

The Zone Defense Against Smut

New York's new smut-dispersal zoning is a thoughtful, conscientious, progressive and somewhat risky legal step that already has opponents preparing for attack. It straddles the difficult issues of free speech and land-use regulation, and can be argued either way. The courts will have to decide who is the injured party—the purveyor of profitable porn, trafficking in filth with First Amendment protection, or a neighborhood being destroyed economically, socially and environmentally by the offensive use of land on a concentrated scale.

It will take a Solomon-like justice, but similar dilemmas have been successfully resolved before. Zoning in New York is only a 60-year-old phenomenon; in that period a solid body of law has been constructed and legally upheld to resolve the conflict between the public's right to air, light, safety and even beauty, and the rights of private property. That, too, is a basic constitutional freedom, but a balance has been established.

Only the willfully blind can fail to see pornographic blight as the cause of noxious and dangerous conditions. These are appropriate zoning concerns. As the blight spreads from commercial to residential areas, the threat to neighborhoods raises legitimate questions of community and individual rights.

The objective of the new zoning law is to limit these noxious activities and to prevent widespread abuse and destruction, not to deny free speech. The law establishes patterns for "adult uses" by restricting their location

and number in ways that would reduce their impact. Neighborhoods would not be tipped into the squalor from which affronted and endangered businesses and residents must flee.

A similar law in Detroit was recently upheld by the Supreme Court. New York's goes a step further because it would not only restrict future development but also phase out excessive existing activity. That, too, is based on sound precedent. Signs and junkyards have been phased out in this fashion. Those massage and sensitivity parlors that front for prostitution, and the sleazy bookstores and movies that assault sensibilities, represent minimum investments; they can be converted to conforming uses over the course of time and without economic hardship.

The law provides for appeals and special permits to be sure that enough "adult messages" are getting through to satisfy consumers. It might mean going a few blocks farther, but no one would be deprived; there is no need to guarantee door-to-door prurience. The Supreme Court has endorsed the proposition that smut businesses can be zoned in terms of land use as long as they can still reach their audience.

Although the law was first designed to help Times Square, an area in acute deterioration accelerated by ascendant porn, the city's action was triggered by the threat to other neighborhoods. No one is carrying signs saying free speech kills. But ironically, free speech can kill, if the life of a city counts.