required referred to the
Others referred to? Board of adjustment who are 3 mem.
of the plan. comm.
- L. Public hearing required? yes X, no __. Notice required _____
- M. Are time limits put on special exceptions? yes X, no ___
Which uses? some industrial uses
- N. Conditions attached to special exceptions.
Optional conditions? yes X, no __. necessary
Necessary conditions? yes X, no __. hardship

Solano County, California (Cont.)6. Uses Allowed As Special Exception

	By Rt.S.E.Zone			By Rt.S.E.Zone	
1. Conversion			14. Junk & storage yd.	X	AE
2. Group dwellings	X	A4	15. Residence, dwell- ings		
3. Cemeteries, funeral home			16. Rail & bus sta. (passenger)		
4. Hospitals, sanitarium			17. Earth removal	X	A
5. Schools, colleges	X	A1	18. Hotel or Inn	X	C
6. Churches	X	A1	*19. Amusements	X	DE
7. Rooming houses, Fraternities dorms	X	A3	20. Warehouse	X	E
8. Gas stations	X	C	21. Gen. categories		
9. Public buildings Public utilites Parks, playgrounds	X	A1, C	Others		
	X	A1, C	22. Nurseries	X	A1, C
	X	A1, C	23. Auto Courts	X	Ar
10. Parking lots	X	D	24. Retail stores	X	C
11. Parking garages	X	D	25. Signs	X	C
12. Repair garages	X	D			
13. Industry Any Ind. noxious ind.	X	A			
	X	G			

*Special Exception required only if use is less than 200 ft. from Res. district.

Board of Supervisors must approve all special exception requests after Plan. Bd. has made recommendation.

2. Explanation of Summary Chart of Check Sheets

This summary chart was compiled to show the findings on each ordinance, so there could be a comparison. The cities were listed arbitrarily according to size on the chance that certain patterns might reveal different practices in the various sizes of cities. There were no such definite patterns indicated.

It was impossible to tabulate all of the information available on such a chart without making it very complicated. To simplify it a legend was devised as indicated on the chart. The chart shows, beginning with 1 at the top in which zone of the zones established for each city, a special exception is allowed. Where no special exception is allowed it shows where the use is allowed as a right. The chart as such indicates the "ceiling," or how far up the scale to the so called "most restricted" zone the use is first allowed. In almost all cases a use is also allowed in all zones less restricted than that which it is indicated on the chart. This is especially true when a use is allowed as a right. For example, rooming houses are allowed as a right in Kansas City in zone 3 or the multi-family residential district. It is assumed that they are also allowed in all less restricted zones as a right. This is not always the case since some cities do not allow residential uses in industrial districts. This can be checked by referring to the fourth question of appendix E.

2. Explanation of Summary Chart of Check Sheets (Cont.)

When a use is allowed as a special exception, as indicated by the black square, the number below it indicates the zone where it is allowed as a S.E. No indication was possible within the limits of this tabulation to show, in addition, in which zones the S.E. was allowed as a right. In most cases these uses were allowed as a right in all zones less restricted than the one in which it was allowed as a special exception, although there were exceptions to this. An example: San Francisco allows churches in the single family district by special exception, it is assumed that it is allowed by right in other districts.

APPENDIX E
Summary from Question Sheets

DATE OF ORDINANCE	POPULATION	NO. OF USE DIST.	RES. IN IND. ZONE	VARIANCES GRANTED	S.E. GRANTED	CLEAR DISTINCTION	NAME GIVEN: NONE	A- SPECIAL EXCEP.	B- VARIATION	C- CONDITIONAL USE	GRANTED BY: OTHERS	A. BD. OF APPEAL	B. CITY COUNCIL	C- PLANNING BD.	D. BLDG. INSP.	PLAN. BD. REP. ON B. OFA.	VOTE TO PASS S.E.	APPEAL BY: OTHERS	A. ANY PERSON	B. OFFICER, DEPT. ETC	C. NOT CLEAR	REF. TO PLAN. BD.:	A. OPINION	B. APPROVAL	REF. TO LEG. BODY	PUBLIC HEARING	TIME LIMIT:	A. ON TEMP. USES	B. ON PERM. USES	NECESSARY COND. STA.	OPTIONAL COND. ALLO
SOUTH CENTRAL, CONN.	48	10		X	X																	X	X								
WASH. MD. REG. DIST.	41	5		X	X																									X	X
VANCOUVER, B. C.	44	10		X	X												2/3							X	X	X	X				
OTTAWA, CANADA	39	10		X	X																										
SOLANO CO., CAL.	69	10		X	X																			X	X	X	X				
SALT LAKE CO. UTAH	212	17		X	X																			X	X	X	X				
JACKSON CO. MO.	427	8		X	X																			X	X	X	X				
COOK CO., ILL.	299	10		X	X																			X	X	X	X				
HUNTING VALLEY, OHIO	384	5		X	X																		X	X	X	X	X	X	X	X	
STOCKBRIDGE, MASS.	42	4		X	X																			X	X	X	X	X	X	X	
BENNSVILLE, ILL.	46	4		X	X																			X	X	X	X	X	X	X	
MIDDLETOWN, R. I.	90	6		X	X																		X	X	X	X	X	X	X	X	
LADUE, MO.	48	7		X	X																		X	X	X	X	X	X	X	X	
ROLLA, MO.	42	8		X	X																		X	X	X	X	X	X	X	X	
PELHAM MANOR, N.Y.	38	7		X	X																			X	X	X	X	X	X	X	
EAST LANSING, MICH.	47	5		X	X																			X	X	X	X	X	X	X	
PRINCETON, N.J.	41	3		X	X																			X	X	X	X	X	X	X	
MADISON, N.J.	41	7		X	X																			X	X	X	X	X	X	X	
ENGELWOOD, COLO.	40	7		X	X																			X	X	X	X	X	X	X	
RYE, N.Y.	42	8		X	X																			X	X	X	X	X	X	X	
WINNETKA, ILL.	47	5		X	X																			X	X	X	X	X	X	X	
HIGHLAND PARK, ILL.	41	9		X	X																			X	X	X	X	X	X	X	
DOTHAN, ALA.	51	9		X	X																			X	X	X	X	X	X	X	
FAYETTEVILLE, N.C.	50	8		X	X																			X	X	X	X	X	X	X	
LEAVENWORTH, KAN.	49	7		X	X																			X	X	X	X	X	X	X	
MANCHESTER, CONN.	45	7		X	X																			X	X	X	X	X	X	X	
WEST HARTFORD, CONN.	45	10		X	X																			X	X	X	X	X	X	X	
TUCSON, ARIZ.	44	8		X	X																			X	X	X	X	X	X	X	
RALEIGH, N.C.	47	7		X	X																			X	X	X	X	X	X	X	
SAMFORD, CONN.	47	8		X	X																			X	X	X	X	X	X	X	
BROOKLINE, MASS.	49	7		X	X																			X	X	X	X	X	X	X	
GREENSBORO, N.C.	64	7		X	X																			X	X	X	X	X	X	X	
PHOENIX, ARIZ.	46	8		X	X																			X	X	X	X	X	X	X	
OAK PARK, ILL.	47	11		X	X																			X	X	X	X	X	X	X	
MADISON, WISC.	45	9		X	X																			X	X	X	X	X	X	X	
CHARLESTON, W.V.	39	8		X	X																			X	X	X	X	X	X	X	
NEWTON, MASS.	50	8		X	X																			X	X	X	X	X	X	X	
MONTGOMERY, ALA.	45	12		X	X																			X	X	X	X	X	X	X	
WINSTON-SALEM, N.C.	44	11		X	X																			X	X	X	X	X	X	X	
AUSTIN, TEXAS	44	11		X	X																			X	X	X	X	X	X	X	
LITTLE ROCK, ARK.	44	6		X	X																			X	X	X	X	X	X	X	
SACRAMENTO, CAL.	44	6		X	X																			X	X	X	X	X	X	X	
TACOMA, WASH.	60	8		X	X																			X	X	X	X	X	X	X	
CAMBRIDGE, MASS.	43	10		X	X																			X	X	X	X	X	X	X	
GARY, IND.	33	5		X	X																			X	X	X	X	X	X	X	
DES MOINES, IOWA	45	11		X	X																			X	X	X	X	X	X	X	
HARTFORD, CONN.	45	10		X	X																			X	X	X	X	X	X	X	
OMAHA, NEB.	42	17		X	X																			X	X	X	X	X	X	X	
PROVIDENCE, R. I.	48	6		X	X																			X	X	X	X	X	X	X	
MEMPHIS, TENN.	48	6		X	X																			X	X	X	X	X	X	X	
OAKLAND, CAL.	48	13		X	X																			X	X	X	X	X	X	X	
DENVER, COLO.	48	9		X	X																			X	X	X	X	X	X	X	
SEATTLE, WASH.	68	6		X	X																			X	X	X	X	X	X	X	
KANSAS CITY, MO.	44	9		X	X																			X	X	X	X	X	X	X	
CINCINNATI, OHIO	45	10		X	X																			X	X	X	X	X	X	X	
MINNEAPOLIS, MINN.	48	16		X	X																			X	X	X	X	X	X	X	
NEW ORLEANS, LA.	44	15		X	X																			X	X	X	X	X	X	X	
SAN FRANCISCO, CAL.	49	14		X	X																			X	X	X	X	X	X	X	
DISTRICT OF COLUMBIA	50	4		X	X																			X	X	X	X	X	X	X	
PITTSBURGH, PA.	71	11		X	X																			X	X	X	X	X	X	X	
ST. LOUIS, MO.	50	11		X	X																			X	X	X	X	X	X	X	
BALTIMORE, MD.	49	4		X	X																			X	X	X	X	X	X	X	
CLEVELAND, OHIO	50	9		X	X																			X	X	X	X	X	X	X	
LOS ANGELES, CAL.	50	18		X	X																			X	X	X	X	X	X	X	
DETROIT, MICH.	49	15		X	X																			X	X	X	X	X	X	X	
CHICAGO, ILL.	50	18		X	X																			X	X	X	X	X	X	X	
NEW YORK, N.Y.	45	9		X	X																			X	X	X	X	X	X	X	

LEADER:
X - YES
POPULATION IS IN THOUSANDS

APPENDIX F

Other Uses Which Have Been Used As Special Exceptions

Animal hospitals, kennels
Athletic fields
Carnivals, circuses, fairgrounds
Crematories
Drive-in theaters
Golf courses, driving ranges
Gun clubs
Nurseries, greenhouses
Penal institutions
Philanthropic institutions
Private clubs
Radio and television antennas
Riding academies
Sewage treatment
Signs and billboards
Slaughter houses
Water plant and facilities
Wayside stands

APPENDIX G

1. Copy of Letter Sent to Chairmen of Zoning
Boards of Appeal

Department of City Planning
Massachusetts Institute of Technology
Cambridge 39, Massachusetts

Chairman
Zoning Board of Appeal

Dear Sir:

Your zoning ordinance has been selected for analysis in a study we are conducting as a thesis on the use of Special Exceptions in zoning practice. We have included ordinances from all parts of the country to allow a comparison of the legal framework and treatment of Special Exceptions as they are used in zoning practice today.

Special Exceptions are known by many different names and the term has sometimes been used interchangeably with variance or variation. In our study we include as Special Exceptions only those specific exceptions to the use provisions stated in the ordinance which may be granted by and at the discretion of some appointed body; usually the board of appeals or adjustment. They are distinguished from variances in that they are usually a matter of "original jurisdiction" without regard to hardship, whereas a variance is a matter of "appeal" in which there must be unusual conditions and hardship pertaining to a particular piece of property.

To complete our study we feel it necessary to find out what the results have been in applying the Special Exceptions provisions so defined in your ordinance. The enclosed form is designed to reduce to a minimum the demands on your time in giving us the benefit of your experience and recommendations.

From this study we hope to make concrete proposals as to how Special Exceptions should be treated in the future. Your response will be of great value and we sincerely appreciate your efforts in answering and returning the questionnaire.

Very truly yours,

Owen W. Burnham

Morris E. Johnson

2. Copy of Questionnaire Completed by Board of Appeal
With Replies Tabulated

- I. A. Special Exceptions are granted:
12 frequently.
34 rarely.
- B. Variances are granted:
30 more frequently than Special Exceptions.
9 about as often.
6 rarely.
- II. In your opinion, Special Exceptions are:
16 an important part of the ordinance.
24 a useful accessory
0 unimportant.
12 troublesome
- III. Special Exceptions should be allowed: (Check one)
38 only when carefully defined and controlled in the ordinance itself.
7 by defining in a general way uses to be allowed as Special Exceptions and giving the board of appeal wide discretionary power.
6 very rarely. If there is need for a Special Exception the ordinance should be amended.
- IV. Which of the following powers should the planning agency have in Special Exceptions? (Check one or more.)
8 Mandatory referral by board of appeal for report only.
6 Mandatory referral with the right to deny any Special Exception request.
23 The right to express an opinion at the public hearing.
18 Report when requested by board of appeal.
23 One member of the planning agency should be a member of the board of appeal.
4 None of the above powers.
- V. Special Exceptions should be granted: (check one)
9 only for temporary uses.
19 for both permanent and temporary uses but with a time limit.
22 without time limits.
- VI. Additional comments:

3. Replies on Questionnaire Sent to Zoning Boards of Appeal

<u>Name of City Replying</u>	<u>Ordinance Analyzed</u>
Alexandria, Va.	
Austin, Texas	X
Bensenville, Ill.	X
Charleston, West Va.	X
Charlotte, N. C.	
Chicago, Ill.	X
Cincinnati, Ohio	X
Cleveland, Ohio	X
Cook County, Ill.	X
Concord, N. H.	
Cuyahoga County, Ohio	
Dallas, Texas	
Denver, Colo.	X
East Lansing, Mich.	X
Engelwood, Colo.	X
Fayetteville, N. C.	X
Greensboro, N. C.	X
Helena, Mont.	
Kansas City, Mo.	X
Lake Forrest, Ill.	
Lansing, Mich.	
Logan, Utah	
Los Angeles, Calif.	X
Louisville, Kentucky	

3. Replies on Questionnaire Sent to Zoning Boards of Appeal (Cont.)

<u>Name of City Replying</u>	<u>Ordinance Analyzed</u>
Madison, N. J.	X
Madison, Wisc.	X
Memphis, Tenn.	X
Miami, Florida	
Milwaukee, Wisc.	
Minneapolis, Minn.	X
Montgomery, Ala.	X
Mt. Lebanon, Penn.	
Nashville, Tenn.	
Newton, Mass.	X
Oak Park, Ill.	X
Omaha, Neb.	X
Pelham Manor, N. Y.	X
Pittsburgh, Penn.	X
Pocatello, Idaho	
Princeton, N. J.	X
Raleigh, N. C.	X
Richmond, Va.	
Rochester, N. Y.	
Sacramento, Calif.	
Salt Lake County, Utah	X
San Francisco, Calif.	X
Seattle, Wash.	
Solano County, Calif.	X

3. Replies on Questionnaire Sent to Zoning
Boards of Appeal (Cont.)

<u>Name of City Replying</u>	<u>Ordinance Analyzed</u>
South Charleston, W. Va.	
St. Paul, Minn.	
Tacoma, Wash.	X
Tucson, Arizona	X
Tulsa, Okla.	
West Hartford, Conn.	X
Winnetka, Ill.	X

BIBLIOGRAPHY

- Bassett, Edward M., Zoning. Russell Sage Foundation, New York. 1948. 513 pp.
- Rathkopf, Charles A., The Law of Zoning and Planning. 2nd Ed. The Grosby Press, New York. 1949. 667 pp.
- Reps, John W., Legal and Administrative Aspects of Conditional Variances and Exceptions. Broome County Planning Board, Binghamton, New York. 28 pp.
- Smith, G. Burchard, The Law and Practice of Zoning. Baker Voorhis & Co., New York. 1937. 552 pp.
- Yokley, E. C., Zoning Law and Practice. The Michie Company Law Publishers, Charlottesville, Virginia. 1948. 513 pp.
- Zoning Board of Appeals, The, Broome County Planning Board, Binghamton, New York. March 6, 1950. 21 pp.