

Think Like a Developer: Fair, Realistic Zoning

February 7, 2020

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I. ZONING - GENERALLY

- A. What is zoning? It is the means of subjecting a property to a certain set of rules and regulations with respect to land uses and development standards.
- B. Other than land uses, the following development requirements are typically imposed in zoning resolutions:
- i. Density
 - a. Residential: Number of units per acre
 - b. Other: Typically square footage per acre
 - ii. Building heights
 - iii. Setback requirements from property lines
 - iv. Maximum lot coverage: Amount of impervious surface which can be developed.
 - v. Architectural design
 - vi. Landscaping design
 - vii. Lighting
 - viii. Signage
 - ix. Street widths and designs
 - x. Required traffic improvements: Traffic study may be required

- C. Developers' View of Zoning: It should be assumed that a property owner has all rights of development until such rights are taken away by government regulation. Therefore, land use restrictions should not overreach. This is one of the things that distinguishes us from other countries, which "give" property rights rather than take them away.

II. PROCEDURE

- A. Statutory zoning procedure: The process for townships is governed by **Ohio Revised Code Chapter 519**. A township may elect to adopt its own zoning regulations or defer to the County in which it is located to provide and administer such regulations. If the township defers to the County, then the County's Planning Commission reviews the zoning application and makes a non-binding recommendation to the Board of County Commissioners, which ultimately votes to approve or disapprove the application. The following procedure applies when a township adopts its own zoning regulations:

- i. County or Regional Planning Commission holds a hearing on a zoning application and makes a non-binding recommendation to the Township.
- ii. A township's Zoning Commission, consisting of appointed (and not elected) members, then holds a hearing on an application and makes a non-binding recommendation to the legislative body of the Board of Township Trustees.

Note: While the Zoning Commission's decisions are non-binding, the majority of the time the Board of Trustees will vote in accordance with the Commission's recommendation.

- iii. Board of Trustees receives the recommendation of the Zoning Commission and sets a date for a public hearing on the zoning application. After the hearing, the Board votes. Majority vote needed for approval of the application.
- iv. Zoning resolution becomes effective after the expiration of a 30-day referendum period. Ohio law provides citizens with the right to file a referendum with the County Board of Elections to challenge a zoning action by filing a petition including a number of valid signatures equal to the number of voters for the last election for governor in the jurisdiction in which the zoning action took place. See Ohio Revised Code Sections 303.11 and ORC 519.11.

- B. Types of Zoning Districts

- i. "Straight" zoning districts: Townships may (but are not required to) adopt zoning resolutions that define the regulations that apply to different zoning classifications. Each classification has a list of allowable uses and development standards relating to density of development, setbacks, building heights, etc. Typically each local jurisdiction has several different residential, commercial, office, and industrial classifications.

ii. Planned districts: Applicant is permitted to write (in a “zoning text”) its own set of zoning regulations that apply only to its property.

- Why use this type of district?

- a. Flexibility – Allows for mix of uses in a single district
- b. Variances – Permits the applicant to seek variances from development standards that would otherwise apply in a straight zoning district. For example, decrease required property line setbacks, increase permitted building heights, etc.

- What’s the catch?

- a. Most jurisdictions have their own set of aesthetic preferences for developments. To the extent that you seek variances from them, the case becomes more difficult.
- b. Often used when a project is complex or when multiple uses are sought (i.e., mixed use developments)
- c. Relatively time-consuming and expensive

iii. Limitation districts: A hybrid of straight and planned districts. A zoning limitation text is used to write standards that are specific to the property that is the subject of the zoning. The limitation is applied to a straight zoning district that can accommodate the proposed development. However, the standards that may be written into the text can only be more restrictive than the underlying straight zoning district provides.

Example: A township’s zoning resolution provides for a “Highway-Oriented Zoning District” which allows for hotels, gas stations, fast-food restaurants, other restaurants, truck stops, and similar uses. Developer wants to build a Holiday Inn. It might write a zoning text which would limit the use of the property to only hotel uses. This might make the township more comfortable than zoning the property more broadly to allow the other uses as well.

III. GENERAL OBSERVATIONS FROM A DEVELOPER’S PERSPECTIVE

A. Zoning is complex: It involves numerous issues, various constituencies with varied interests, and knowledge of the local communities in which you are pursuing case. Good professional relationships with local officials can be very important. Participants in and influencers of the zoning process include:

- i. County and township administrative staff
- ii. Township and/or County economic development department
- iii. County engineering department

- iv. County Planning Commission
- v. Township Zoning Commission
- vi. Township Board of Trustees
- vii. Adjacent or nearby neighbors
- viii. Community at large
- ix. State government officials in the case of large economic development projects

B. Developer Decision-Making:

- i. Site Selection: Choosing a property for development involves a large number of decisions. These include:
 - a. General market conditions (supply/demand; volatility of property values; general feel of a community and the proposed development's fit)
 - b. Land price
 - c. Prediction of the likelihood of obtaining use and densities that will allow a project to be economically feasible.
 - d. Time to obtain zoning approvals – time is money.
 - e. Estimated costs. Costs include planning, engineering, permitting, legal fees, architectural design, traffic studies, and others.

- ii. Utilities: Development follows sanitary sewer and water utility infrastructure.
 - a. County Health Departments and Ohio EPA impose strict regulations on properties which do not have access to these utilities. Septic systems are the alternative to public sanitary sewer lines and are deemed to be much less preferable from an environmental standpoint. Water wells do not provide the same level of water quality, pressure, or volumes as public water lines.
 - b. Some townships do not have any ability to provide sanitary sewer and water services. This severely limits the amount of development that can occur. For example, in many parts of Franklin County development of residential projects is practically limited to 1 residence per 2-3 acres due to health and environmental regulations. In incorporated areas, densities can range from 1 residence per acre to in excess of 25 residences per acre (in the latter case, this would be an apartment development). Density is important to a developer for a number of reasons.
 - c. Townships that have the ability to provide sanitary sewer and water services are at a significant advantage in terms of attracting development and stopping annexations because they can offer densities that make sense for development.

- iii. Annexation: Annexation is the process of changing the governmental jurisdiction that governs a property from a township to a village or city.

Developers with property which is adjacent to a municipal boundary may elect to annex a property to a municipality.

- iv. Infrastructure Costs: A significant part of the financial equation for a developer is the cost of constructing infrastructure needed to serve a proposed development. Such infrastructure includes:
 - a. Streets
 - b. Off-site traffic improvements (turn lanes, traffic signals, etc.)
 - c. Sanitary sewer and water service lines (or septic systems and wells)
 - d. Storm water management
 - e. Environmental considerations (wetlands, trees, streams, etc.)

- v. Public finance tools:
 - a. Tax increment financing districts
 - b. New community authorities (require County assistance)
 - c. Tax abatements (not available in townships)
 - d. Fee waivers
 - e. Other