

MINIMUM DWELLING SIZES

<u>City</u>	<u>Units Per Acre</u>	<u>Multifamily</u>		<u>Dwelling Size (Sq. Ft.)</u>	
		<u>Apt. Size</u>			
Rowlett	All	Efficiency		1,033	(total bldg. area per dwelling)
		1 Bedroom		1,633	
		2 Bedroom		2,016	
		3 Bedroom		2,400	
		Additional Bedrooms		+200	
Garland	All	Efficiency		500	(total living area per dwelling)
		1 Bedroom		650	
		2 Bedroom		800	
		3 Bedroom		950	
		Additional Bedrooms		+150	
Plano	All	Efficiency		500	(total living area per dwelling)
		1 Bedroom		650	
		2 Bedroom		800	
		3 Bedroom		1,000	
		Additional Bedrooms		+200	
Mesquite	12	Efficiency		500	(total living area per dwelling)
		1 Bedroom		800	
		2 Bedroom		1,000	
		3 Bedroom		1,200	
	16	Efficiency		500	(total living area per dwelling)
		1 Bedroom		725	
		2 Bedroom		875	
		3 Bedroom		1,000	
Richardson	14	All		1,000	(total living area per dwelling)
	18	All		700	
Waco	16	1 Bedroom		900	(total living area per dwelling)
		2 Bedroom		1,000	
		3 Bedroom		1,100	

<u>CITY</u>	<u>Units Per Acre</u>	<u>Apt. Size</u>	<u>Dwelling Size (Sq. Ft.)</u>	
Farmers Branch	9.5/16	1 Bedroom	800	(total living area per dwelling)
		2 Bedroom	1,000	
		Additional Bedrooms	+150	
	24	1 Bedroom	650	(total living area per dwelling)
		2 Bedroom	825	
		Additional Bedrooms	+150	
DeSoto	14	Efficiency	500	(total living area per dwelling)
		1 Bedroom	650	
		2 Bedroom	900	
		3 Bedroom	1,000	

Each Building must average not less than 900 sq. ft. per dwelling.

18	Efficiency	500	(total living area per dwelling)
	1 Bedroom	650	
	2 Bedroom	800	
	3 Bedroom	900	

Each Building must Average not less than 800 sq. ft. per dwelling.

Allen (Current)	12	All	850	(total living area per dwelling)
	24	All	700	

(Proposed)	12	All	500
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Each building must average not less than 850 sq. ft. per dwelling.

18	All	500
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Each building must average not less than 800 sq. ft. per dwelling

24	All	500
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Each building must average not less than 700 sq. ft. per dwelling

MINIMUM DWELLING SIZES

Single Family

<u>City</u>	<u>Category</u>	<u>Lot Size Sq. Ft.</u>	<u>Dwelling Size Sq. Ft.</u>
Rowlett	R-1	10,000	1,800
	R-2	9,000	1,700
	R-3	8,000	1,500
Garland	SF-5	5,000	1,000-1,700
	SF-7	7,000	1,300-1,700
	SF-8	8,000	1,300-1,900
	SF-10	10,000	1,400-2,100
	SF-13	13,000	1,500-2,300
	SF-16	16,000	1,500-2,300
	SF-40	40,000	1,600-2,300
Plano	All	All	800
Mesquite	R1	11,000	1,800
	R1-A	8,250	1,800
	R2	8,250	1,500
	R2-A	7,200	1,500
	R3	7,200	1,300
	Richardson	R1,500M	9,000
R2,000M		14,000	2,000
R1,800M		12,000	1,800
R1,250M		8,500	1,250
R1,100M		8,000	1,100
R1,000M		8,000	1,000
R950M		7,500	950
R850M		7,500	850
Lancaster	Estate	1 Acre	1,700
	SF-1A	10,000	1,200
	SF-1	9,000	1,700
	SF-2	7,500	1,500
	SF-3	7,000	1,350
Farmers Branch	R-1	1 Acre	2,200
	R-2	13,000	1,900
	R-3	10,000	1,800
	R-4	10,000	1,600
	R-5	8,700	1,500
	R-6	8,700	1,300

<u>City</u>	<u>Category</u>	<u>Lot Size Sq. Ft.</u>	<u>Dwelling Size Sq. Ft.</u>
Allen	R-2	18,000	2,000
	R-3	12,000	1,800
	R-4	9,000	1,400
	R-5	7,500	1,200
DeSoto	Estate	1Acre	1,750
	SF-1	9,000	1,750
	SF-2	8,000	1,550
	SF-3	7,000	1,350

MEMORANDUM

CONFIDENTIAL

October 5, 1987

TO: Members of the Planning and Zoning Commission
FROM: Pete Eckert City Attorney PE
RE: Constitutionality of Minimum Square Foot Requirements for Single Family Residences

This memorandum has been prepared in response to a proposal to amend the City of Rockwall's Comprehensive Zoning Ordinance to provide for an increase in the minimum square footage requirement for a single family dwelling unit located in SF-7 Single Family Residential District from 900 square feet per unit to 1,500 square feet per unit. Changes in the other districts, as well as zero lot line, duplex and multi-family, are also proposed.

The proposed amendment raises certain concerns and issues regarding the constitutionality of minimum square foot requirements. This memorandum discusses certain legal developments and trends with respect to the effect and consequences of land use regulations that restrict development of single family residential districts in such a manner as to exclude certain groups of persons including persons of low and moderate income.

Zoning Power: It's Limits

A municipality derives its power to regulate land use through the zoning process from the delegation of police power by the state. Both the Texas Supreme Court and the United States Supreme Court have upheld the zoning power as a valid exercise of legitimate police power. Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114 (1926); City of Sherman v. Simms, 183 S.W.2d 415 (Tex. 1944); Weaver v. Ham, 232 S.W.2d 704 (Tex. 1950). However, the line between legitimate and illegitimate regulation of land use is not always clear. All such laws and regulations must be justified with respect to the public welfare. In City of Sherman, 183 S.W.2d at 416 the Texas Supreme Court wrote:

"The justification for zoning rests in the police power of municipalities. In the exercise of that power arbitrary and

discriminatory regulations will not be upheld, but only such regulations as are reasonable and have a substantial relation to the health, safety, morals or general welfare of the community. The statutory authority under which the City of Sherman proceeded in enacting the ordinance expressly limits its power to these named purposes, as is reflected by the opening language of Art. 1011a of Vernon's Annotated Civil Statutes, as follows: For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative body of cities and incorporated villages is hereby empowered to regulate . . ."

Under the United States Constitution and the Texas Constitution, police powers must reasonably be exercised. Zoning regulations cannot be unreasonable, arbitrary or capricious. Zoning ordinances are presumed by the courts to be valid unless it can be demonstrated that there is no reasonable basis for the restrictions contained in the ordinance. If the court can find no reasonable basis for the regulation, the court will find the ordinance unconstitutional and invalid.

The great weight of opinion in the courts is that regulations must not place unnecessary and excessive restrictions on the use of property. An ordinance found to be unreasonable because it is arbitrary, confiscatory or discriminatory will be held to be unconstitutional and void. "The power may never be used unreasonably nor beyond legitimate and defensible purposes." J. Caruthers v. Board of Adjustment, 290 S.W.2d 340, 351 (Tex.Civ.App.-Galveston - 1956, no writ).

In Weaver, 232 S.W.2d at 709, the Court said:

"The purpose of endowing the City with police power is to subserve the general welfare. If it appears from the terms of the ordinance or is established by the evidence as a matter of law that it does not do so, then the legislative act is void."

Because the zoning statutes in Texas are substantially like zoning statutes in other states, Texas courts consider the opinions of courts in other states helpful when examining similar ordinances and statutes in Texas. Weaver, 232 S.W.2d at 708. The Texas courts frequently rely on holdings by courts in jurisdictions such as New Jersey, New York, Michigan, Illinois and California.

In the last few years there have been several significant court decisions invalidating zoning ordinances which imposed use restrictions that the courts found unreasonable because they resulted in the purely arbitrary, capricious and unfounded exclusion of other types of legitimate land use where there was no reasonable governmental interest being advanced by the zoning classification. (emphasis added) Kropf v. City of Sterling Heights, 215 N.W.2d 179 (Mich. 1974). Exclusionary zoning operates to exclude certain people, whether racial minorities or ethnic groups, or lower-income persons from residential areas. Various studies have shown that such restrictions interfere with the availability of housing in areas where housing is needed. Courts have declared as unconstitutional and invalid zoning regulations which foreclose new housing opportunities to racial minorities and low-income groups. Examples of exclusionary zoning include restrictions on lot size, minimum square footage requirements, limitations on number of rooms permitted, and exclusion or restrictions on multifamily housing. For example, the Pennsylvania Supreme Court has held that when a person has shown a total exclusion or ban of an otherwise legitimate use or activity, the municipality must demonstrate the public interest to be protected and the rationale of its exercise of police power. Beaver Gasoline Co. v. Osborne Borough, 445 Pa 571, 285 A2d 501; Appeal of Green & White Copter, Inc., 25 Pa Cmwlth 445, 360 A2d 283. In addition, courts have held as invalid zoning regulations designed to limit or prevent entrance of newcomers into a community in order to avoid future burdens upon public service. (Oakwood at Madison, Inc. v. Township of Madison, 117 NJ Super 11, 283 A2d 353 affirmed 72 NJ 481, 371 A2d 1192.)

The Mount Laurel Decision

In a landmark case decided in 1975 and reaffirmed in 1983 and 1986, the New Jersey Supreme Court ruled that a zoning ordinance that contravened the general welfare was unconstitutional and that a developing municipality violated that constitutional mandate by excluding housing for low and moderate income people and, further, that a developing municipality has an affirmative obligation to afford a realistic opportunity for the construction of its fair share of present and future regional need for low and moderate income housing. (emphasis added) South Burlington County NAACP v. Township of Mount Laurel, 67 NJ 151 (1975), cert. denied. (This case is hereinafter referred to as "Mount Laurel.")

Mount Laurel, New Jersey was, in the early 1970's, a community similar in many respects to the presently developing communities and municipalities in and around the greater Dallas-Fort Worth Metroplex. Mount Laurel was a small rural community located a number of miles from a rapidly expanding central city. With the building of interstate highways and

other major arteries through and around the Township, the area experienced a period of rapid growth and with a large amount of undeveloped land remaining in the path of future residential, commercial and industrial growth as the boundaries of the central city spread inevitably outward. Mount Laurel developed a comprehensive zoning ordinance to control and regulate the development of the community. In providing for residential land use, the Township designated three or four districts as "single family residential districts" and imposed thereon minimum lot sizes which ranged from approximately 9,375 square feet to 20,000 square feet and minimum dwelling square footage requirements that ranged from 900 square feet on an 11,000 square foot lot to 1,100-1,300 square feet on a 9,375 square foot lot. In addition, set-back and lot width and depth requirements further reduced the density within each district.

In evaluating the minimum lot size and square footage requirements the New Jersey Supreme Court found that persons with low and moderate incomes (in 1975, up to \$12,000 per annum) would be unlikely to afford a residence within the Township. The plan effectively excluded from the community most single persons, large families and low and moderate income retirees. Apartments, attached townhouses and mobile homes were originally not permitted in the Township. Residential areas were developed but with a low density; dwellings were substantial with an average value in 1971 of \$32,500. The zoning ordinance was eventually amended to permit garden apartments, high rise condominiums and attached townhouses, with such restrictions that all such structures were beyond the financial reach of low and moderate income families. The Court noted that the Township's lower paid municipal employees and the employees of local industry and commerce (industry and commerce which had been actively sought by the Township) were excluded from residing in the Township due to the operation of the residential zoning restrictions. The aim of the comprehensive zoning ordinance was quite clear: only persons of medium and upper income were sought. Findings included in the resolutions approving the ordinances recited that development within the framework of the plan would attract a highly educated and trained population base. The trial court found that Mount Laurel had "acted affirmatively to control development and to attract a selective type of growth" and that "through its zoning ordinances has exhibited economic discrimination in that the poor have been deprived of adequate housing and the opportunity to secure the construction of subsidized housing, and [the Township] has used federal, state, county and local resources solely for the betterment of middle and upper-income persons." Such "finances and resources" refer to moneys spent on highways within the municipality, loans and grants for water and sewer systems federal guarantees of mortgages on new homes, and the like.

The Court found that the zoning plan had been developed

to keep down local property taxes without regard to nonfiscal considerations with respect to people. No official of the Township testified to the contrary.

The New Jersey Supreme Court found the comprehensive zoning ordinance unconstitutional and invalid. In so finding the Court stated:

"It is elementary theory that all police power enactments, no matter at what level of government, must conform to the basic state constitutional requirements of substantive due process and equal protection of the laws. . . . It is required that, affirmatively, a zoning regulation, like any police power enactment, must promote public health, safety, morals or the general welfare. Conversely, a zoning enactment which is contrary to the general welfare is invalid."

Court decisions passing on the validity of zoning ordinances generally have addressed only the interest of the enacting municipality, and without consideration of the impact of such regulations on areas outside the municipalities. The New Jersey Supreme Court considered this approach and rejected it. Instead, the court ruled:

"[I]t is fundamental and not to be forgotten that the zoning power is a police power of the state and the local authority is acting only as a delegate of that power and is restricted in the same manner as is the state. So, when regulation does have a substantial external impact, the welfare of the state's citizens beyond the borders of the particular municipality cannot be disregarded and must be recognized and served."

"It is plain beyond dispute that proper provision for adequate housing of all categories of people is certainly an absolute essential in promotion of the general welfare required in all local land use regulation. Further the universal and constant need for such housing is so important and of such broad public interest that the general welfare which developing municipalities

like Mount Laurel must consider extends beyond their boundaries and cannot be parochially confined to the claimed good of the particular municipality. It has to follow that, broadly speaking, the presumptive obligation arises for each such municipality affirmatively to plan and provide, by its land use regulations, the reasonable opportunity for an appropriate variety and choice of housing, including, of course, low and moderate cost housing, to meet the needs, desires and resources of all categories of people who may desire to live within its boundaries. Negatively, it may not adopt regulations or policies which thwart or preclude that opportunity."

Conclusion

The above New Jersey decision has not been applied to any great extent by Courts in Texas or the southwest. New Jersey is a state where raw land development is at a premium and where densities are much greater anyway. Thus, it would still appear that such minimum requirements can be upheld if they have a substantial relationship to the City's enumerated police powers and that the argument that such requirements have the purpose or effect of achieving a form of economic segregation can be overcome. The problem occurs where it has been shown to the Courts that the zoning restrictions were imposed primarily for the purpose of restricting or channeling population growth and in an effort to hold down governmental costs and future burdens upon public services. Suffice to say that no number should simply be pulled out of the air, but that analysis of the minimum in each district should be given a great deal of study.

PLANNING AND ZONING COMMISSION HEARING - OCTOBER 8, 1987
STATEMENTS REGARDING AMENDING
MINIMUM DWELLING REQUIREMENTS

Richard Harris

Concerned about affordability of larger housing. Stated a need for smaller houses for single parents, one child families and retired persons. Told P&Z that Rockwall couldn't attract industry if there were no homes employees could afford. He said at \$61.00 per square foot, a \$40,000/year income family could afford approximately \$833 house payments averaging a 1000 sq. ft. home. He stated that the trend is for smaller houses and the \$150,000 houses are more difficult to find buyers for.

Jane Wimpee, President, Rockwall County Board of Realtors

Urged P&Z to not eliminate first-time homeowners from buying in Rockwall by increasing minimum sizes and making homes unaffordable.

Rob Whittle, President, Rockwall Chapter, Home Builders Ass'n

Stated that the market would dictate where homes were built. Stated that increasing minimum would force smaller families out of Rockwall. Said in 24 months, 32 homes closed on were 80% 2-person families or less. Told P&Z that existing zoning had been requested based on the segment of the housing market it would establish and that much land had been bought by builders based on the zoning it carried. Changing minimum sizes would restrict many builders from developing land they way intended when they bought it. He asked P&Z to recommend leaving the requirements as is. He stated that housing costs would probably not decrease in several years as labor costs were low and materials were high.

Bob Benedict, Home Builders Association, Dallas Chapter

Urged P&Z to consider 1) deregulating floor area and rely on the Uniform Building Code, 2) governing location of smaller housing by locations of single family zoning classifications, 3) require an average house size for a given subdivision allowing a mixture of larger and smaller homes. Stated that on the average, most builders built homes larger than the minimum but that builders needed the flexibility to build smaller depending on the market.

Charlie Pitts, President, Chamber of Commerce

Stated that larger minimums would have a negative effect on commercial businesses. While the newly adopted tax abatement policy

would attract industry, workers in these industries would not be able to afford housing.

Jack Williams, Great Western Development Corp.

Spoke representing Gemcraft Homes. Stated that larger minimum sizes would eliminate volume builders from coming to Rockwall. Told P&Z to work towards quality housing instead of larger. Said volume housing can be quality housing. As Gemcraft has 10 year warranties, they are well-built homes or couldn't offer the warranty. He stated that it was difficult to tell the size of a home from the street and that 1400 square foot homes could be as attractive as 1500 or 1600.

Leland Miller

Told P&Z to leave minimums as they are. Raising minimum sizes would be damaging to local business as it would deter industry and it was already too easy to drive to Town East Mall.

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Conclusion

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	SF-8	8,000	1,300-1,900
	SF-10	10,000	1,400-2,100
	SF-13	13,000	1,500-2,300
	SF-16	16,000	1,500-2,300
	SF-40	40,000	1,600-2,300
Plano	All	All	800
Mesquite	R1	11,000	1,800
	R1-A	8,250	1,800
	R2	8,250	1,500
	R2-A	7,200	1,500
	R3	7,200	1,300
	Richardson	R1,500M	9,000
R2,000M		14,000	2,000
R1,800M		12,000	1,800
R1,250M		8,500	1,250
R1,100M		8,000	1,100
R1,000M		8,000	1,000
R950M		7,500	950
R850M		7,500	850
Lancaster	Estate	1 Acre	1,700
	SF-1A	10,000	200
	SF-1	9,000	1,700
	SF-2	7,500	1,500
	SF-3	7,000	1,350
Farmers Branch	R-1	1 Acre	2,200
	R-2	13,000	1,900
	R-3	10,000	1,800
	R-4	10,000	1,600
	R-5	8,700	1,500
	R-6	8,700	1,300

<u>City</u>	<u>Category</u>	<u>Lot Size Sq. Ft.</u>	<u>Dwelling Size Sq. Ft.</u>
Allen	R-2	18,000	2,000
	R-3	12,000	1,800
	R-4	9,000	1,400
	R-5	7,500	1,200
DeSoto	Estate	1Acre	1,750
	SF-1	9,000	1,750
	SF-2	8,000	1,550
	SF-3	7,000	1,350

MINIMUM DWELLING SIZES

<u>City</u>	<u>Units Per Acre</u>	<u>Multifamily</u>		<u>Dwelling Size (Sq. Ft.)</u>	
		<u>Apt. Size</u>			
Rowlett	All	Efficiency		1,033	(total bldg. area per dwelling)
		1 Bedroom		1,633	
		2 Bedroom		2,016	
		3 Bedroom		2,400	
		Additional Bedrooms		+200	
Garland	All	Efficiency		500	(total livin area per dwelling)
		1 Bedroom		650	
		2 Bedroom		800	
		3 Bedroom		950	
		Additional Bedrooms		+150	
Plano	All	Efficiency		500	(total livin area per
		1 Bedroom		650	
		2 Bedroom		800	
		3 Bedroom		1,000	
		Additional Bedrooms		+200	
Mesquite	12	Efficiency		500	(total livin area per dwelling)
		1 Bedroom		800	
		2 Bedroom		1,000	
		3 Bedroom		1,200	
	16	Efficiency		500	(total livin area per dwelling)
		1 Bedroom		725	
		2 Bedroom		875	
		3 Bedroom		1,000	
Richardson	14	All		1,000	(total livin area per dwelling)
	18	All		700	
Lancaster	16	1 Bedroom		900	(total livin area per dwelling)
		2 Bedroom		1,000	
		3 Bedroom		1,100	

<u>CITY</u>	<u>Units Per Acre</u>	<u>Apt. Size</u>	<u>Dwelling Size (Sq. Ft.)</u>	
Farmers Branch	9.5/16	1 Bedroom	800	(total living area per dwellin
		2 Bedroom	1,000	
		Additional Bedrooms	+150	
	24	1 Bedroom	650	(total living area per dwellin
		2 Bedroom	825	
		Additional Bedrooms	+150	
DeSoto	14	Efficiency	500	(total living area per dwellin
		1 Bedroom	650	
		2 Bedroom	900	
		3 Bedroom	1,000	

Each Building must average not less than 900 sq. ft. per dwelling.

18	Efficiency	500	(total living area per dwellin
	1 Bedroom	650	
	2 Bedroom	800	
	3 Bedroom	900	

Each Building must Average not less than 800 sq. ft. per dwelling.

Allen (Current)	12	All	850	(total living area per dwellin
	24	All	700	

(Proposed)	12	All	500
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Each building must average not less than 850 sq. ft. per dwelling.

18	All	500
----	-----	-----

Each building must average not less than 800 sq. ft. per dwelling

24	All	500
----	-----	-----

Each building must average not less than 700 sq. ft. per dwelling

PLANNING AND ZONING COMMISSION HEARING - OCTOBER 8, 1987
STATEMENTS REGARDING AMENDING
MINIMUM DWELLING REQUIREMENTS

Richard Harris

Concerned about affordability of larger housing. Stated a need for smaller houses for single parents, one child families and retired persons. Told P&Z that Rockwall couldn't attract industry if there were no homes employees could afford. He said at \$61.00 per square foot, a \$40,000/year income family could afford approximately \$833 house payments averaging a 1000 sq. ft. home. He stated that the trend is for smaller houses and the \$150,000 houses are more difficult to find buyers for.

Jane Wimpee, President, Rockwall County Board of Realtors

Urged P&Z to not eliminate first-time homeowners from buying in Rockwall by increasing minimum sizes and making homes unaffordable.

Rob Whittle, President, Rockwall Chapter, Home Builders Ass'n

Stated that the market would dictate where homes were built. Stated that increasing minimum would force smaller families out of Rockwall. Said in 24 months, 32 homes closed on were 80% 2-person families or less. Told P&Z that existing zoning had been requested based on the segment of the housing market it would establish and that much land had been bought by builders based on the zoning it carried. Changing minimum sizes would restrict many builders from developing land they way intended when they bought it. He asked P&Z to recommend leaving the requirements as is. He stated that housing costs would probably not decrease in several years as labor costs were low and materials were high.

Bob Benedict, Home Builders Association, Dallas Chapter

Urged P&Z to consider 1) deregulating floor area and rely on the Uniform Building Code, 2) governing location of smaller housing by locations of single family zoning classifications, 3) require an average house size for a given subdivision allowing a mixture of larger and smaller homes. Stated that on the average, most builders built homes larger than the minimum but that builders needed the flexibility to build smaller depending on the market.

Charlie Pitts, President, Chamber of Commerce

Stated that larger minimums would have a negative effect on commercial businesses. While the newly adopted tax abatement policy

would attract industry, workers in these industries would not be able to afford housing.

Jack Williams, Great Western Development Corp.

Spoke representing Gemcraft Homes. Stated that larger minimum sizes would eliminate volume builders from coming to Rockwall. Told P&Z to work towards quality housing instead of larger. Said volume housing can be quality housing. As Gemcraft has 10 year warranties, they are well-built homes or couldn't offer the warranty. He stated that it was difficult to tell the size of a home from the street and that 1400 square foot homes could be as attractive as 1500 or 1600.

Leland Miller

Told P&Z to leave minimums as they are. Raising minimum sizes would be damaging to local business as it would deter industry and it was already too easy to drive to Town East Mall.



Comments of the Rockwall Division of the
Home & Apartment Builders Association of
Metropolitan Dallas

before the

City Council of the City of Rockwall

December 7, 1987

Mr. Mayor, members of the Council, my name is Bob Benedict and I am Director of Government Affairs for the Home & Apartment Builders Association of Metropolitan Dallas. I am here tonight on behalf of our Rockwall Division.

To summarize what I will say in a nutshell, we support the modest increase in the minimum house size for zoning district SF 7000 from 900 square feet to 1100 square feet being proposed by the Planning and Zoning Commission. We oppose any other increases in any other minimums.

In our testimony before the commission, we came out against any increases in the minimums. We did that for a number of reasons.

1. Minimum floor area requirements are a major barrier to housing affordability. Bigger is not necessarily better. And bigger handicaps builders and prevents them from meeting the the challenges of providing affordable housing.

Our industry is one of the most responsive to consumer demand. For us to respond, it is also necessary for you to be equally responsive to that demand. If this does not happen, the result will be either too many homes people cannot afford or a movement toward communities with lower minimum house sizes or no minimums at all.

Finally, a word about tax base. A study done in 1980 for the City of Plano showed the net revenue per acre for the city, exclusive of the school district, in a low density neighborhood to be around \$650 per acre.

The same study showed net revenue from high density development to be more than three times that amount, or \$2054 per acre. For patio, zero lot line units and duplexes the net

revenue per gross acre was more than \$2,500.

This study was done by Frank Osgood for Plano.

I use this by way of example to show that, from the city's perspective, bigger is not always better.

2. Is zoning the proper place for minimums? In our view, zoning ordinances are designed for dealing with height, bulk location and use of buildings and for land development. Except for minimum floor area, nothing in a zoning ordinance deals with a building interior.

We believe the proper way to deal with minimum floor area is through the building code. The Uniform Building Code, which Rockwall uses, sets forth the concept that habitability requires that there be at least one room with at least 120 square feet of floor area and, if there are other rooms, that they be at least 70 square feet.

3. We could ask the question: "Why then do many zoning ordinances contain minimum square footage requirements?" Many experts across the country believe that this practice exists for exclusionary reasons. Although I will not dwell on this issue this evening, there have been many court cases on this subject, most of which concluded that minimum floor area requirements are, at best, ill-advised. I have submitted for the record and for review by the city attorney during the P & Z hearing, a list of cases so he may brief you at a later time.

We believe there are alternatives available to you besides significantly increasing minimum floor areas. They are:

*Performance Zoning. Performance zoning focuses on innovative approaches to land use and density and downplays house size.

A balance of housing types should be encouraged so businesses and industry attracted to Rockwall will have employee residents available who are capable of staffing its positions. The lack of reasonably priced homes inhibits growth by inhibiting diversity. In addition, many city employees in cities with unreasonably high minimums cannot even afford to live where they work.

*Consistency. If minimum areas are to be addressed in the zoning ordinance, they should be consistent with the Uniform Building Code.

*Averaging. Finally, average house sizes provide a more useful approach than minimums. This concept allows us the flexibility we need to provide a variety of sizes and still satisfy the requirements of the community. That average should be low, certainly no higher than the recommendation of the planning and zoning commission.

As I mentioned earlier, we would prefer no minimums. However, in the absence of this, we would prefer reasonable minimums, and the proposal you have before you is just that--reasonable.

Thank you. If you have any questions, I would be pleased to respond to them.

Comments of the Rockwall Division of the
Home & Apartment Builders Association of
Metropolitan Dallas

to the
Planning and Zoning Commission of the
City of Rockwall
Regarding the Proposal to
Increase the Minimum House Size
October 8, 1987

Commission members, I am Bob Benedict, Director of Government Affairs for the Home & Apartment Builders Association of Metropolitan Dallas. I am speaking on behalf of our Rockwall Division this evening.

To summarize what I will say this evening in a nutshell, we are opposed to minimum house sizes as a matter of principle. There are a number of reasons for this and those reasons will form the basis of the rest of my comments.

1. Minimum floor area requirements are a major barrier to housing affordability. Bigger is not necessarily better. And bigger handicaps builders and prevents them from meeting the affordable housing challenges.

Over the years, there has been a decline in the size of households and a strong trend toward one and two person units. Since 1970, these households have grown dramatically. More than 70 percent of the net increase in households of less than five persons was in this category.

Housing costs are increasing almost as fast as the number of smaller families. The average home buyer in 1982 had to spend nearly three times the monthly amount to buy and use a home as he would have paid in 1975.

Smaller homes respond to both of these trends and do not sacrifice the quality of life or character of the community. In fact, as a city you stand to gain in several ways from this trend.

*Smaller house mean reduced energy consumption;

*They mean reduced building area which broadens opportunities to preserve open space and groundwater recharge;

*They mean greater emphasis on functional design quality;

*They mean more compact communities making it easier and less costly to provide such services as fire and police;

*They offer opportunities for neighborhood revitalization; and

*They help infill development.

Our industry is one of the most responsive to consumer demand. For us to succeed, it is also necessary for you to be equally responsive to that demand. If this does not happen, the result will either be too many homes people cannot afford or a movement toward communities with lower or no minimum house sizes. It is interesting to note that where the minimum house size has been increased in other cities, the share of homes built by volume builders decreased only slightly, while the number of small custom builders in the community was most severely impacted. The reason was simple: Volume builders have a larger production machine so they became more competitive in the 1500-1800 square foot range, making it impossible for the smaller builder to compete.

Finally, a word about tax base. A study done in 1980 for the City of Plano showed the net revenue per acre for a city in a low density neighborhood (.7 units per acre, 2500 square foot homes, \$250,000 values per home) to be \$647 per acre.

The same study showed net revenue from high density single family development (3.9 units per acre, 1340 square foot homes, \$55,000 values per home) to be \$2054 per acre.

For patio, zero lot line units and duplexes at 6.5 units per acre, 1310 square foot units and values at \$80,000, net revenue was \$2,525 per gross acre.

I use this by way of example to show that bigger is simply not always better. The higher values associated with lower density single family units are not sufficient to offset the reduced revenue per acre. Thus they are fiscally less desirable for the city. 2. Is zoning the proper place for minimums anyway? In our view, zoning ordinances are designed for dealing with height, bulk, location and use of buildings and for land development. Except for minimum floor area, nothing in a zoning ordinance deals with a building interior.

In our view, the proper way to deal with minimum floor area is through the building code. The Uniform Building Code, which this city uses, sets forth the concept that habitability requires at least 150 square feet of living area for the first person and 100 square feet for each additional person.

3. We could ask the question: "Why then do many zoning ordinances contain minimum square foot requirements?" Many experts across the country believe that this practice exists for exclusionary reasons. Although I will not dwell on this issue this evening, there have been many court cases on this subject, most of which concluded that minimum floor area requirements are at best ill-advised. I will simply submit for the record, and for review by the city attorney, a list of cases in this area so he may brief you and the city council at a later time.

We believe there are several alternatives available to the city besides minimum floor areas. They are:

*Deregulation. Deregulate floor areas altogether. We believe the restrictions in the Uniform Building Code are sufficient to protect the health and public welfare which is, after all, the reason for all ordinances of this nature.

*Performance Zoning. Performance zoning focuses on innovative approaches to land use and density and does not consider house size. A balance of housing types should be encouraged so businesses and industry attracted to this area will have residents available who are capable of staffing its positions.

The lack of reasonably priced homes inhibits growth by inhibiting diversity. In addition, many city employees cannot even afford to live in the cities for which they work.

*Consistency. If minimum areas are to be addressed in the zoning ordinance, they should at least be consistent with the Uniform Building Code.

*Averaging. Finally, average house sizes provide a more useful approach than minimums. This concept allows us the flexibility we need to provide a variety of sizes and still satisfy the requirements of the community. That average should probably be low, certainly no higher than the current minimums in your ordinance today.

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NOTE: This information is provided free of charge to NAHB members and their attorneys. Said information is intended as general background in an area of law and should not be substituted for research by and advice of local counsel.

EXCLUSIONARY ZONING:

Large minimum lot size

Prepared: July 1986

14254
ZONING AND PLANNING
Area and frontage requirements.
1985.

City ordinance which, for purpose of meeting minimum lot size requirement, creates exception for "single lots of record" at effective date of adoption or amendment of zoning provision requiring merger of multiple lots of continuous frontage owned by same person, applied to preexisting lot which was contiguous with second lot owned by same owner; the exception did not relate only to isolated lots, since those lots would be unaffected by the merger clause.
Ston v. City of South Portland, 499 A.2d 472

14497
ZONING AND PLANNING
Self-created hardship: prior knowledge.
1a.App. 4 Cir. 1986.
Landowners who purchased property knowing that it did not comply with minimum lot size requirements were not entitled to zoning variance.
Sanchez v. Board of Zoning Adjustments of City of New Orleans
38 So.2d 1277

14485
ZONING AND PLANNING
Density of population.
1a.App. 5 Dist. 1984.
"Density cap" which limited multifamily dwellings to 12 dwelling units per acre and hotels and motels to 24 units per acre, which had been incorporated into city charter by way of special referendum election, was arbitrary and unreasonable, inasmuch as density figures were not based on any study, but were merely arbitrary, and plan provided for no possibility of variance.
Inkeepers Motor Lodge, Inc. v. City of New Smyrna Beach
10 So.2d 379

108*51(1)
COVENANTS

*. In general,

Tex.Civ.App. 1980.

Proposed resubdivision of lots did not violate terms of restrictive clauses governing real estate development, even though one clause provided that "lots * * * shall be used for single family residential purposes only, and no structure shall be * * * erected * * * on any lot * * * except one single family residence," and even though plat depicting size and number of lots in uniform plan was filed of record, where restrictions also provided that "there shall be no resubdivision or division of lots in such manner as will impair the minimum site and front line clearance required," and proposed location of additional residences on parcel would not impair minimum building site clearances as specified in restrictions.

Brown v. Wehner
610 S.W.2d 168

108*103(1)
COVENANTS

*. In general,

Tex.Civ.App. 1977.

Defendant's mortgaging of one acre of land immediately surrounding her house was not, in and of itself, breach of subdivision restrictions placing three-acre minimum on lots further subdivided, as lot was not resubdivided for further sale.

Mathis v. Wallace,
553 S.W.2d 236

157*574
EVIDENCE

*. Conflict with other evidence.

Tex. 1974.

Where jury found that all of certain new residences built in subdivision satisfied the minimum floor area requirements established by restrictions, testimony of real estate appraiser that owners of existing structures suffered damage because the new residences did not comply with the floor area

restrictions could not support an award of damages to the owners on the basis of jury finding that three of the 13 new residences failed to meet the requirement that new construction be in conformity and harmony of external design with existing structures.

DENTON v. BUIE
512 S.W.2d 744

268*601(10)
MUNICIPAL CORPORATIONS

*. In general,

Tex.Civ.App. 1956

Minimum area requirements in zoning ordinances are supportable when reasonably necessary for the protection of public safety, health, morals or general welfare.

CARUTHERS v. BOARD OF ADJUSTMENT
290 S.W.2d 340

228*181(15)

JUDGMENT

*. Particular cases in general.

Fla.App. 1 Dist. 1983.

In action brought by majority of subdivision building committee to enjoin owners of certain lots in subdivision from modifying restrictions requiring 2,000 square foot minimum for lots. unresolved issues as to whether certain owner was acting as agent for others in agreeing to 2,000 square foot minimum, and whether committee had authority to enter into agreement which modified square footage requirements established in original covenants, raised substantial fact issues which precluded summary judgment.

Dorsey v. Bacon

436 So.2d 1017

414*472

ZONING AND PLANNING

*. Effect of change in regulations on permission granted.

Ga. 1986.

Stipulations as to property use were not inherently authorized by existing zoning classification compatible with proposed mobile home park containing eight units per acre to require to be applied to development approved prior to their reaffirmation since they affected substantial property rights of developer by effectively denying access, limiting use of a 200-foot strip and reducing density of proposed development.

WMM Properties, Inc. v. Cobb County

339 S.E.2d 252, 255 Ga. 436

414*337

ZONING AND PLANNING

*. Cessation of use.

N.C.App. 1985.

Given evidence that use of lake property as commercial amusement was abandoned at least four years within meaning of county zoning ordinance, which zoned lake property for large-lot residential development and which permitted recreational facilities but not commercial amusements and which provided that existing nonconforming uses could continue but that once use was voluntarily abandoned, with intent not to reestablish, it could not thereafter be reestablished, nature and use of lake property did not remain the same as its previous nonconforming use and property could not be reopened as a commercial amusement.

Forsyth County v. Shelton

329 S.E.2d 730, 74 N.C.App. 674

414*82

ZONING AND PLANNING

*. Stables and keeping of animals.

Ga. 1984.

Where zoning ordinance was applicable to residential districts containing large, i.e., 21-acre, tracts, it was unconstitutionally unreasonable and irrational in limiting number of animals per tract without taking into consideration the size of the tract.

Avant v. Douglas County

319 S.E.2d 442, 253 Ga. 225

414662

ZONING AND PLANNING

6. Architectural and structural designs: value.
N.J.Super.L. 1984.

Zoning ordinance, which created district consisting of 150 acres of land owned by borough and zoned for single and two-family houses, did not provide realistic opportunity for borough to satisfy "present indigenous need" of lower income persons for housing in borough, in that ordinance imposed excessive minimum lot size and setback requirements for district and contained no provisions designed to encourage construction of lower income housing, there was no evidence that housing affordable to lower income persons could be built subject to such requirements even if land were conveyed free by borough to developer, and borough presented no evidence of any specific development plans for such district.

Countryside Properties, Inc. v. Mayor and Council of Borough of Ringwood
500 A.2d 767. 205 N.J.Super. 291

414662

ZONING AND PLANNING

6. Architectural and structural designs: value.
N.J.Super.L. 1984.

Excessive restrictions or exactions with regard to zone plan and zoning ordinance of township which would prevent actual construction of lower income housing, which construction was required to comply with Mount Laurel were noted, without passing upon validity of any such sections, including large lot zoning, efforts at high density rezoning, requirement that all townhouses have private garage, requirement of different design for townhouses in close proximity, and excessive setback provisions.

AMG Realty Co. v. Warren Tp.
504 A.2d 692. 207 N.J.Super. 388

4146570

ZONING AND PLANNING

6. Decisions reviewable.
Conn.App. 1984.

Neighbor's appeal from the granting of a variance from zoning regulation providing that maximum floor area of a building on applicants' lot could not exceed 30% of the lot area was moot, where the zoning regulation had been amended during pendency of the appeal to provide that maximum floor area of the building could not exceed 50% of the lot area, thereby permitting use, which the variance had allowed, as of right.

Johnson v. Zoning Bd. of Appeals of Town of Branford
475 A.2d 339. 2 Conn.App. 24

4146167

ZONING AND PLANNING

6. Particular uses or restrictions.
N.J.Super.A.D. 1984.

Rezoning which required three acres for each residential unit on property that contained streams that flowed into a public lake maintained by county was necessary since the township municipal utilities authority would be unable to accommodate the sewerage produced if density of the property were increased as its sewerage treatment capacity was filled.

Albano v. Mayor and Tp. Committee of Washington Tp.
476 A.2d 852. 194 N.J.Super. 265

414*538

ZONING AND PLANNING

*. Architectural or structural designs.
Conn.App. 1985.

Absent evidence to establish that the subject property had little or no value because of the zoning regulations concerning minimum lot sizes, applicant failed to establish that the enforcement of zoning requirements concerning minimum frontage and minimum area of a building lot would result in an unusual hardship or an exceptional difficulty and therefore applicant was not entitled to a variance from those zoning requirements. C.G.S.A. § 8-6(3).

Brillo v. Zoning Bd. of Appeals of City of West Haven
493 A.2d 275. 4 Conn.App. 205

414*503

ZONING AND PLANNING

*. Architectural or structural designs in general.
Pa.Cmwlth. 1985.

Even if zoning ordinance, which made certain specified allowances for lots, exempted proposed geriatric personal care facility from compliance with total ~~area~~ and with requirements, and provision describing restrictions applicable to ~~corner~~ lots reduced minimum size requirement, where proposal for a structure which would cover 34% of the lot area nevertheless failed to conform to the 20% maximum building coverage requirement, and also failed to conform to requirement that one parking space per bed be provided, decision of the zoning hearing board to deny variances from those requirements in absence of any unique physical circumstances or conditions which created an unnecessary hardship was not error. 53 P.S. § 10912.

Appeal of Ethken Corp.
493 A.2d 787. 89 Pa.Cmwlth. 612

414*70

ZONING AND PLANNING

*. Complete prohibition of use within municipality.
Pa.Cmwlth. 1985.

Township zoning ordinance permitting only single-family residences on three-acre lots had an extraordinary justification related to public interest, where much of zoning district existed as a development by virtue of deed restrictions identical to zoning ordinance, zoning regulation was sought by residents of the fully developed area, and zoning district was small and not readily developable; therefore, three-acre minimum was not unduly restrictive, confiscatory or an invalid exercise of police power.

Kelly v. Zoning Hearing Bd. of Upper Moreland Tp.
487 A.2d 1043. 87 Pa.Cmwlth. 534

414*381.5

ZONING AND PLANNING

*. Maps, plats, or plans, conformity to regulations.
Me. 1984.

Planning board may consider compliance with state's minimum lot size law in passing on a subdivision plan. 12 M.R.S.A. § 4807 et seq.

Lakes Environmental Ass'n v. Town of Naples
486 A.2d 91

414*538

ZONING AND PLANNING

*. Architectural or structural designs.

Conn.App. 1985.

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Me. 1984.

Planning board may consider compliance with state's minimum lot size law in passing on a subdivision plan. 12 M.R.S.A. § 4807 et seq.

Lakes Environmental Ass'n v. Town of Naples

486 A.2d 91

414663
ZONING AND PLANNING
*. Area and frontage requirements.
Or.App. 1986.
Fact that county zoning ordinance provisions relating to land divisions in county's exclusive farm use and farm/forest zones, when read with comprehensive plan, embodied goal requirement that minimum lot size utilized for any farm use zones would be appropriate for continuation of existing commercial agricultural enterprise within the area did not sustain validity of ordinance provisions which were themselves not consistent with goal requirement.
1000 Friends of Oregon v. Land Conservation and Development Com'n
714 P.2d 252, 77 Or.App. 590

4146385
ZONING AND PLANNING
*. Architectural and structural designs.
Wash.App. 1985.
Where landowners complied with all applicable ordinances in submitting application for subdivision, and two new lots resulting from subdivision would meet minimum lot size, denial of application on ground that resulting irregularly shaped lot would not be in the best interest of the town's citizens was arbitrary and capricious.
Carlson v. Town of Beaux Arts Village
704 P.2d 663, 41 Wash.App. 402

414628
ZONING AND PLANNING
*. Certainty and definiteness.
Colo.App. 1984.
Planned unit development regulations provided adequate constraints on county and established standards to provide meaningful judicial review where they defined calculation of density, listed integrated uses, required narrative specifications, specified minimum number of acres or units which could constitute a planned unit development, were keyed to availability of services generally and required all plans to meet extensive submission requirements which satisfy all conditions of approval at each plan sketch stage, establishing a thorough review process. C.R.S. 24-67-101 et seq.
Best v. La Plata Planning Com'n
701 P.2d 91

Mass.App. 1986.

Lot with less than minimum frontage was protected by "grandfather" provision, and owner was entitled to building permit.

Carciofi v. Board of Appeal of Billerica

492 N.E.2d 747, 22 Mass.App. 926

414*681

ZONING AND PLANNING

*. Regulations in general.

Pa.Cmulth. 1984.

Fact that landowners demonstrated that township zoning ordinance, in providing less than one percent of township's land for mobile home parks, constituted an unconstitutional de facto exclusion of mobile home parks and obtained court order requiring additional acreage owned by landowners to be rezoned to allow mobile home parks did not relieve landowners of burden of proof on separate question pertaining to constitutionality of density restrictions and minimum lot size requirements for mobile homes imposed by the ordinance in question.

53 P.S. § 10101.

Poli v. Board of Sup'rs of Northampton Tp.

478 A.2d 927

414*537

ZONING AND PLANNING

*. Weight and sufficiency of evidence.

Pa.Cmulth. 1984.

Where property owner, who sought to establish subdivision, produced no evidence showing that property had unique physical characteristics, that there was no possibility of development under ordinance, that unnecessary hardship was not created by property owner, that variance would not alter essential character of area, and that variance was minimum necessary for relief, zoning hearing board correctly denied request for variance from ordinance limiting number of dwellings on each tract, establishing minimum lot size, and limiting new dwellings to poorer soils. 53 P.S. § 10912.

Boundary Drive Associates v. Shrewsbury Tp. Bd. of Sup'rs

473 A.2d 706

414*462

ZONING AND PLANNING

*. Successive applications.

Pa.Cmulth. 1983.

Prior zoning proceedings resulting in determination that subject property was not legally nonconforming use and, hence, could not be used for three-family occupancy was not res judicata as to subsequent request by successor in title for variance from minimum lot size and side yard requirements and for permission to use property as two-family dwelling.

Thompson v. Wean

466 A.2d 1126

414a254

ZONING AND PLANNING

a. Area and frontage requirements.
Me. 1984.

"Lots of record," within meaning of town zoning ordinance's grandfather clause, which allowed all such lots existing at time of ordinance amendment to be developed according to dimensional requirements which were in effect immediately prior to amendment, referred only to those lots recorded in registry of deeds at time of ordinance amendment that did not meet postamendment minimum land area requirements.

Camplin v. Town of York

471 A.2d 1035

See publication Words and Phrases for other judicial constructions and definitions.

414a503

ZONING AND PLANNING

a. Architectural or structural designs in general.
Me. -1983.

Administrative relief is not warranted where owner of contiguous substandard lots can solve problem by combining them to meet minimum requirements of zoning regulations; in such case, development plans may have to be revised, and property owner may not be able to extract maximum profit from his tract, but he has not been denied reasonable use of his land.

Sibley v. Inhabitants of Town of Wells

462 A.2d 27

414a503

ZONING AND PLANNING

a. Architectural or structural designs in general.
Ohio 1984.

Denial by township board of zoning appeals of homeowners' request for variance from open space conservation zoning, which required five-acre minimum lot size, was neither arbitrary, confiscatory, nor unreasonable, since homeowners did not discuss why they could not develop subject property in conformity with applicable minimum lot size, homeowners created their own hardship by arbitrarily instructing surveyor to draw lines that did not comply with requirements contained in township zoning resolution, and purposes of open space conservation district set forth in zoning resolution were reasonable and legitimate exercise of police power. R.C. § 519.14(B).

Reed v. Rootstown Tp. Bd. of Zoning Appeals

458 N.E.2d 840, 9 Ohio St.3d 54

414a645

ZONING AND PLANNING

i. Permissions or certificates.
Ind.App. 2 Dist 1984.

In property owner's challenge to zoning board's refusal to issue permit to remodel interior of residence to house fraternity members, owner failed to establish that performance standards requiring fraternity houses to have one-acre minimum lot size, 75-foot front building setback line, and 25-foot side yard lines, exceeded or failed to achieve end of amelioration of special problems of traffic, noise, and litter posed to public health, safety, morals or welfare by fraternity houses, or that performance standards were unreasonable in not applying to other residences in area.

Hico Corp. v. Delaware-Muncie Bd. of Zoning Appeals

66 N.E.2d 472

Supreme Court of New Jersey.
Argued Oct. 20, 21, 22 and Dec. 15, 1980.
Decided Jan. 20, 1983.

In litigation concerning municipalities' obligation under Mount Laurel doctrine to provide by land use regulations realistic opportunity for low and moderate income housing, judgments were entered by, inter alia, the Superior Court, Appellate Division, 173 N.J.Super. 45, 413 A.2d 356; by the Superior Court, Appellate Division, 170 N.J.Super. 461, 406 A.2d 1322, reversing the Superior Court, Chancery Division, 142 N.J.Super. 11, 359 A.2d 526; by the Superior Court, Law Division, 164 N.J.Super. 563, 397 A.2d 384; and by the Superior Court, Law Division, 161 N.J.Super. 317, 391 A.2d 935. On direct certification or appeal, cases were heard and decided together. The Supreme Court, Wilentz, C.J., held that: (1) State Development Guide Plan serves as basis for remedy for violations of Mount Laurel doctrine; (2) absolute ban of mobile homes would no longer be permissible on grounds of adverse effect on real estate values; and (3) trial courts on remand would determine pursuant to described procedure municipalities' obligation to provide opportunity for such housing.

All cases remanded for further proceedings.
Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp.
456 A.2d 390. 92 N.J. 158

(101),
414*63
ZONING AND PLANNING

a. Area and frontage requirements.
N.J. 1983.

Preservation of open spaces itself may, under proper circumstances, be sufficient justification for large lot zoning, including five-acre zoning.
Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp.
456 A.2d 390. 92 N.J. 158

As for those municipalities that may have to make adjustments in their lifestyles to provide for their fair share of low and moderate income housing, they should remember that they are not being required to provide more than their fair share. No one community need be concerned that it will be radically transformed by a deluge of low and moderate income developments. Nor should any community conclude that its residents will move to other suburbs as a result of this decision, for those "other suburbs" may very well be required to do their part to provide the same housing. Finally, once a community has satisfied its fair share obligation, the Mount Laurel doctrine will not restrict other measures, including large-lot and open area zoning, that would maintain its beauty and communal character.
56 A.2d 390

R 2 OF 2

P 182 OF 377

ATL

T LOCATE

414*497
ZONING AND PLANNING

a. Self-created hardship; prior knowledge.
Vt. 1984.

Where landowner created alleged hardship when he executed deposit and sales agreement and conveyed lot after being informed that adjacent lot was undersized, landowner was not entitled to hardship exception from lot size requirement of zoning ordinance to allow him to construct residence on the adjacent lot. 24 V.S.A. §§ 4464, 4468(a).
LeBlanc v. City of Barre
477 A.2d 970

414a503
ZONING AND PLANNING

a. Architectural or structural designs in general.
Vt. 1984.

Landowner was not entitled to zoning variance to allow him to construct residence on undersize lot where, contrary to his assertion that the lot could have been developed under minimum size requirements of previous zoning ordinances, the lot was not in individual and separate nonaffiliated ownership from the adjacent lot as required by the previous ordinances. 24 U.S.A. § 4406(1).

LeBlanc v. City of Barre, 477 A.2d 970

92a278.2(1)
CONSTITUTIONAL LAW

a. In general.
Wis.App. 1983.

Zoning classification, by requiring minimum three-acre lot size, effectively prevented any construction on two-acre island, and thus classification unconstitutionally deprived owner of property without due process of law.

U.S.C.A. Const. Amend. 14.

State ex rel. Nagawicka Island Corp. v. City of Delafield

343 N.W.2d 816

414a66
ZONING AND PLANNING

a. One family, two family, or multiple dwellings.
Or.App. 1983.

Comprehensive plan which set forth lot size of 1.5 acres merely as "general" maximum density and "optimum" lot size for rural residential development did not conflict with implementing zoning ordinance providing for one-acre minimum lot size, or otherwise preclude partition of lot into parcels of between one and 1.5 acres; plan did not in itself attempt to establish more than an average or recommended size and clearly envisioned that minimum lot size standards would be established by the implementing ordinance. ORS

197.175(2)(d).

Alluis v. Marion County

668 P.2d 1242

414 ZONING

k193. Report or recommendation of board or commission.

Or.App. 1978.

County zoning ordinance stating that if county board of commissioners does not order new hearing it shall review record of hearing before county planning commission and render decision sustaining action of commission if there was substantial evidence for commission's action did not require board of commissioners, which upon review of record denied zone and minimum lot size changes recommended by county planning commission, to approve such changes upon recommendation of planning commission. ORS 215.010 et seq., 215.050, 215.110.

Greb v. Board of Com'rs for Klarath County,

573 F.2d 733.

414g503

ZONING AND PLANNING

g. Architectural or structural designs in general.
N.H. 1983.

Where shoreland parcel was entirely suitable for use as residential lot and had been used as such since at least 1937, and zoning ordinance which required minimum lake frontage of at least 150 feet in total area of at least 30,000 square feet had same effect on parcel as it did on every other parcel smaller than 60,000 square feet, that is, to render subdivision of that parcel impermissible, any resulting injustice was general, rather than specific; landowner was not entitled to variance from zoning ordinance on ground of unnecessary hardship.

Governor's Island Club, Inc. v. Town of Gilford
467 A.2d 246

414k503

ZONING AND PLANNING

k. Architectural or structural designs in general.
Conn. 1982.

Zoning regulation, which provided that special exception as to minimum lot area requirements could be granted for parcel with area of less than 9,000 square feet for "owners of such parcels of record as of August 12, 1959 * * * for the otherwise permitted uses thereof * * *," did not pertain only to erection of building upon vacant lot, and thus special exception for enclosure of existing porch should have been granted, where regulation referred indiscriminately to "such parcels," and definition of "lot" in regulations included occupied parcel of land.

Dowling v. Zoning Bd. of Appeals of Town of Old Lyme
447 A.2d 1172, 187 Conn. 689

CCPR. (C) WEST 1983 NO CLAIM TO ORIG. U.S. GOVT. WORKS

414k167

ZONING AND PLANNING

k. Particular uses or restrictions.
N.H. 1982.

Substance of town zoning amendment which increased minimum lot size promoted accepted purpose of preventing overcrowding of the land and thus was not beyond scope of zoning enabling act. RSA 31:60.

Sanderson v. Town of Greenland
453 A.2d 1285

COPR. (C) WEST 1983 NO CLAIM TO ORIG. U.S. GOVT. WORKS

414k63

ZONING AND PLANNING

k. Area and frontage requirements.
Pa.Cmwlth. 1982.

Constitutionality of minimum lot size requirement must be determined on case-by-case basis.

Caste v. Zoning Hearing Bd. of Whitehall Borough
453 A.2d 69

414k63

ZONING AND PLANNING

k. Area and frontage requirements.

Pa.Cmwlth. 1982.

Where much of testimony of witnesses for party seeking to build high-rise apartments proved only that borough ordinance was more restrictive than others which witnesses had reviewed, party failed to meet its heavy burden of proving constitutional invalidity of minimum lot size and density restriction requirements of zoning ordinance.

Caste v. Zoning Hearing Bd. of Whitehall Borough

453 A.2d 69

414k588

ZONING AND PLANNING

k. Process or notice and appearance.

Mass.App. 1982.

Where only notice sent of complaint seeking judicial review of decision of town board of appeals was addressed to board, required notice could not be claimed to have been received by town clerk within required statutory period, and thus counts of complaint seeking review of board's denial of request for variance from minimum lot size requirements of town's zoning bylaw were properly dismissed. Rules Civ.Proc., Rule 12(b)(1), 43A M.G.L.A.; M.G.L.A. c. 40A, s 17.

Pasqualino v. Board of Appeals of Wareham

440 N.E.2d 523

414k726

ZONING AND PLANNING

k. Remand.

Pa. 1982.

Record demonstrated that property owner properly presented and preserved contention that five-acre minimum lot size requirement contained in township zoning ordinance lacked a reasonable relation to public health, safety, welfare, or morals, and therefore, remand was appropriate for a determination of such contention with an opportunity for the parties to present relevant evidence.

Appeal of B-K Proper

446 A.2d 891

414k254

ZONING AND PLANNING

k. Area and frontage requirements.

Mass.App. 1982.

Wetlands provision of zoning bylaw, which required that minimum area of upland be contained in a lot before special permit to construct a residence can be granted, defined inland wetlands district with ample clarity even though zoning map contained errors that made it inadequate and unreliable, and thus wetlands provision could properly be applied to plaintiff's land, which included areas within both inland and coastal wetland zoning districts.

Farrugia v. Board of Appeals of Marshfield

442 N.E.2d 1161

414k503

414 ZONING

k503. Architectural or structural designs in general.

Colo.App., 1978.

Where property owner purchased property subsequent to enactment of zoning ordinance and with knowledge of such ordinance, but ordinance, which established minimum depth of 200 feet for front yards and minimum depth of 20 feet for back yards, precluded any use of property owner's 220 foot lots, county board of adjustment abused its discretion when it failed to grant property owner's application for variance.

Landmark Universal, Inc. v. Pitkin County Bd. of Adjustment

579 F.2d 1184

579 P.2d 1184

414k489

ZONING AND PLANNING

k. Grounds for grant or denial in general.

N.Y.A.D. 1982.

Granting of variance from zoning ordinance for single-family residences that requires minimum lot area of 40,000 square feet in circumstances apparently similar to those involving petitioner did not oblige village zoning board of appeals to grant area variance to petitioner.

Carmel v. Zoning Bd. of Appeals of Village of Kings Point

456 N.Y.S.2d 814

COPR. (C) WEST 1983 NO CLAIM TO ORIG. U.S. GOVT. WORKS

414k63

ZONING AND PLANNING

k. Area and frontage requirements.

Wis. 1983.

Minimum lot size regulation is an authorized and necessary part of subdivision control; thus, ordinance adopted by town, which restricted lot size to a minimum of 80,000 square feet in area and a minimum of 200 feet street frontage, was a valid subdivision control ordinance pursuant to statutory section governing local subdivision regulations. W.S.A. 236.01 et seq., 236.45.

Town of Sun Prairie v. Storms

327 N.W.2d 642

COPR. (C) WEST 1983 NO CLAIM TO ORIG. U.S. GOVT. WORKS

414k254

ZONING AND PLANNING

k. Area and frontage requirements.

Or.App. 1982.

Fact that owners' properties, which were parcels of less than 40 acres in a Forest-40 acre minimum zone, were initially conveyed in violation of statutory prerequisites for conveyance of subdivision lots did not affect "legal" status of lots for purposes of zoning ordinance establishing procedures and conditions for allowance of a residential conditional use on a parcel of 40 acres or less in Forest-40 acre minimum zone. ORS 92.016.

Yamhill County v. Ludwick

646 P.2d 1349

COPR. (C) WEST 1983 NO CLAIM TO ORIG. U.S. GOVT. WORKS

414k68

ZONING AND PLANNING

k. Use of property in general.

Cal.App. 1982.

With respect to Government Code requirement that land-use element of general plan contain statement of standards of "building intensity," general use captions such as "commercial-neighborhood," "light industrial," and statements stating minimum lot sizes for "residential/agricultural" and "resource" areas were not sufficient as statements of building intensity. West's

Ann.Cal.Gov.Code s 65302.

Twain Harte Homeowners Ass'n, Inc. v. Tuolumne County

188 Cal.Rptr. 233

CCPR. (C) WEST 1983 NO CLAIM TO ORIG. U.S. GOVT. WORKS

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414 ZONING AND PLANNING

163. Area and frontage requirements.

N.J. Super. A.D., 1982.

Township's 50-acre minimum tract size requirement for planned unit development and planned unit residential development was proper; the statutory minimum acreage for PUD's and PURD's is not mandatory but discretionary. N.J.S.A. 40:55I-6.

Round Valley, Inc. v. Clinton Tp.

413 A.2d 356, 173 N.J. Super. 45

414 ZONING AND PLANNING

1593. Architectural or structural designs in general.

N.J., 1980.

In proceeding on applicants' unsuccessful application for zoning variance for construction of single-family residence on undersized lot, fact that proposed house would be smaller in size than others would not in and of itself justify denial of variance, since size of house did not violate any of traditional zoning purposes of light, air and open space which were reflected in ordinance given fact that minimum lot size may be closely related to goals of public health and safety, but minimum floor area requirements were not per se related to public health, safety or morals.

Commons v. Westwood Zoning Bd. of Adjustment

410 A.2d 1138, 91 N.J. 597

414 ZONING AND PLANNING

1538. Architectural or structural designs.

D.C. App., 1980.

In proceeding wherein landowner sought area variance in order to build residence for his personal use on undersized lot, evidence that the proposed house would be separated from adjoining house by only 13 to 14 feet and that substantial size of variance requested, which was 24.68% below minimum area and 68% below minimum back yard allowances, supported ultimate conclusion of Board of Zoning Adjustment that the variance would have detrimental impact on the public good and impair the zoning plan. D.C.C.E. s 5-420(3).

Scobel v. District of Columbia Bd. of Zoning Adjustment

417 A.2d 405

414 ZONING AND PLANNING

163. Area and frontage requirements.

Pa. Cmwlth., 1981.

Zoning ordinance with five acre minimum lot size for institutional houses was unconstitutional as applied to proposed use of property as group home.

Christ United Methodist Church v. Municipality of Bethel Park

428 A.2d 745

6

414 ZONING AND PLANNING

436. Aesthetic considerations.

Minn., 1979.

Ordinance purpose which trial court felt was dominant "aesthetic" purpose in no way diminished validity of wild and scenic river ordinance which contained bluff line setback requirement and minimum lot size requirement and restricted uses of property which would have harmful spillover effects on river corridor and on property of other landowners near river, and ordinance as a whole represented valid exercise of police power. M.S.A. ss 104.31-104.40, 104.34, subd. 2, 104.36, 104.37, 105.485, 105.485, subd. 2, 394.25, subd. 2.

Pine County v. State. Dept. of Natural Resources

280 N.W.2d 625

4144571

414 ZONING AND PLANNING

4571. Right of review.

Ohio, 1980.

Where use of property in F-1 district as a private park was not a permitted use but was a conditionally permitted use under zoning ordinance, property owner seeking benefit of the conditionally permitted use provision of the ordinance could not challenge standards, including 100-acre requirement, for granting conditional zoning certificate, as determination that minimum acreage requirement was arbitrary or unreasonable would not transform smaller private parks into permitted uses.

Gerzeny v. Fichfield Tp.

405 N.E.2d 1034. 62 Ohio St.2d 339

414463

414 ZONING AND PLANNING

463. Area and frontage requirements.

N.Y., 1960.

Zoning ordinance which created, in certain areas of the village, minimum lot requirements of five acres was not an unreasonable or improper exercise of police power or beyond the power delegated by section of the Village Law.

Village Law ss 7-700, 7-704.

Robert F. Kurzius, Inc. v. Incorporated Village of Upper Brookville

414 N.E.2d 680, 51 N.Y.2d 339

4144562

414 ZONING AND PLANNING

4562. Exhaustion of administrative remedies.

Mass.App., 1981.

Owners of property would be required to exhaust administrative remedies prior to maintaining action in nature of mandamus to compel building inspector to revoke building permit and to enforce against contractors' building on owners' property the minimum lot frontage requirement of city's zoning ordinance.

M.G.L.A. c. 40A, s 7.

Neuhaus v. Building Inspector of Marlborough

415 N.E.2d 235

4144681

414 ZONING AND PLANNING

4681. Regulations in general.

Pa.Cmwlth., 1980.

Burden of overcoming presumption that township zoning ordinance imposing a ten-acre minimum lot restriction was valid remained on challenger where there was no total prohibition of a lawful use from the whole area of the township.

Martin v. Millcreek's Tp.

413 A.2d 764

414 ZONING AND PLANNING

4435. Evidence and fact questions.

Wash.App., 1980.

In proceeding wherein county approved preliminary plat providing less than one acre per living unit in area in which soil permitted rapid drainage and percolation, failure to present evidence on the record establishing "engineering justification" so as to satisfy regulation, which, under such soil conditions, required minimum lot size of two acres unless engineering justification could be provided, could not be attributed to ambush tactics by owner of adjacent land where he had made the argument that the soil permitted very excessive drainage and that it was recommended that maximum density for such soil classification was one unit per two acres if individual lots were on private water supply.

Gardner v. Pierce County Bd. of Com'rs

617 P.2d 743

414 ZONING AND PLANNING

4503. Architectural or structural designs in general.

D.C.App., 1980.

Board of Zoning Adjustment did not err in denying property owner's application for area variance from minimum lot size requirement for building single-family dwellings, where affirmative act of owner in subdividing tract of three lots she had purchased made property nonconforming and Board found that variance would permit building on substandard lot out of character with neighborhood.

Carliser v. District of Columbia Bd. of Zoning Adjustment

412 A.2d 52

414 ZONING AND PLANNING

4376. Change of regulations as affecting right.

N.H., 1980.

Grandfather clause in zoning ordinance protected developer's lots from subsequent changes in lot size requirement, where town officials had consistently interpreted and administered the clause to protect lots that complied with size minimums in effect when lots were recorded.

Win-Tasch Corp. v. Town of Merrimack

411 A.2d 144

414 ZONING AND PLANNING

4542. Determination.

Pa.Cmwltth., 1979.

Township hearing board's denial of application by equitable owner of lot, which contained two thirds of an acre and which was within commercial zoning district, for variance from area, width, yard, and off-street parking requirements so as to authorize erection and operation of neighborhood convenience market as a permitted use in such district, in which minimum lot area of two acres was required, was not an abuse of discretion, in view of absence of any indication that lot was held in separate ownership before adoption of the zoning limitation and that the variance requests were based on a building which was the largest of three standard designs. 53 P.S. s 10912(5).

Southland Corp. v. East Caln Tp. Zoning Hearing Bd.

405 A.2d 1078

414 ZONING AND PLANNING

§724. Affirmance, modification, or reversal.

Pa.Cmwlth., 1979.

Decision that zoning map and ordinance imposing five-acre lot area minimum had not been shown to be invalid was affirmed.

Appeal of B F Properties

405 A.2d 1083

414 ZONING AND PLANNING

§329. Enlargement or extension of use.

N.J.Super.L., 1979.

Where landowners received preliminary site approval and final approval for nursery school use on 12.6 acres of land, where the findings of fact and conclusions of law stated that the entire 12.6-acre area could be allotted to the proposed site of satisfaction of the one-acre minimum requirements, and where, less than a year later, property was rezoned from general business to residential, making the nursery school a nonconforming use, the use for which they obtained approval was protected, as to their entire 12.6-acre site, for period of two years and they were entitled to expand the existing operations on the land. N.J.S.A. 40:55F-49, 52.

Elezrak v. Fresham Tp.

406 A.2d 201, 170 N.J.Super. 216

414 ZONING AND PLANNING

§63. Area and frontage requirements.

N.H., 1979.

Though subdivision regulations may prescribe minimum lot area, those prescriptions must conform to the local zoning ordinance. RSA 36:21.

Town of Seabrook v. Tre-Sea Corp.

410 A.2d 240

414 ZONING AND PLANNING

§709. Variances or exceptions.

Mass.App., 1979.

Conduct of superior court when, acting on basis of a stipulation of facts by parties, it annulled decision of board of appeals and ordered it to grant a variance for construction of two single-family houses amounted to a reshaping of relief originally sought from board of appeals and, as such, was beyond power of a reviewing court in that variance which landowners originally sought would have permitted them to divide a lot into two lots, each of which would have been below prescribed minimum lot area, and would have permitted erection on one of those lots of the two-family house in a zoning district where two-family houses were not permitted as of right. M.G.L.A. c. 40A s 21, St.1973, c. 1114.

Gerry v. Zoning Appeals Bd. of Easthampton

396 N.E.2d 733

414 ZONING AND PLANNING
#572. Decisions reviewable.
Or.App., 1979.

Finding of board of county commissioners concerning minimum lot size, which was underlying basis for its conclusion that proposed subdivision met Agricultural Land Goal # 3 relating to preservation of agricultural lands, was conclusory and insufficient for purposes of judicial review.
Hood View Neighborhood Ass'n v. Board of County Com'rs of Clackamas County
604 P.2d 447

414 ZONING AND PLANNING
#644. Weight and sufficiency of evidence in general.
Or., 1979.

Assuming that state regulation requiring that minimum lot sizes in farm use zones be "appropriate for the continuation of existing commercial agricultural enterprise within the area" required that minimum lot sizes be such as would maximize agricultural production, substantial evidence supported conclusion of board of county commissioners that such standard was met with respect to proposed subdivision of 22 acres of agricultural land, which was found by board to be more agriculturally productive if subdivided.
Meeker v. Board of Com'rs of Clatsop County
601 P.2d 804

Or.App., 1979.
City's general plan, which provided that " * * * Urban medium residential areas are intended to accommodate housing developments at an average of about three to six dwelling units per acre * * *. In some sections * * * this housing density will be exceeded in places by construction of duplexes * * *," did not impose absolute maximum of six dwelling units per acre, and, thus, city council, which denied application for conditional use permit authorizing construction of four duplexes on parcel slightly larger than an acre, erred in determining that proposed units would be of higher density than that allowed in plan.
Miller v. Council of City of Grants Pass
592 P.2d 1088

414 ZONING AND PLANNING
#171. Dwellings.
Pa.Cmwlth., 1990.
Township ordinance rezoning tract to R-1 single family and permitting maximum of three units per acre could be found to be rationally related to legitimate public end, i. e., protection of community's health and safety by reasonably restricting township's physical growth pattern. 53 P.S. s 11004 (Repealed).
Blue Ridge Realty and Development Corp. v. Lower Paxton Tp.
414 A.2d 737

414 ZONING AND PLANNING
#63. Area and frontage requirements.
Pa.Cmwlth., 1979.
Ordinance affording minimum lot sizes are not unconstitutional per se.
Application of Wetherill
406 A.2d 827

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414 ZONING

k496. Unique or peculiar hardship.
Conn., 1978.

Uncommon hardship beyond the control of a property owner exists which will warrant grant of variance when the state seeks to condemn a portion of his or her land and thereby render it nonconforming to minimum lot area restriction.
C.G.S.A. ss 8-6, 48-24.

Smith v. Zoning Bd. of Appeals of Town of Norwalk
387 A.2d 542

414 ZONING

k503. Architectural or structural designs in general.
D.C.App., 1978.

Board of Zoning Adjustment was authorized to grant variance from minimum-width requirement of lot for single-family residential use where original parcel had been susceptible to subdivision into three conforming parcels, zoning office personnel on three occasions implicitly found that lot in question conformed to width requirements, lot owner and predecessor proceeded in good faith following subdivision of original parcel, homes were constructed on two out of three newly created lots and present dispute was due to actions of zoning officials which were later found to be in error. D.C.C.E. s 5-420(3).

De Azcarate v. District of Columbia Bd. of Zoning Adjustment
388 A.2d 1233

199 HEALTH AND ENVIRONMENT

k25.15(2). Injunction.
Me., 1978.

Evidence in action brought by state to secure injunction preventing condominium developer, who was granted waiver of requirements of minimum lot size statute subject to condition that "upon availability of public sewers the condominiums shall be immediately connected thereto and the underground septic system discontinued," from refusing to construct sewer line linking condominium with town's sewer collection system, after sewer line had become available for connection, was sufficient to support granting of injunction requested by state. 38 M.P.S.A. s 451; 12 M.R.S.A. s 4807 et seq.

State v. Beck
389 A.2d 844

Me., 1979.

If subdivision violated minimum lot size requirements of zoning ordinance effective after subdivision was approved, and if town code enforcement officer had duty to enforce ordinance and to notify subdivision planners of violation and he failed or refused to perform that duty, then zoning board of appeals was agency directly charged with authority to review officer's decisions with respect to applicability of 1977 ordinance. 30 M.R.S.A. s 4963.

Cunningham v. Kittery Planning Bd.
400 A.2d 1070

414 ZONING

k652. Amendment or rezoning, sufficiency of evidence.
D.C.App., 1978.

Evidence in proceedings on application for zoning amendment to change classification of vacant parcel of land supported conclusion that change from classification providing for one-family detached dwellings with minimum lot area of 5,000 square feet to classification permitting development of row dwellings within minimum area of 2,000 square feet would be appropriate for the area and compatible with comprehensive zoning plan in District of Columbia; change in classification would not be reversed on theory that Zoning Commission had no authority to make change without making preliminary finding that substantial change in character had occurred in surrounding neighborhood which necessitated zoning amendment. D.C.C.E. s 5-414.
Pock Creek Neighborhood League, Inc. v. District of Columbia Zoning Commission
388 A.2d 450

ZONING AND PLANNING

k538

N.J.Super.A.D., 1979.

Record supported action of township board of adjustment in denying variance for undersized lot on findings that landowners had not demonstrated that strict application of minimum zoning requirements would inflict peculiar and exceptional practical difficulties or exceptional and undue hardship and that grant of variance would constitute substantial detriment to zone scheme and plan and to public good. N.J.S.A. 40:55D-70, 70, subs. c, d.
Galdieri v. Board of Adjustment of Morris Tp., Morris County
398 A.2d 893, 165 N.J.Super. 505

414 ZONING

k503. Architectural or structural designs in general.
Pa.Crwth., 1979.

Not every lot is guaranteed the right to be used at maximum residential density regardless of its size.

Christner v. Zoning Bd. of Borough of Mount Pleasant
397 A.2d 30

414 ZONING

k495. What constitutes in general.
Pa.Crwth., 1978.

Where lot is too small to conform with minimum lot area requirements and cannot be made to conform by merging lots or resubdividing larger tract, enforcement of ordinance will sterilize land, creating necessary hardship which will justify granting of variance.

ECL, Inc. v. West Bradford Tp., by Bd. of Sup'rs.
387 A.2d 970

108 COVENANTS

k79(1). In general.
Vt., 1978.

Although grantors of lot smaller than 10-acre minimum permitted by restrictive covenant were original covenantors to restrictive covenant at issue, the grantees in conveyances of 15 and 38-acre parcels also subject to the restrictive covenant were successors in title to original covenantees, and therefore, for such grantees to have standing to sue for breach of the covenant, benefit of the covenant had to run in favor of 15-acre and 38-acre parcels.

Albright v. Fish
394 A.2d 1117

92

k278.2(1)

Ill.App., 1978.

Strict enforcement of zoning provision requiring minimum width for side yards, which resulted in denial of applicants' building permit following their division of two lots into three, did not unconstitutionally deprive applicants of property without due process of law where there was no showing that other lots in area had been excused from compliance with zoning scheme in situations similar to applicants, where record did not reflect extent of applicants' deprivation nor extent which applicants would economically benefit from granting of permit and where minimum width requirement bore a relationship to public welfare.

People ex rel. Wordell v. City of Chicago

384 N.E.2d 894

414 ZONING

k546. Effect of determination.

Ill.App. 1978.

County zoning board which granted requested variation of minimum lot area requirements, which variation resulted in the creation of three lots from two lots, did not resubdivide property and thus did not improperly exercise power of board of county commissioners which had final power to subdivide.

Hale v. First Nat. Bank of Mount Prospect,

372 N.E.2d 959.

414 ZONING

k278. Particular terms and uses.

Mass.App., 1978.

Town zoning bylaw would be construed to mean that all density regulations found therein applied in single-family zoning district except the one pertaining to minimum lot sizes and, thus, bylaw would not permit apartment proposed by property owner.

McCausland v. Board of Appeals of Salisbury

375 N.E.2d 335

414 ZONING

k323. Existence of use in general.

N.Y.A.D., 1978.

Parcel, which had frontage of 115 feet on road and depth of 200 feet and which was purchased before zoning ordinance was amended to require that residential lots have minimum frontage of 150 feet and minimum size of one acre, did not have preexisting nonconforming use for residential purposes where, though owner had intended to use parcel for residential purposes, he had made no improvement on parcel. Town Law s 261 et seq.

Cook v. Haynes

406 N.Y.S.2d 173

N.Y.A.D., 1979.

Village's zoning ordinance which created a five-acre minimum lot requirement in certain areas of village zoned for residential use was arbitrary and unreasonable because it had no substantial relation to the public health, safety, morals or general welfare. Village Law s 7-700.

Robert E. Kurzius, Inc. v. Incorporated Village of Upper Brookville

414 N.Y.S.2d 573

414 ZONING

k503. Architectural or structural designs in general.
N.Y.A.D. 1978.

Denial of application for variance from ten-foot side yard setback requirement in order to make possible division of parcel, in light of fact that addition to existing house was only six feet from proposed division line, was not arbitrary, unreasonable, irrational or indicative of bad faith, and would be upheld, despite contention that intent of ordinance was to provide a minimum distance of 20 feet between houses and that property owners would be willing to encumber proposed vacant parcel by recorded instrument which would provide that any dwelling erected thereon was to be at least 20 feet from the existing dwelling. Id.

Campus v. Delany,
403 N.Y.S.2d 308.

228 JUDGMENT

k185.3(1). In general.
Ga.App., 1978.

In action in which contestant challenged issuance of a single-family residence building permit to applicant, his neighbor, evidence on summary judgment, which did not show that subject lot was platted or in existence at time of adoption of regulations, was insufficient to establish that lot in question was entitled to a lot of record exemption so as to render it exempt from all building regulations governing lot size which might render lot unsuitable for building, under city ordinance providing that if owner of lot at time of adoption of regulations did not own sufficient land to enable him to meet minimum size lot requirements, such lot could be used as a building site for a single-family residence.

Stephens v. Tate
249 S.E.2d 92

414 ZONING

k376. Change of regulations as affecting right.
Ariz.App., 1978.

Owner of one or more subdivision lots has a vested right in size of lot or lots when subdivision plat has been validly recorded, and thus change in zoning ordinance affecting minimum size of lots cannot alter this right.

Iawe v. City of Scottsdale
581 P.2d 1143

414 ZONING

k724. Affirmance, modification, or reversal.
Wash.App., 1978.

In absence of evidence to negate findings that surrounding use of lots in question was predominantly for single-family residences and that there were no special circumstances applicable to lots in question or to intended use that had not applied generally to other property and class of use in same vicinity and zone since zoning restriction was adopted, denial of landowner's application for use variance from zoning restriction permitting only construction of single-family residences within minimum lot area of 18,000 square feet would not be reversed on ground that a substantial number of property in zoned area had been developed as multi-family dwellings. RCWA 36.70.810.

Ling v. Whatcom County Bd. of Adjustment
585 P.2d 815

ROCKWALL
PLANNING AND ZONING
COMMISSION HEARING
OCTOBER 8, 1987

INTRODUCTION

DISCUSSION OF PROPOSED CHANGES

PROPOSED CHANGES

WHAT DO THESE CHANGES ACCOMPLISH?
WHAT THESE CHANGES DO NOT ACCOMPLISH
WHY ARE WE OPPOSED TO CHANGES?

SUMMARY

o INTRODUCTION

- JACK WILLIAMS, PROJECT MANAGER, GREAT WESTERN DEVELOPMENT COMPANY
- SUBSIDIARY OF GEMCRAFT, INC.
- SISTER COMPANY OF GEMCRAFT HOMES, INC.
 - . LARGEST SINGLE FAMILY DETACHED BUILDER IN TEXAS
 - . LARGEST SINGLE FAMILY DETACHED BUILDER IN METROPLEX
 - . 29th LARGEST SINGLE FAMILY DETACHED BUILDER IN NATION
- GEMCRAFT OWNS APPROXIMATELY 492 ACRES ON EAST SIDE OF ROCKWALL

o DISCUSSION OF PROPOSED CHANGES

- . PROPOSED CHANGES
- . OUR UNDERSTANDING

	CURRENT	PROPOSED
SF-7	900 sq.ft.	1500 sq.ft.
SF-10	1500 sq.ft.	2000 sq.ft.
SF-16	1800 sq.ft.	2500 sq.ft.
Zero lot line	1000 sq.ft.	1400 sq.ft.
Duplex	800 sq.ft.	1300 sq.ft.
Multi-Family		1000 sq.ft. - 1 Bedroom
		1100 sq.ft. - 2 Bedroom
		1200 sq.ft. - 3+ Bedroom

- WHAT DO THESE CHANGES ACCOMPLISH?

- . All new single family detached homes in Rockwall will be at least 1400 sq.ft.
- . All conventional single family detached homes in Rockwall will be at least 1500 sq.ft.
- . There probable will be no duplex or multi-family units built.
- . Projects a message that Rockwall does not want moderate housing.
- . Makes volume builders such as Gemcraft reluctant to enter the Rockwall market.
- . Limits the amount of "affordable" housing to be built in Rockwall.
- . Industry and business could choose other cities in which to locate where there is affordable housing for their employees.
- . Projects a message that Rockwall does not want moderate housing.

- WHAT THESE CHANGES DO NOT ACCOMPLISH

- . Assure the Quality of Homes or Neighborhoods
 - A large house size does not assure quality.
 - There can be 1500 sq.ft. or 2000 sq.ft. shoddy houses and subdivisions.
 - There can be 900 sq.ft. quality neighborhoods.
 - What are some things that will help to assure quality?
 - . Developer deed restrictions
 - . Enforcement of building codes
 - . Having developers build brick entryways and landscaping
 - . Working with reputable developers and builders to insure quality developments and housing
 - . Upgrading of building materials
 - 300 lb. shingles instead of 220 lb. shingles
 - Demanding more brick coverage on houses
 - Seeding front yards
 - Landscaping requirements
 - Fenced back yards
 - Standardized mail boxes
- . Project an image of a progressive community wanting business and industry to locate there
- . Project a message that Rockwall wants moderate or "affordable" housing

- WHY WE ARE OPPOSED TO CHANGES

- I want to state that we feel that 900 sq.ft. minimum is not a good idea in SF-7, but we also do not agree with 1500 sq.ft.
 - You are limiting our market as a developer by possibly eliminating builders such as Gemcraft Homes and others.
 - Limits builders' product in an interest sensitive market and interest volatile economy.

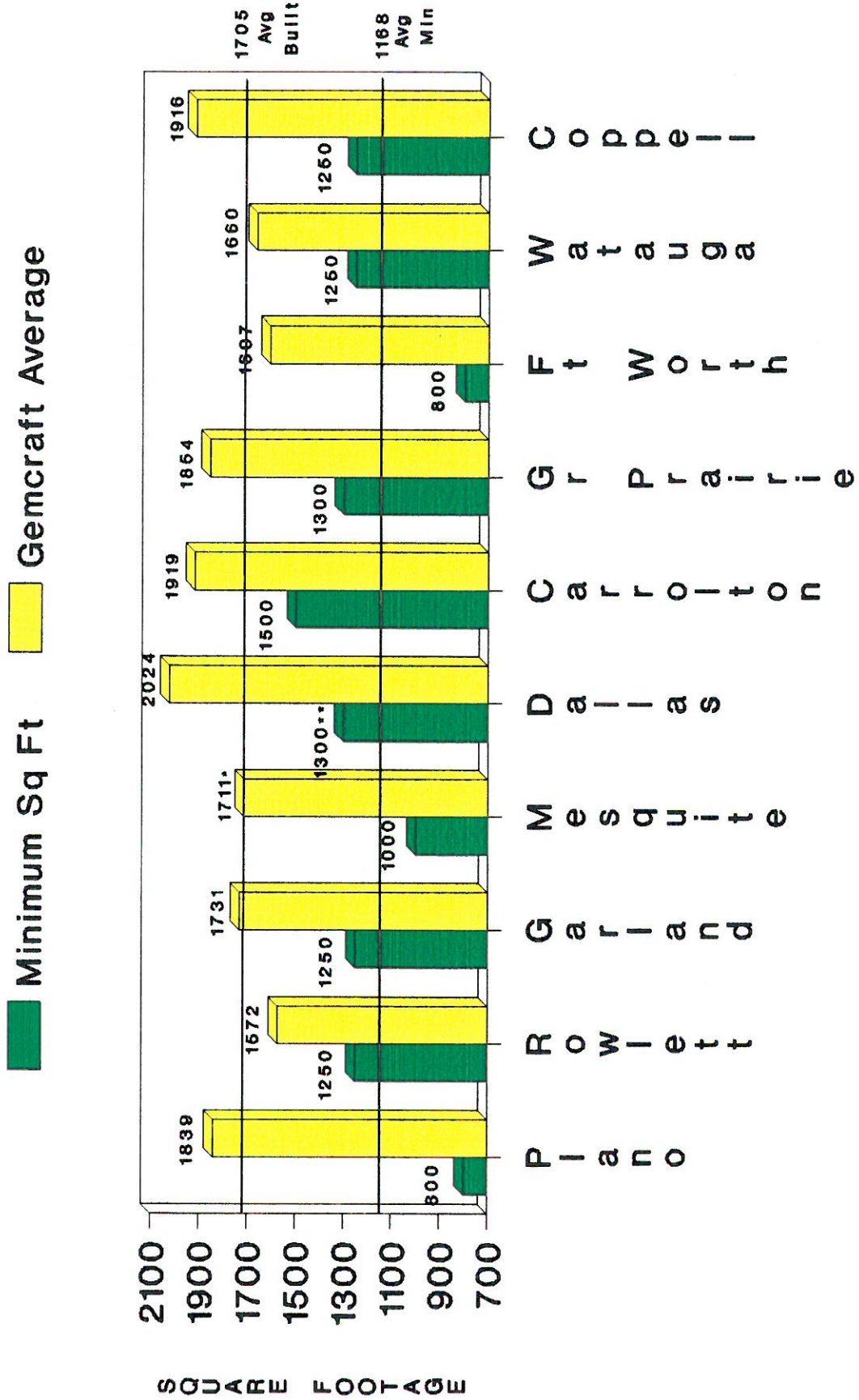
o SUMMARY

- WE WANT TO BE A PARTNER WITH THE CITY OF ROCKWALL
- WE WANT QUALITY HOUSING AND NEIGHBORHOODS WHEREVER WE DEVELOP AND BUILD
- WE NEED THE CITY TO ALLOW US THE FLEXIBILITY REQUIRED BY BUILDERS AND DEVELOPERS TO RESPOND TO MARKET CONDITIONS
- LET US ADD THE QUALITY THROUGH ITEMS WHICH ARE EVIDENT AS YOU DRIVE THROUGH A COMMUNITY

EXHIBIT A

GEMCRAFT HOMES

Average Plan Built vs. Minimum



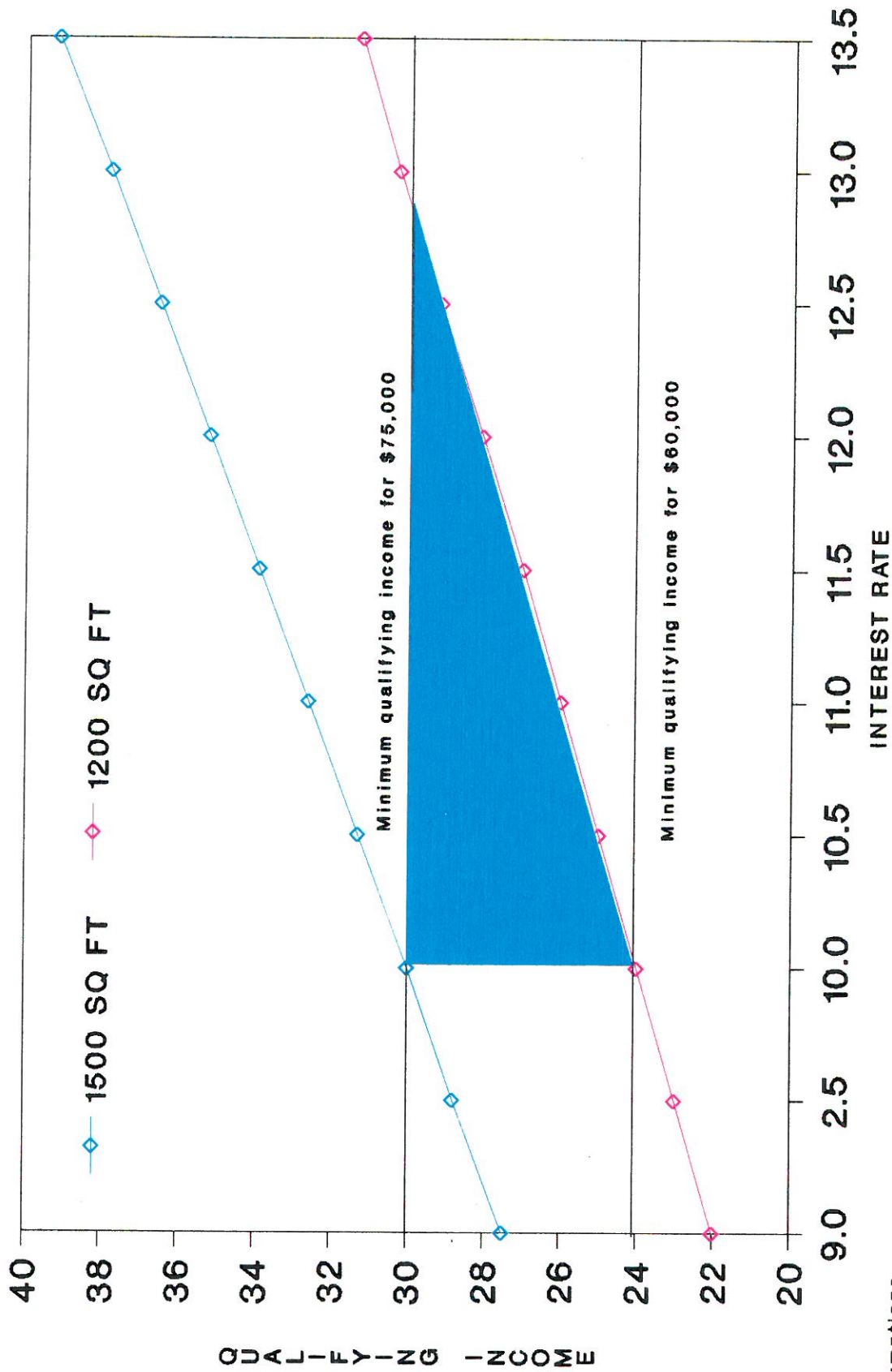
COMMUNITY

*Includes 40' program with 1000 sq ft min and 1344 sq ft avg

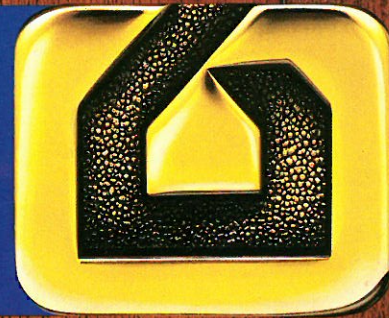
**Deed restriction minimum

EXHIBIT B

HOME AFFORDABILITY COMPARISON



Assumptions
 Both homes have equal sq ft costs
 30 yr fixed rate financing with 5% dn pmt
 Only principal and interest used in qualifying
 Payment equals 25% of qualifying income



Gemcraft Homes®
SETTING THE NEW STANDARD®

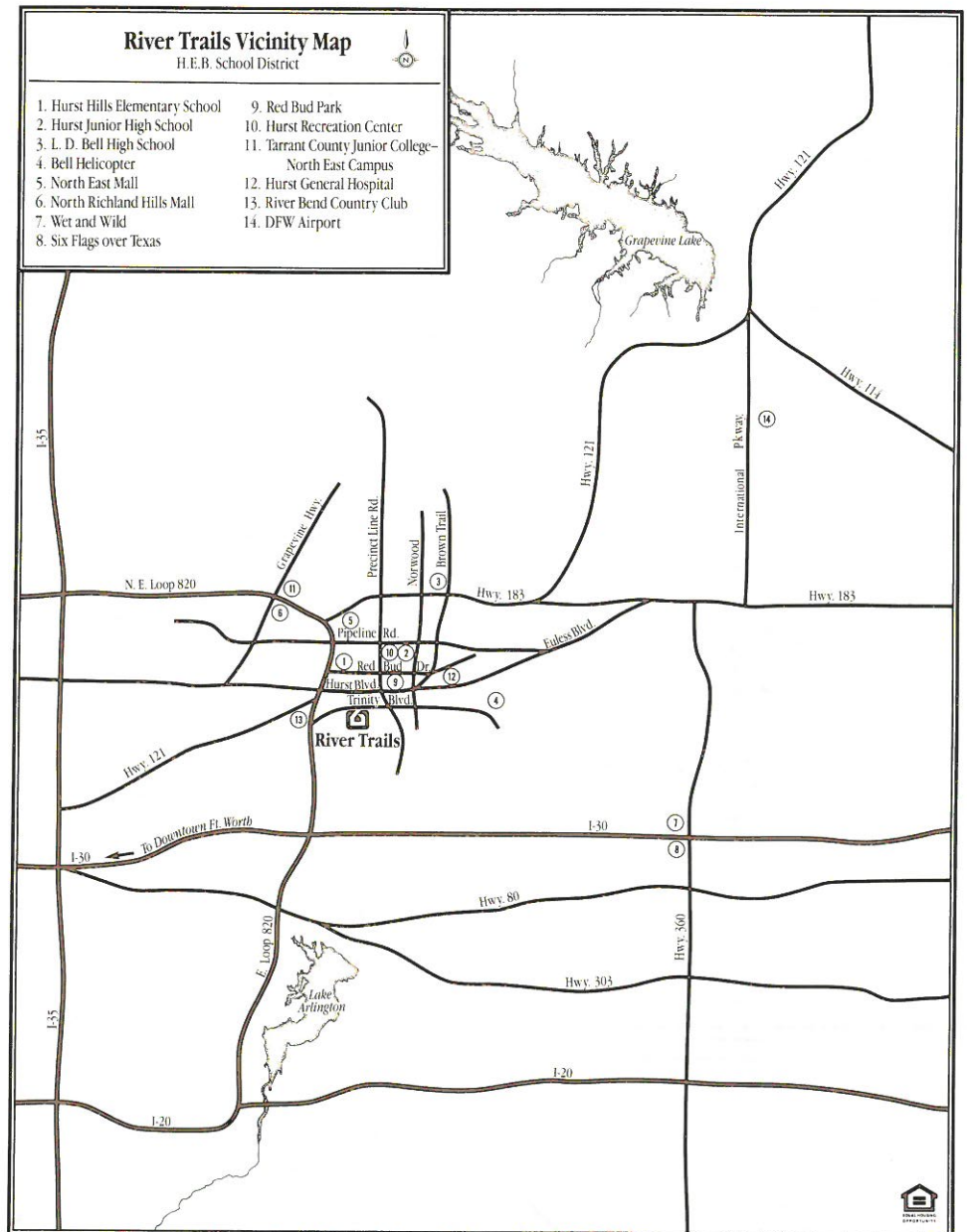


RIVER TRAILS VICINITY

Gemcraft Homes. Setting the New Standard in Fort Worth.

Situated in the scenic, wooded hills just northeast of Fort Worth, River Trails offers you a high quality of life in a very convenient location. This fine Gemcraft neighborhood is close to major thoroughfares like Loop 820, Highway 121, and I-30, so you're just minutes from great recreation at Grapevine Reservoir or Lake Arlington. You can also enjoy your weekends at a variety of well-known entertainment and amusement facilities, including Six Flags Over Texas, Wet and Wild Park, and Texas Stadium.

Since River Trails is between Dallas and Fort Worth, it's an ideal location wherever you may work. You'll not only have easy access to numerous major employers such as Bell Helicopter and General Dynamics, but to both downtown areas and the D/FW Airport. In addition, you'll take pride in living within the highly rated H.E.B. school district. For more information about River Trails, consult your Gemcraft Sales Counselor.



RIVER TRAILS STANDARD FEATURES

Spacious Living Area:

Extra Large Family Room with Raised Ceiling
Wood Burning Tile Fireplace with Built-In Fire Screen
Ceiling Fan in Family Room with Reversible Variable
Speed Control and Light
Formal Dining Room
Choice of High Quality Carpeting
Pre-Wired for Telephone

Elegant Master Suite:

Spacious Master Suite with Raised Ceiling
Luxurious Vanity/Grooming Center in Master Bath
Marble Topped Dual Bathroom Vanity
Privacy Lock
Wood Door Medicine Cabinets
Heat Lamp in Bath Area
Linen Closet
Extra Large Carpeted Walk-In Closet

Color Coordinated Kitchen

Countertops in Choice of Decorator Finishes
Custom Finished Wooden Cabinetry
Choice of Decorator Wallpaper
Easy Care Vinyl Flooring
Stainless Steel Sink with Water Sprayer
Garbage Disposal
Large Pantry
Energy Efficient Pot Scrubber Dishwasher
Exhaust Cooking Hood
Pre-Installed Icemaker Line
Convenient all Electric Cooking
Fluorescent Lighting

Room Finished Garage:

Double Car Garage
Garage with Raised Car Stop
Convenient Storage and Work Area with Electrical Outlet
Embossed Steel Garage Doors

Exterior:

Exterior Lighting
Fully Sodded Front Yard with Tree
Fully Fenced Backyard
Post Tension Slab
Protective Ground Fault Interrupter Circuits
Private Patio with Outdoor Lighting and Electrical Outlet

Energy Package:

Energy-Saver Double Pane Windows
Electric Central Air Conditioning
High Insulation Standards (R-13 Walls, R-22 Ceilings;
Industry Standards R-11 Walls, R-19 Ceilings)
Dishwasher with Energy-Saver Drying Cycle
Dimmer Switches in Family Room and Dining Room
Polycel Caulking on all Exterior Joints
Ceiling Fan with Reversible Variable Speed Control and
Light in Family Room
Full Washer and Dryer Connections with Outside
Dryer Vent

Security Package:

Insulated Steel Front Doors
Security Viewer in Front Door
Deadbolt Locks
Smoke Detectors
Fenced Backyard
Attic Storage with Disappearing Stairs

Community Highlights:

Public Sidewalks
Convenient Shopping Centers
Highly Rated H.E.B. School District
Safety Lighted Streets

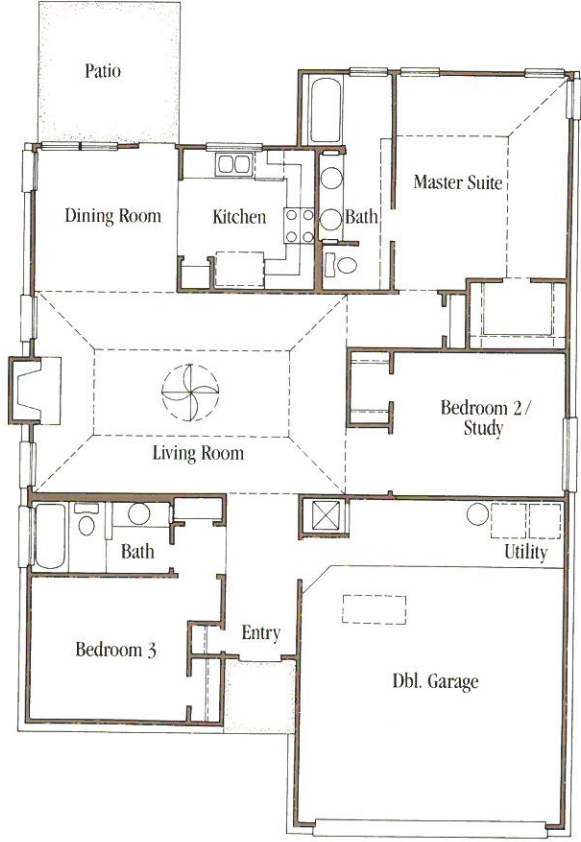
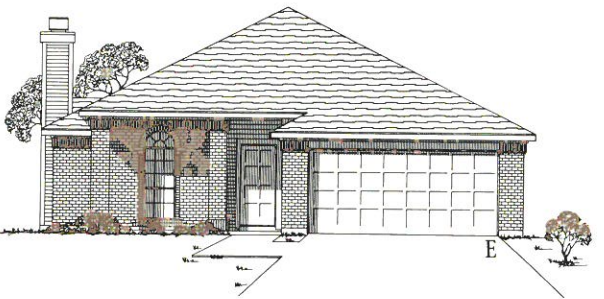
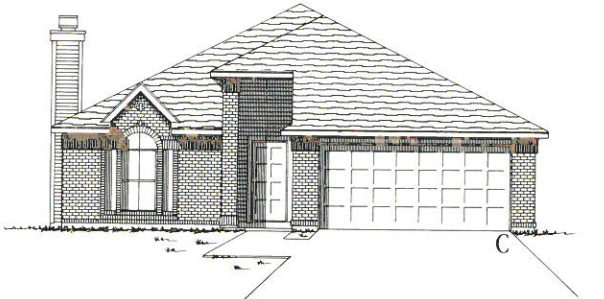
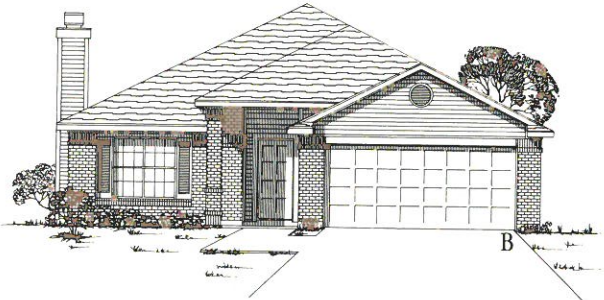
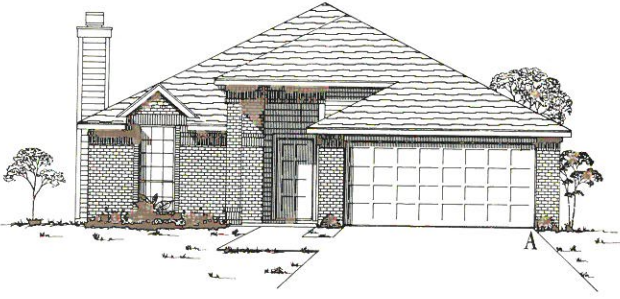
FHA, VA or Conventional Financing Available with No Closing Costs to Buyer.

*Specifications Subject to Change without Notice.

*See Individual Floor Plans for Additional Information.



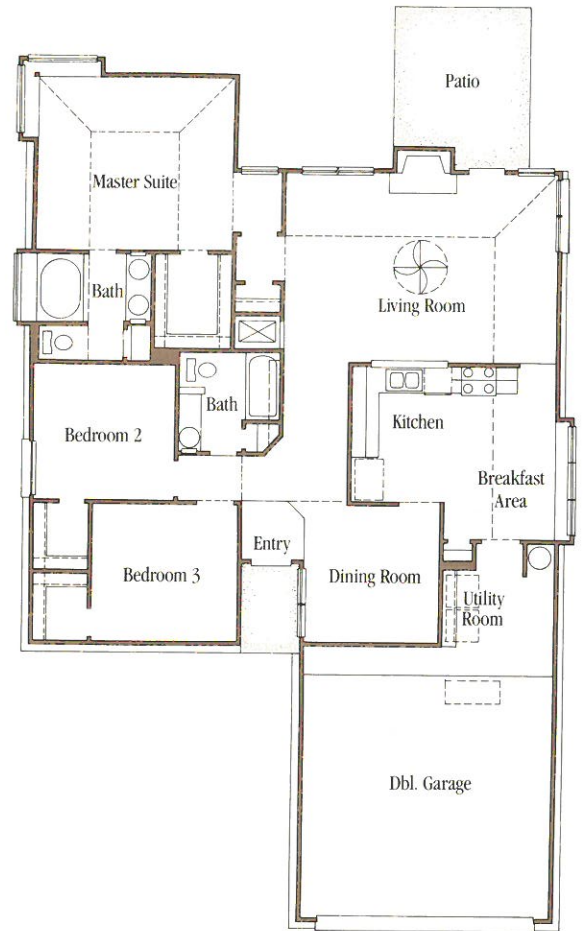
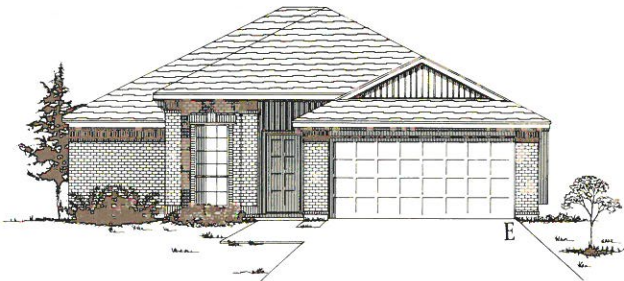
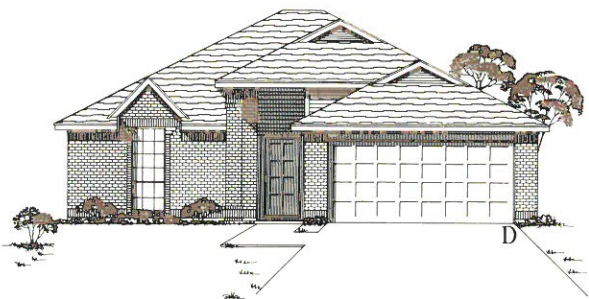
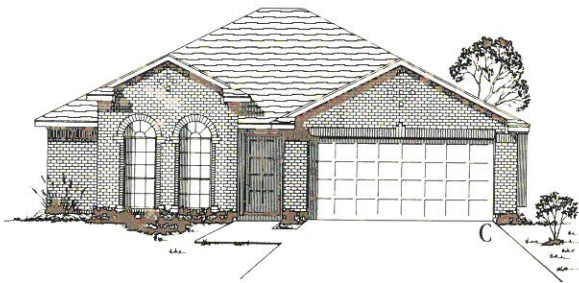
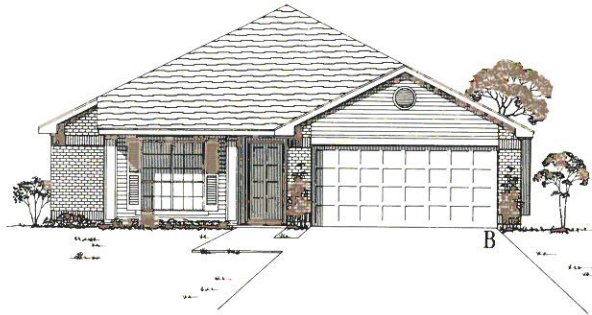
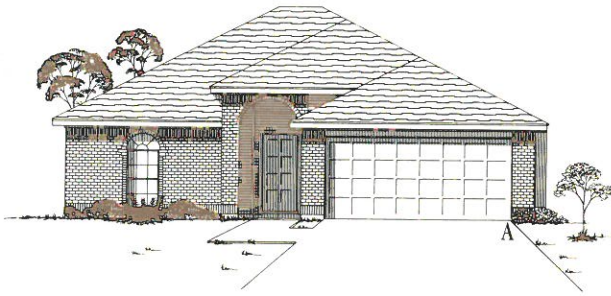
Gemcraft Homes[®]
SETTING THE NEW STANDARD.[®]



Plan 13
3 Bedroom/Study, 2 Bath, 2 Car Garage

- Entry Hall with Garage Access
- Extra Large Living Room with Gambrel Ceiling
- Store Front Door from Dining Room to Patio
- Spacious Master Suite with Gambrel Ceiling
- Full Ceramic Tile Tub Enclosure
- Plant Shelf in Master Bath
- Recessed Entry

*Specifications Subject to Change without Notice.
*See Standard Features List for Additional Information.

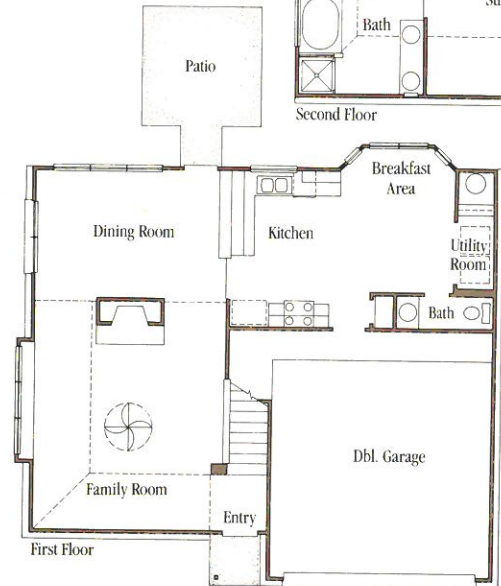
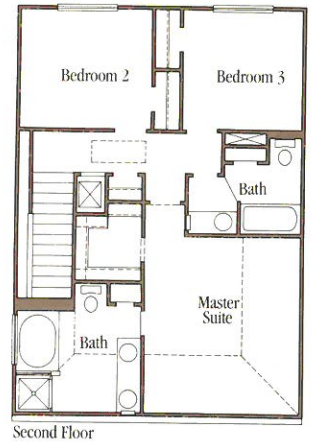
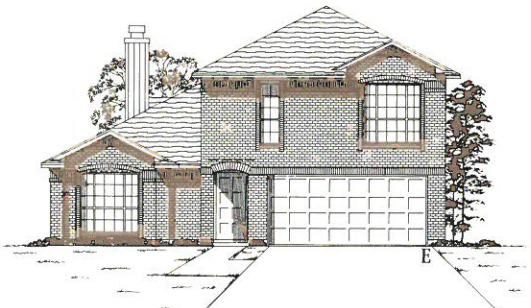
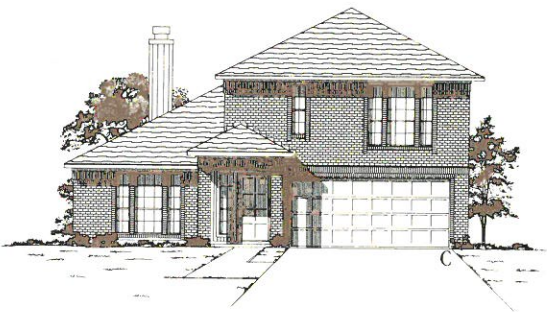
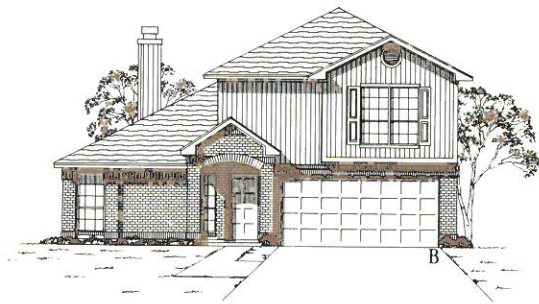
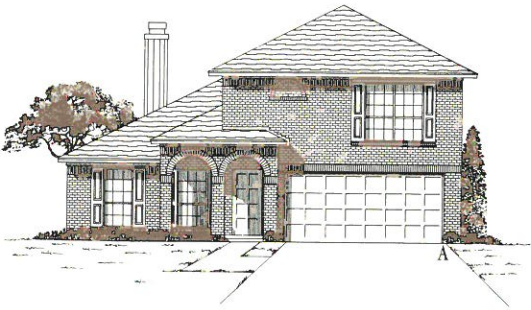


Plan 14

3 Bedroom, 2 Bath, 2 Car Garage

- Extra Large Living Room with Gambrel Ceiling
- Store Front Door from Living Room to Patio
- Plant Shelf in Entry
- Spacious Master Suite with Gambrel Ceiling
- Box Windows in Master Suite
- Box Window in Master Bath
- Plant Shelf in Master Bath
- Oversized Garden Tub in Master Bath
- Full Ceramic Tile Tub Enclosure
- Pass Through Serving Counter from Kitchen to Living Room
- Box Window in Breakfast Area
- Recessed Entry

*Specifications Subject to Change without Notice.
 *See Standard Features List for Additional Information.

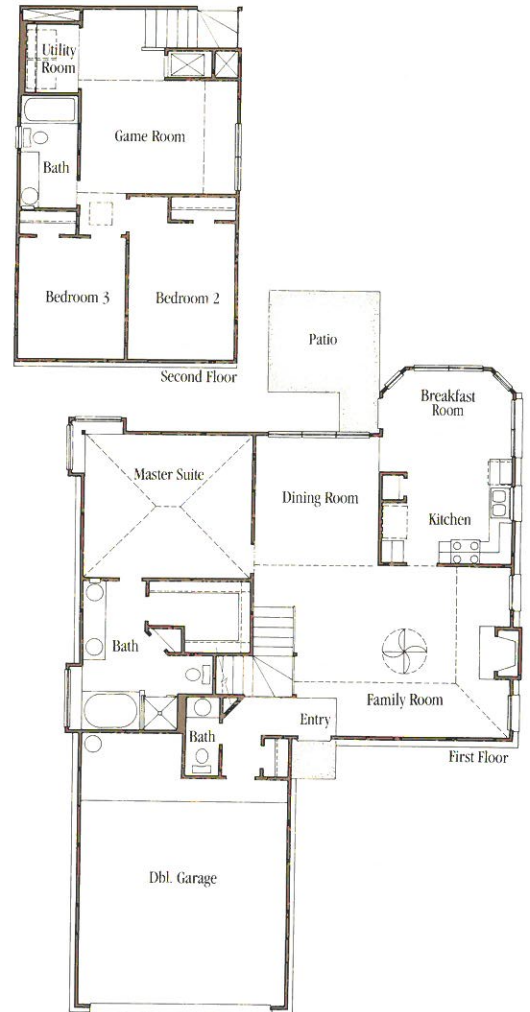
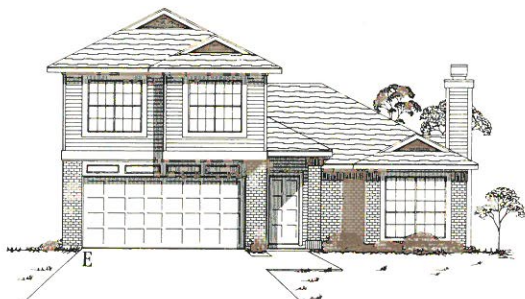
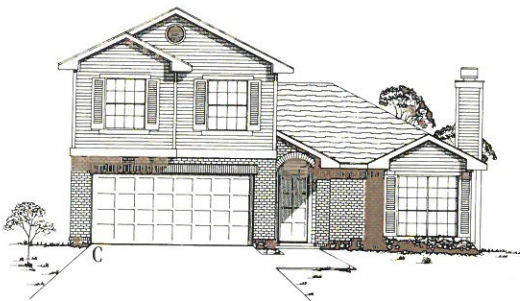
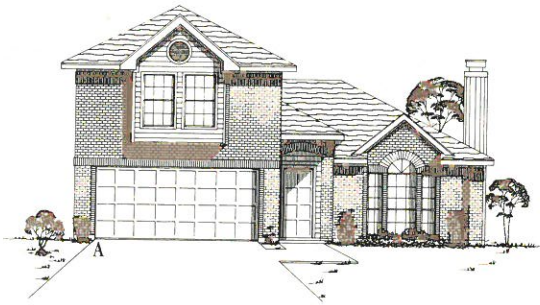


Plan 17

3 Bedroom, 2 1/2 Bath, 2 Car Garage, 2 Story

- Extra Large Family Room with Gambrel Ceiling
- Wood Burning Free-Standing Fireplace
- Store Front Door from Dining Room to Patio
- Box Window with Window Seat in Family Room
- Spacious Master Suite with Gambrel Ceiling
- Oversized Garden Tub in Master Bath
- Fully Tiled Separate Clear Glass Shower Enclosure in Master Bath
- Pass Through Serving Counter from Kitchen to Dining Room
- Separate Breakfast Area with Bay Window
- Convenient Indoor Utility Room

*Specifications Subject to Change without Notice.
 *See Standard Features List for Additional Information.



Plan 18

3 Bedroom with Game Room, 2 1/2 Bath, 2 Car Garage, 2 Story

- Entry Hall with Garage Access
- Extra Large Family Room with Gambrel Ceiling
- Store Front Door from Breakfast Room to Patio
- Raised Ceiling in Game Room
- Spacious Master Suite with Raised Ceiling
- Box Windows in Master Suite
- Box Window in Master Bath
- Oversized Garden Tub in Master Bath
- Fully Tiled Separate Clear Glass Shower Enclosure in Master Bath
- Separate Breakfast Room with Bay Window
- Convenient Indoor Utility Room

*Specifications Subject to Change without Notice.
 *See Standard Features List for Additional Information.



III. Public Hearings

- A. P&Z 87-66-Z - Hold Public Hearing and Consider Amending the Comprehensive Zoning Ordinance to Change the Minimum Dwelling Requirements in Residential Zoning Districts

As the Commission is aware, the City Council has initiated public hearings to consider revising the minimum square footage requirements for residential districts. At the joint Work Session with the City Council a number of alternatives were discussed. The following indicates the current minimum square footages and, for discussion purposes, some of the alternatives that were discussed:

	<u>Current</u>	<u>Alternative Example</u>
SF-16	1,800 sq. ft.	2,500 sq. ft.
SF-10	1,500 sq. ft.	2,000 sq. ft.
SF-7	900 sq. ft.	1,500 sq. ft.
ZLL-5	1,000 sq. ft.	1,400 sq. ft.
2-F	800 sq. ft.	1,000 sq. ft. + 2-car garage
MF-15 - 1 bedroom	-	1,000 sq. ft.
2 bedroom	-	1,100 sq. ft.
3 bedroom	-	1,200 sq. ft.

We have enclosed a copy of a survey done of other cities to provide some examples of what other cities are doing. We have also included a copy of a Memorandum from the City Attorney regarding this matter. As we have discussed, this is a fairly complex matter that contains a number of issues that need to be addressed during the discussion including what effect a change would have on existing development and how any change might impact future development, both along the lake and away from the lake. There should be a number of people present to present testimony on Thursday night.

Agenda Notes - 11/12/87
Planning and Zoning Commission

IV. Action/Discussion Items

- A. Discuss and Consider Amending the Comprehensive Zoning Ordinance to Amend the Minimum Dwelling Requirements

The Commission may take action on your recommendation to Council regarding any changes to the minimum square footage requirements in residential districts. Again, the districts that action may be taken on include "SF-16", "SF-10", "SF-7", "2-F", "ZL-5", and "MF-15". The Council will hear this item on December 7th.

PLANNING AND ZONING ACTION SHEET

Applicant Council initialed Case No. 87-66-2

Property Description _____

Case Subject Matter consider amending zoning ord
review minimum dwelling sizes in residential

CASE ACTION

Date to P&Z 11/12 Approved Disapproved Tabled

Conditions joint Worksession 9/14, Hearing 10/8 - action
tabled, joint Worksession 11/9, Recommendation on
11/12 to amend SF-7 to 1100, leave others as is

Date to City Council 12/7 _____

Conditions _____

Ordinance no. _____ Date _____

ITEMS IN FILE

Zoning Cases

- Application
- Site Plan
- Filing Fee
- Notice to Paper
- Notice to Residents
- List of Residents Notified
- Residents' Responses
- Consultant's Review
- Agenda Notes
- Minutes
- Ordinance
- Correspondence
- Applicant Receipts

Plat/Site Plan Cases

- Application
- Filing Fee
- Plat/Plan
- Engineer's Review
- Consultant's Review
- Agenda Notes
- Minutes
- Correspondence
- County File Number
- Applicant Receipts