very day in meeting rooms across the country some variation of this scenario plays out: A property or business owner wants to make a change that requires a hearing. Neighbors are opposed. Both sides marshal their forces and appear before the zoning board. Each speaker engages in a few minutes of impassioned huffing and then the board must make a decision. It has limited freedom and limited time; the board members must work with the facts in front of them and make a decision within the context of the zoning rules.

No matter what the board decides, some people will leave disappointed. Often this process aggravates rather than heals relationships; it is rarely satisfying even for the winner. And it doesn’t always end there. The party that did not get its way might appeal or file a lawsuit, both of which take up valuable staff time and city money. This, more or less, has been the standard zoning process since the 1920s.

But now some cities are getting good results with a much different approach: mediation.

Recently, a church located in a residential neighborhood came before the Zoning Adjustments Board in Berkeley, California, seeking a permit to add a small second building to its lot for its day care center. (Some details have been changed for confidentiality.) After hearing the case, the zoning board realized that the parties already had a strained relationship that could make the hearing process ugly. The board suggested that they try mediation and both sides agreed. (Usually, cases are referred to mediation by city staff before an initial hearing is held.)

During the mediations—there were several, each lasting two to three hours—it became clear that the real issues went back many years and were as varied as a loud, slamming gate and children picking flowers from someone’s yard. During one interest-

eng exchange, a neighbor said, “Members of the church don’t even say hello to us as they walk by. I feel like a ‘townie’ being ignored by people who go to the university.” A member of the church responded, “Really? You want everyone to say hello? I was trying to respect your privacy. But I am happy to say hello. Hello.”

In the end, the church agreed to make a number of changes in both its permit proposal and its day-to-day practices. Some were as simple as giving the neighbors advance notice of planned events, something that would never have been discussed at the zoning board hearing.

When the church reappeared before the zoning board it presented a revised request—and no one from the neighborhood was opposed to it. The board granted the permit. The mediation process reduced the staff’s workload and eliminated the danger of the decision being appealed to the city council or a court.

Mediation in practice

Planners are familiar with a range of public engagement methods, such as community meetings and design charrettes. Mediation can complement these processes. By involving both parties and their interests, mediators can help the parties generate solutions. By being creative and problem solving together, new ideas that benefit both parties can often be brought to the table.

Mediation begins with everyone agreeing to a clear set of ground rules and the mediator guiding the conversation. The parties (generally not their lawyers or hired experts) present their views, and when appropriate, the mediator encourages the participants to work together.

The project: restoring the Lower Neponset River in Massachusetts. The players: various state agencies, the cities of Boston and Milton, merchants and watershed associations, and a citizens advisory committee whose work is being facilitated by the Cambridge-based Consensus Building Institute. Above: the former Walter Baker chocolate factory.
In a planning context, mediation is a way of generating improved, less contentious proposals for planning or zoning boards to consider. Mediation is subject to the same standards and procedures as other proposals. It is a pre-step, usually optional, before the application is denied.

Incorporating mediation into planning activities offers a number of benefits, including saving time and money. Between 50 and 80 percent of land-use cases brought to mediation reach a formal agreement, according to 2007 report published by the University of Montana that studied 27 programs across the country. Because participants are more likely to have a resolution that they are satisfied with, the number of appeals and lawsuits is minimized. At the very least, mediation reduces the contentiousness of the dialogue, even if no agreement is reached.

Using mediation

Planning and mediation are using in a number of ways.

Zoning/environmental disputes. Mediation offers a complement to the traditional zoning process. When done right, the zoning and planning board has little discretion or where the opposition is rooted more in ideology or politics and less on based on direct impacts. Re-cords, and it needs to be realistic.

Ideally, projects will get referred to me- diation before they go to the zoning or plan- ning board, usual concentrated on projects that are being appealed. While zoning boards are fairly fluent on the formal side, say, they are constantly interacting with an an- gelic group, or new parties and new voices, says CBI’s man- aged director, Patrick Field. “And through innovative, dynamic, vibrant processes, a whole bunch of energy and new idea can be brought to the table.”

Moving forward

For cities interested in incorporating medi- ation into their dispute resolution there are several next steps.

Staff training
Mediation experts say that it is unlikely that Berkeley, or any city, would turn to mediation, and it has helped to resolve disputes, lawsuits, reduce staff time, and save money. It can be useful in existing planning programs and in many cases there is nothing to lose by trying it. As it turns out, when they do it in a proper process, all we can really get along.

Joshua Abrams is a mediator and city planner. He is director of the Consensus Building Institute, a national nonprofit that promotes consensus-based policy making and conflict resolution. Contact him at abrams@cbi.org.