



## **Law You Can Use: Consumer Information Column**

### **Zoning Laws Can Affect You and Your Property**

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Real property ownership is a wonderful thing for many reasons. For instance, owning property is thought to allow for great freedom and latitude when it comes to how land can be used and developed – as opposed to renting, where tenants must typically receive permission from a landlord for even the smallest of changes. But one’s right to use and develop real property is not without its limits. Federal, state and local governments all regulate the use and development of private real property in a variety of ways.

One way in which local governments regulate how real property is used and developed is through the enactment and enforcement of zoning codes. While many people may have at least a minimum level of familiarity with the concept of zoning, it can be easy to underestimate or misunderstand how, when, and to what extent zoning may affect the general public.

#### **Zoning Basics**

Zoning can be described as the government’s use of its authority to divide land into different districts in order to regulate its use and development. This authority stems from the government’s interest in protecting the public’s health, safety, convenience, comfort, prosperity and general welfare. We call these governmental powers, generally, “the police powers.”

Aside from procedural and other administrative rules, zoning laws normally apply to two distinct concepts: *standards and uses*.

Zoning laws that regulate *standards* determine how property looks and can be physically developed. How tall a building is permitted to be, how far back from a boundary line an improvement must be placed (typically referred to as a “setback”), and the maximum area a lot can be covered by improvements are examples of these types of zoning laws.

Zoning laws that regulate *use*, just as the name implies, restrict properties to certain types of uses. These laws regulate whether properties may be used for residential purposes (including single family vs. multi-family) or for office or manufacturing purposes.

There is no statewide zoning code in Ohio. Rather, the state’s political subdivisions (counties, townships, villages and cities) may enact their own zoning codes from authority granted by the Ohio Constitution and the Ohio Revised Code. This results in vast differences in zoning laws from one local government to the next in terms of their application, standards and procedures.



## **Zoning and the Property Owner**

At first thought, one might think that zoning only affects commercial or large developments. It is correct that these matters often raise zoning considerations, and sometimes, controversies, but the reality is that anybody can encounter zoning issues. Seemingly inconsequential alterations to property—like constructing a shed or outbuilding, extending a porch, or installing new windows—could run afoul of local zoning codes.

Local governments will generally have inspectors or officers who enforce the zoning code. If these officers discover an unlawful use or improvement, it could spell trouble for the property owner.

### **Penalties for Zoning Violations**

Penalties for violating zoning codes can be serious. Criminal charges are one possibility, which could lead to convictions, fines and, in severe cases, jail time. Civil actions are also an option. Injunctive relief (a court order to cease any illegal use or to remove an unlawful improvement), removal or stoppage of the unlawful improvement or usage by the government, and other legal consequences could be imposed for violating a zoning ordinance. In any event, unlawful uses or improvements must typically be stopped or removed unless an alternative solution is reached.

Violations of zoning laws create a unique issue, too, in that each day a violation continues is typically considered a new, separate offense. This means that common legal defenses like statutes of limitations or double jeopardy may not apply when the government seeks to enforce its zoning code. For example, if a person's garage encroaches in a setback area, a city could issue a violation notice and commence legal action 15 years after the garage was built, and the person may ultimately be required to tear it down. Even if the city was unsuccessful in its first case against the garage's owner, however, it could issue a new violation notice and commence a new action based on the "same" violation six months later.

### **Getting Around a Zoning Code**

People can seek permission from their local government to use or develop property in a way not permitted by the zoning code. This can be done by requesting a variance or conditional use permit or asking for the property to be rezoned. The type of request will likely determine the procedure that must be followed, but in any case, notice will need to be given to the appropriate persons and a public hearing before a government body will be required.

Obtaining a variance, conditional use permit, or rezoning can be tedious, time consuming and expensive, and none of them are granted as a matter of right—the burden is on the applicant to demonstrate that a departure from, or modification to, the zoning code is appropriate and warranted.



## **How an Attorney Can Help**

Zoning matters are heavily driven by forms, procedures and relationships. Success often requires navigating complex rules and standards (this article hardly scratches the surface of what these entail), all while adhering to strict time frames. Just as important is knowing the persons in the local government who are involved, as well as what their concerns might be. Experienced attorneys can be a valuable asset to help with these issues.

Additionally, because zoning codes can vary greatly among local governments, an attorney who is familiar with a particular region, and the government players involved, is the best ally to have.

## **About the Author**

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