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GAZA Summer Conference: August 19, 2022 Key Land Use and Zoning Laws

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2022 AMENDMENTS TO THE ZPL

Quasi judicial agencies delegated to hear appeals of administrative decisions on applications for variances , special administrative permits, special exceptions, conditional use permits, or other permits not listed as a zoning decision in the ZPL.

O.C.G.A. Sec. 36-66-3 (1.1)



GRANT OR DENIAL OF VARIANCE OR CONDITIONS

Consideration of a variance or conditions in conjunction with a rezoning or special use permit is a legislative action to be decided by the city council or board of commissioners. Only one hearing is required. Newspaper notice required at least 15 to 45 days in advance of public hearing.



NOTICE OF QUASI-JUDICIAL HEARING

Notice of a quasi-judicial hearing must be provided at least 30 days before the hearing along with additional notice mailed to the owner of the property subject to the proposed action.

NOTICE OF AMENDMENT TO SINGLE-FAMILY USES

Proposed amendment to the zoning ordinance relating to single-family uses to permit multifamily uses or to grant blanket permission to deviate from existing zoning requirements of single-family zoning requires adoption at 2 regular meetings of the local government not less than 21 days apart.



HEARING ON POLICIES AND PROCEDURES

Local government shall adopt policies and procedures which govern the calling and conducting of quasi-judicial decisions and specify a time period of not less than 10 minutes per side.

O.C.G.A. Sec. 36-66-5(a)

ADOPTION OF STANDARDS FOR QUASI-JUDICIAL DECISIONS

A local government may (shall) adopt specific standards governing the exercise of quasi-judicial decision-making to include factors by which the local government directs the evaluation of quasi-judicial matters. Copies shall be made available for distribution to the general public.

O.C.G.A. Sec. 36-66-5(b.1)

APPEALS OF QUASI-JUDICIAL DECISIONS TO THE SUPERIOR COURT

In the case of quasi-judicial decisions (such as a variance or conditional use 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 hearing before the local governing board or agency.

O.C.G.A. Sec. 5-3-5

O.C.G.A. Sec. 36-66-5.1(a)(2)

TIME FOR APPEAL

Appeals of quasi-judicial decisions entered by a local government must be filed in the superior court within 30 days after the final judgment is signed and notice given to all parties if the agency has a clerk or filed or recorded, whichever comes first, if the agency has a clerk.

O.C.G.A. Sec. 5-3-7(b)

Due process for quasi-judicial hearings before the local government (such as a variance or special use permit) 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)



On appeal, the court reviews:

1. only the record of the proceedings before the local government administrative agency;
2. accepts findings of fact and credibility of the agency unless they are clearly erroneous;
3. accepts a decision regarding an issue unless an abuse of discretion;
4. determines if judgment sustained by sufficient evidence; and
5. reviews question of law de novo.

O.C.G.A. Sec. 5-3-5(a)

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.

The Ansley House, Inc. v. City of Atlanta, 260 Ga. 540 (1990)



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).



- A local government ordinance will be strictly construed by the court in favor of the property owner but never extended beyond its plain meaning.
- 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).

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.

O.C.G.A. Sec. 36-66-5(c)

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.

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.

O.C.G.A. Sec. 36-66-5(c)



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NON-CONFORMING USE vs. VESTED RIGHT

- Non-conforming uses are those structures or uses of land that legally exist prior to the enactment of an ordinance that renders them non-conforming. A use merely contemplated for the future but unrealized prior to the effective date of an ordinance is not a non-conforming use.
- A vested right to develop property in accordance with the prior zoning, and thus not in accordance with the current zoning, comes into being because the owner has made a substantial change of position in relation to the land, has made substantial expenditures, or incurred substantial obligation.

BBC Land & Development, Inc. v. Butts County, 281 Ga. 472 (2007).

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 non-conforming use.

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.



VESTED RIGHT BY ESTOPPEL

“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.”

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

ZONING OF PROPERTY IS A 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

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.

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

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.

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

“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.”

