Zoning disputes in mediation

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Typically, in a zoning dispute, sides are clearly drawn. One side seeks to alter the zoning in some way, be it through a variance, conditional use permit or other avenue. The other side opposes that. The decision is then left to local zoning board members, who, more often than not, are donating their time to the local community and have little, if any, zoning expertise. The process is often a crap shoot and the end result usually alienates one side or the other.

Does it always have to be that way?

As I was recently sitting in a board of zoning appeals meeting, representing a company that was seeking a conditional use permit, and listening to a significant amount of vocal community opposition, it became readily apparent that the two sides of the issue were not communicating with each other. Though the board chair did her best to lead a productive conversation and educate the people in attendance opposing the application, it was as if two entirely different conversations were being had at the same time. Emotions began to run high as the meeting dragged on and fatigue set it.

That there was a clear divide between the two sides was readily apparent as I walked to my car after the meeting, and someone from the mass of people from the parking lot yelled out to me, "Don't worry, we're not going to be a lynch mob."

What if the two sides had an opportunity to sit down and mediate the issues, with a skilled neutral? What if they understood, clearly, what the zoning code, and federal law, provided for and what they did not? What if their questions and concerns could be clearly identified and addressed? What if the applicant could be viewed as a contributor to the community rather than an adversary?

Nationwide, some jurisdictions are beginning to mandate zoning mediation. Some fall short of issuing a mandate, and, instead encourage mediation. Is this not an avenue worth exploring for zoning disputes?

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Several years ago, a local funeral home wanted to open a second location, this one being located across the street from my development. The neighbors were up in arms over this, including shouts of "the whole neighborhood will stink" as they erroneously feared that a crematorium would be part of the project. There was a heated board of zoning appeals meeting, followed by several homeowners' association meetings. The owner of the funeral home asked if he could address the homeowners' association to discuss the project. The homeowners' association granted the request and an hour-long question and answer session was had.

After the owner left the meeting, I assisted the homeowners' association in compiling a list of about a dozen requests that, if granted, would assuage their fears. This list was presented to the owner of the funeral home who readily agreed to all of them. This list of conditions was then jointly presented to the board of zoning appeals at the next meeting and the funeral home's application was approved. By virtue of coming together, the funeral home owner addressed the issues head on and positioned himself to be a good neighbor.

By using a mediator, the parties in a zoning dispute can self-determine what will happen with the land and, if done correctly, everyone will benefit as a result, without the rancor and hostility that can so often exist.