

The Basics You Should Know About **ZONING**

Zoning is a form of local government regulation which determines how private property can be used by the owners.

This governmental regulatory power attempts to balance the individual owner's dominion over the use of their property with the public good of the community. Zoning is not as ancient as one might think. In Illinois, the first

Zoning Districts

Municipalities and counties with zoning ordinances in effect divide their jurisdictions into "zoning districts," sometimes known as "use districts." These districts are most often classified into broad categories such as residential, commercial/business, industrial. Within these broad categories, specific uses can also be identified.



state-enacted zoning law, the Illinois Zoning Act, was effective in 1921. This act enabled municipalities and counties to pass local ordinances to zone individual parcels of property. This act was actually drafted with the assistance of the Zoning Committee of the Chicago Real Estate Board—now known as the Chicago Association of REALTORS®. The state did not require zoning but left this to the local communities. In fact some municipalities and counties in Illinois, particularly in smaller and more rural areas, have chosen not to enact a zoning code.

The zoning of property is something that is not often reviewed or considered until one decides to transfer, develop, or redevelop property.

There are some basic terms and concepts of zoning which individuals who own or want to own property should know. Terms like "use restrictions," "rezoning," and "zoning variance." It is important to find out if a municipality or county has certain zoning-related requirements that need to be addressed when properties transfer ownership.

In residential, multi-family (apartment buildings, condominiums) is usually considered a separate use. In commercial/business, office use can be designated in one area and retail in another. For industrial, a warehouse use could be considered different than manufacturing and put in different areas. Always check with your municipality or county since property use is classified differently in all areas. What is "R1" in one municipality might be completely different than what it is in another. Since property use has an impact on property value, it is recommended that when you are planning to market a property, and you are not sure of the use, call the municipality (or county if it's in an unincorporated area*) and talk with the building or zoning department to verify the zoning or use classification of the property. This is a good practice if the zoning and the exact usage of the property are in question.

**According to state law, a municipality is able to zone property up to one-and-a-half miles outside its corporate boundaries.*

Rezoning

From time to time, units of government may change zoning. This can be done due to a request from a property owner or to implement a land-use plan or policy goal established by the governing body. There are certain notification requirements on the part of the government and/or property owner to notify the effected property as well as surrounding property owners.

State statute provides for the notification of all property owners that are within 250 feet of the property that would be rezoned. They must be notified of any proposed or requested zoning changes and must be given an opportunity to provide public testimony at a public hearing.



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Municipal zoning disclosure and certification requirements

There are some municipalities that require the current property owner to disclose the zoning status of the subject property to prospective purchasers. Some municipalities have a certification process whereby the municipality—once notified by the seller of an imminent or pending property transfer—will do a zoning “check.” The intent is to ensure that the current and future use of the property complies with the zoning code, or is a legal, non-conforming use, and that the future owner of the property is made aware of how the property is zoned. Again, check with our municipality or county to determine if this type of certification process is required.

Use Restrictions

Even if a property is zoned for a particular use, the zoning code can apply specific restrictions to that use. Historic designations and legal non-conforming are two examples of a use restriction.

Historic Landmark/District

Designation: With this designation or zoning classification, a property can be classified as business or a residence and be fully functional in that capacity. However, this restriction must be carefully reviewed should a property owner need to make repairs or want to upgrade the property. For example, there may be height or size restrictions, the use of certain materials may be required or a municipal review process and a subsequent “certificate of appropriateness” may be required before a project can go forward. Historic designation sometimes appear on the title policy but can best be determined by calling the municipality or county to determine if one exists. It is important to know this information since affordability of the maintenance of the property may be a long-term issue for a purchaser.

Legal, Non-Conforming Status:

Legal, non-conforming status can be defined as a use that was legal under a previous zoning code but no longer complies with the current use

regulations of the zoning district in which it is located. A property can also be considered non-conforming due to its lot size. An example of a non-conforming use would be a property that was built as a duplex when R1 was defined simply as “residential.” A subsequent zoning action reclassifies R1 as single-family use only. Now you have a property that has a “non-conforming” use. The use of that property is legal but it does not conform to current zoning code. Most municipalities will allow for the continuation of that use so long as there are no significant changes made to the structure. Many zoning ordinances are written to require that the non-conforming use be brought into compliance with the current zoning classification if the property is abandoned or if the property is destroyed.

The existence of a non-conforming use, even if legal, can affect the value and marketability of the property. Some banks and mortgage brokers will not approve loans on non-conforming properties, and appraisers need to reflect the value difference of the property in their appraisals. It is highly recommended that you be aware of the current zoning status of the property and whether the existing use is permitted by the current zoning status.

Zoning Variance

A zoning “variance” is essentially an exception that the local government grants to a property owner for a use that “varies” from the current zoning requirements. For instance, a municipality or county may have in place a setback requirement that is too stringent for a lot that might be smaller than average for the neighborhood. A property owner can request relief from the local government to allow the property owner a smaller setback or variance from the setback requirement as long as local variance requirements are met. This process is an official act of the government and as such is conducted in a public open meeting. Again, local requirements and time to secure a variance varies, so it is recommended that you learn local requirements and the process for variances *before* purchasing the property.

Zoning and Demolition



If you are dealing with property on which the existing structure might be demolished and replaced by a new structure, it is a good idea to check the municipality’s zoning ordinance for “teardown” provisions. These provisions may regulate things such as the conditions under which the demolition can occur, special fees for the needed permits, maximum house height and area and minimum setbacks.



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