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Frank's Surprise**

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PROMOTING EXCELLENCE IN GOVERNMENT

Non-Conforming Uses

Non-conforming uses are those existing prior to the enactment of an ordinance which renders them non-conforming. A permit for an unlawful use cannot authorize a continued use in violation of the zoning ordinance and does not vest constitutional rights.

Olympus Media, LLC v. City of Dunwoody, 335 Ga.App. 62 (2015).



Abandonment of a non-conforming use means an intentional and knowing relinquishment of a right to devote the property to a non-conforming use as evidenced by an overt act or failure to act sufficient to support the implication that abandonment was intended.

Olympus Media, LLC v. City of Dunwoody, 335 Ga.App. 62 (2015).



If a local government intends for a cessation of use of a non-conforming use to prevent reestablishing, the ordinance should provide a period of time for cessation of use with a specific language that the cessation for a certain period terminates a non-conforming use whether or not abandonment of the use is intended.



To prohibit a non-conforming use from expanding on the same lot, an ordinance should provide the following: No such non-conforming use of land shall in any way be extended, either on the same or adjoining property.

Henry v. Cherokee County, 290 Ga.App. 355 (2008).



Appeals of Administrative Decisions to the Superior Court

In administrative or quasi-judicial decisions (such as a variance or building permit), no new evidence may be introduced to the court or otherwise admitted into evidence. The only evidence considered by the court is that introduced at the administrative hearing before the local governing board or agency.

Druid Hills Civic Association, Inc. v. Buckler, 328 Ga.App. 485 (2014).



Appeals of administrative decisions entered by a local government must be filed in the superior court within 30 days after the decision is reduced to writing and signed by the appropriate official.

Mortgage Alliance Corporation v. Pickens County, 294 Ga. 212 (2013).

Taco Mac v. Atlanta Board of Zoning Adjustment, 255 Ga. 538 (1986).



Due process for administrative hearings before the local government (such as a variance) requires the following:

1. Notice of the hearing
2. Applicant must be allowed to explain its reasons for requesting the variance
3. Allow presentation of evidence in support of the application, including letters, photographs, plats, and schedules of property values in the community



4. Allow the applicant to answer questions from the board members
5. Preparation of a verbatim transcript or detailed account of the hearing sufficient for judicial review
6. Explain the reasons for the board's decision, and put that in writing.

Jackson v. Spalding County, 265 Ga. 792 (1995)



1. On appeal the court reviews only the record of the proceeding before the local government administrative agency.
2. The superior court reviews an administrative decision under the any evidence standard of review on appeal.
3. Construction of the meaning of the ordinance is a question of law for the court.



4. A local government ordinance will be strictly construed by the court in favor of the property owner but never extended beyond its plain meaning.
5. Where an ambiguity exists in a zoning ordinance, it will be construed in favor of the property owner.

City of Dunwoody v. Discovery Practice Management, Inc., 338 Ga.App. 135 (2016).



The only method of appeal of a local government quasi-judicial administrative decision to superior court is by writ of certiorari, O.C.G.A. § 5-4-1, et seq.

City of Cumming v. Flowers, 300 Ga. 820 (2017).



Citation for Ordinance Violations

Entry of a code violation in a citation must recite the language of the violated code section which sets out the offense charged or allege facts sufficient to establish a violation of the code section.

Strickland v. State, 349 Ga.App. 673 (2019).



Zoning Procedures Law, O.C.G.A. Chapter 36-66

ZONING DECISION means final legislative action by a local government which results in:

- A. The adoption of a zoning ordinance;
- B. The adoption of an amendment to a zoning ordinance which changes the text of the zoning ordinance;



- C. The adoption of an amendment to a zoning ordinance which rezones property from one zoning classification to another;
- D. The adoption of an amendment to a zoning ordinance by a municipal local government which zones property to be annexed into the municipality; or
- E. The grant of a permit relating to a special use of property.

O.C.G.A. § 36-66-3(4)



Notice of Public Hearing (Application for Rezoning by Property Owner)

A. Notice published in a newspaper of general circulation within the territorial limits of the jurisdiction at least 15 days, but not more than 45 days, prior to the hearings.

B. The notice must state the time, place and purpose of the hearing.



C. Notice shall include location of the property, the present zoning classification of the property, and the proposed zoning classification of the property.

D. A sign placed in a conspicuous location on the property containing information required by the zoning ordinance not less than 15 days prior to the date of the hearing.

O.C.G.A. § 36-66-4(b)



Notice of Zoning Hearing (Application by City Council or Board of Commissioners)

A. Notice published in a newspaper of general circulation within the territorial limits of the jurisdiction at least 15 days, but not more than 45 days, prior to the hearings.

B. The notice must state the time, place and purpose of the hearing.

O.C.G.A. § 36-66-4(a)



Public Hearing Procedures

A. Local governments shall adopt policies and procedures which govern calling and conducting hearings required by Code Section 36-66-4, and printed copies of such policies and procedures shall be available for distribution to the general public.

B. A local government is required to give equal time to both proponents and opponents of the zoning application. In addition, the written procedures must state that each side shall have no less than 10 minutes.
O.C.G.A. § 36-66-5(a)



Public Hearing on Public Hearing Procedures

The policies and procedures which govern calling and conducting a public hearing may be included in and adopted as part of the zoning ordinance. But prior to adoption of any zoning ordinance, a local government is required to conduct a public hearing on the policies and procedures for conducting public hearings. Notices of a public hearing for adopting policies and procedures shall be the same as for adoption of a zoning ordinance.



Zoning Standards

In addition to policies and procedures required by subsection (a) of this Code section, each local government shall adopt standards governing the exercise of the zoning power, and such standards may include any factors which the local government finds relevant in balancing the interest in promoting the public health, safety, morality, or general welfare against the right to the unrestricted use of property. Such standards shall be printed and copies thereof shall be available for distribution to the general public.

O.C.G.A. § 36-66-5(b)



PUBLIC HEARING FOR ADOPTION OF STANDARD

Standards to be adopted by a local government may be included in and adopted as part of the zoning ordinance. But before its adoption, a local government is required to conduct a public hearing on the proposed standards. Notices relating to public hearings for adoption of zoning standards shall be advertised and conducted in the same manner as public hearings for adoption of a zoning ordinance.



VESTED RIGHTS

Café Risqué/We Bare All Exit 10, Inc. v. Camden County, 273 Ga. 451, 542 S.E.2d 108 (2001).

Where a local government issues a permit which is in violation of an existing ordinance, even if issued under a mistake of fact, the permit is void and the holder does not acquire any vested rights. This is true even if substantial expenditures were made in reliance on the void permit. A local government is not prohibited from revoking an improperly issued permit.



North Georgia Mountain Crisis Network, Inc. v. City of Blue Ridge, 248 Ga.App. 450, 546 S.E.2d 850 (2001).

A land use that is merely contemplated for the future but unrealized as of the effective date of a new zoning regulation does not constitute a nonconforming use. A property owner may acquire a vested right to use property where he makes a substantial change in position by expenditures in reliance on the probability that a building permit will issue or based upon an existing ordinance and the assurances of zoning officials. But where the only change in position is the purchase of the property itself, the purchase does not confer a vested right to a particular use by the purchaser.



Meeks v. City of Buford, 275 Ga. 585, 571 S.E.2d 369 (2002).

The issue in this case is whether a property owner obtained a vested right to use undeveloped investment property in accordance with a variance granted in 1985, 14 years earlier. In finding the earlier variance no longer valid, the court relied on the rule that a property owner must make a substantial change in position or make substantial expenditures or incur substantial obligations in order to acquire a vested right. In this case, the mere reliance on a variance without showing substantial change in position by expenditures or other obligations does not vest a right in the land owner to develop in accordance with the earlier variance which would no longer be valid by virtue of a subsequently adopted zoning ordinance.



Cooper v. Unified Government of Athens-Clarke County, 277 Ga. 360, 589 S.E.2d 105 (2003).

A property owner claiming a vested right to use property must make that claim to the local government before an appeal is made to the superior court. A claim of vested right to use property may not be made for the first time in superior court.



Union County v. CGP, Inc., 277 Ga. 349, 589 S.E.2d 240 (2003).

The issuance of a building permit results in a vested right only when the permit has been legally obtained, is valid in every respect, and has been validly issued. Where a permit was issued to build a subdivision which was in violation of the flood control ordinance, the permit was not valid and the developer did not obtain a vested right to complete the subdivision.



Cohn Communities, Inc. v. Clayton County, 257 Ga. 357, 359 S.E.2d 887 (1987).

“The rule in Georgia is that where a landowner makes a substantial change in position by expenditures in reliance upon the probability of the issuance of a building permit, based upon an existing zoning ordinance and the assurances of zoning officials, he acquires vested rights and is entitled to have the permit issued despite a change in the zoning ordinance which would otherwise preclude the issuance of a permit.” The expenditure of \$600.00 was not substantial and thus did not accord the developer of a proposed multi-family building a vested right.



ZONING OF PROPERTY IS LEGISLATIVE DECISION

Courts consider the following standards in reviewing zoning decisions: **Diversified Holdings, LLP v. City of Suwanee, 302 Ga.App. 597 (2017)**

1. Existing uses and zoning of nearby property.
2. The extent to which property values are diminished by the particular zoning restrictions.



3. The extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals or general welfare of the public.
4. The relative gain to the public, as compared to the hardship imposed upon the individual property owner.
5. The suitability of the subject property for the zoned purposes.
6. The length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the property.



LAND USE CONDITIONS, INCLUDING
CONDITIONAL ZONING: WHAT A TOOL!

SPECIAL USE PERMITS

City of Atlanta v. Wansley Moving & Storage Company, 245 Ga. 794, 267 S.E.2d 234 (1980)

The terms “special use permit” and “conditional use permit” mean essentially the same thing. Both involve a special use authorized by the zoning ordinance, but the ordinance provides that such uses are allowed only upon condition that it’s approved by the appropriate local government subject to meeting certain standards or conditions.



Conditional zoning is enforceable if the conditions are imposed pursuant to the police power for the protection or benefit of neighbors to ameliorate the effects of a zoning change.

Warshaw v. City of Atlanta, 250 Ga. 535 (1983)

Cross v. Hall County, 238 Ga. 709 (1977)



City of Atlanta v. Wansley Moving & Storage Company, 245 Ga. 794, 267 S.E.2d 234 (1980)

Special use permits must be either approved or denied based upon specific standards.

Without standards, a special use permit ordinance is unconstitutional.



“Rezoning is conditional only if the conditions are set forth in the rezoning resolution itself or if an examiner of the resolution would be alerted to the existence of such conditions. Examples include (1) naming the zoning classification ‘Residential Conditional,’ (2) stating the condition in the rezoning resolution and (3) passing a rezoning resolution ‘pursuant with stipulations presented by [the applicant],’ which stipulations are recorded in the county board’s official public minutes.”

Cherokee Cty. v. Martin, 253 Ga.App. 395, 559 S.E.2d 138 (2002)


