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The ABCs of Zoning

Preparing for Municipal Planning and Zoning Commission Hearings

By Alan A. Broholm, CCIM

Astute commercial real estate brokers and developers often increase property value by obtaining a change in a property's zoning designation or by subdividing a parcel of land. This can apply to vacant land, improved sites, and most often, to existing properties with obsolete buildings.

Zoning changes always require government approval, usually at the local jurisdiction level. Zoning regulations are designated and enforced by all forms of municipal government, including cities, townships, counties, parishes, and state agencies. Getting approval can be a difficult process, but you can greatly improve your chances if you address certain areas of concern before making a presentation to the planning and zoning boards.

A change in zoning normally allows a change or creation of use for a property. Brokers and developers know that upgrading a parcel to its "highest and best" use usually produces the greatest monetary value for the parcel owners. The challenge is to convince certain other citizens that the "highest" use is also the "best" use for a given property.

In subdividing property, land parcels typically are downsized to accommodate a partial sale of a plot of land. Some jurisdictions allow the subdivision of land zoned for agricultural use into smaller parcels of five acres or more without required government approvals. Subdividing land in any other way will likely require a developer to obtain some form of government approval.

The Possibilities

The most common zoning change made today is to have land currently zoned for agricultural use rezoned to residential uses.

Another way to increase property value is by remodeling existing properties to expand or change their originally designated use. Typical examples would be the renovation of an outdated strip shopping center; conversion of former government use buildings; renovation of hotels and hospitals into residential housing units; conversion of industrial buildings located adjacent to heavily traveled arterial roadways to retail uses; reclassification of cemetery parcels to non-burial uses; and conversion of waterfront property and other terrain-favorable parcels to recreational uses such as golf courses, ski slopes, gaming facilities, vehicle and animal race courses, and vacation resorts. Undoubtedly, there are many other uses, some not even tried or thought about yet, for this wonderfully adaptable asset all-inclusively called real estate.

The Process

Generally, the previously mentioned uses will require a review by a local planning authority. Many redevelopment plans never are implemented because they first require approval by a government zoning or planning board. Because renovations of any sort typically require that the entire project be brought into compliance with existing building and safety codes, it often becomes economically unound to rehab some properties. The local planning and zoning hearings often mandate that any zoning or use change will only be authorized if the subject parcel is brought into full compliance with existing building code statutes. Landscaping, water retention, and parking requirements also must meet current criteria. A typical requirement that causes deep financial strain on a project is the addition of a fire-department approved sprinkler system and building walls that meet newly established fire-hour ratings. Another is full compliance with the requirements of the Americans with Disabilities Act.

A project sponsor must demonstrate that the proposed project, whether it is a for-profit or a not-for-profit endeavor, will improve the quality of life for the citizens who will inhabit, use, or may be financially affected by the project. Some communities require a public hearing before issuing a building permit, whether it is a new project or a remodeling project. A typical quality-of-life improvement is the addition of public sidewalks to a site that never had them. Cities often add sidewalk requirements that mandate that the developer construct those walls on public property. Alley paving and landscaping also are quality-of-life improvements.

In the past, obtaining a building permit was often a simple process of supplying the appropriate governmental office with a few sets of building plans, paying a minimal fee, and waiting a few days while the plans were reviewed. If the proposed project had a structurally sound design, the permit issuance was almost automatic.



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Areas of Concern to Municipal Planning and Zoning Boards

- Is the proposed site aesthetically pleasing?
- How many jobs would it create?
- How much of an increase in vehicle traffic would the new operation create?
- How much in additional property tax revenue would the property generate?
- What are the parking or landscaping requirements?
- What type of infrastructure improvements are required?
- Does the signage meet existing city ordinances?
- What effect would it have on adjacent properties?
- Does it comply with the existing community master zoning plan?
- What types of atmospheric disturbances,

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Today, building plan reviews are usually much more detailed and often require input from other local governmental agencies, such as police and fire departments, that eventually may have interaction with the proposed development. Today, in many communities, the first logical step in obtaining a building permit is to gain approval for the proposed project from the appropriate zoning/planning board.

Some communities employ a community development director to help you through the permit process. In other jurisdictions, your only guide through the permit process will be a building inspector. The director can explain basic requirements and areas of local concern. The director will typically supply you with all the necessary forms and schedules pertaining to the permit process and tell you whether your project will require any type of public hearing or building department interview.

The time frame between the filing of an application for a zoning/planning board hearing and the actual hearing date varies by community and existing case load. Depending on statutory publication requirements, it may take up to three months to get on a zoning/planning board's agenda. Usually, the smaller the affected community, the shorter the time will be between the filing date and the hearing date. Depending on the scope of a project, the zoning/planning board may require a specially advertised public hearing on a project for either the initial presentation or subsequent hearings.

Controversial projects often are tabled to allow greater publication of following hearings and greater public input before decisions are made. Controversial proposals may take many months or even years to gain approval.

Filing fees also vary tremendously from community to community, but generally range from \$20 to \$500 per project.

The Decision-Making Body

When a project is within designated city limits, the city usually has a committee, commission, or board of appointed citizens who serve voluntarily on a planning committee, commission, or board and another group of volunteers who serve on a zoning committee, commission, or board. In some communities, project approval will be required from both groups. In others, these groups are combined into one entity. These groups may be chaired by an elected official such as a mayor, council member, or alderman.

Projects in unincorporated areas usually are under the jurisdiction of similar boards at the township, county, or state level of government. These groups are collectively referred to as the zoning/planning board.

Just as zoning codes and ordinances are markedly different in adjacent communities, so, too, is the authority of zoning/planning boards. In one community, the decision of the zoning/planning board is absolute with regard to final project approval. In a neighboring community, the zoning/planning board may be only advisory in nature. That type of board may offer recommendations to an elected body such as a city council for final approval. If project approval is denied, many governments offer an appeals process to ensure fairness and to squelch arguments concerning political favoritism.

What the Boards Want

Most governmental agencies and planning commissions are interested in the aesthetic conformity of the proposed site, the number of jobs it will create, the amount and timing of the vehicle traffic that the raw operation will create, and any potential additional property tax revenues.

The boards are often subject to input from homeowners associations, environmental groups, historical societies, park district representatives, school boards, economic development officials, parent-teacher organizations, fraternal organizations, and nearby property owners. Many of these groups advocate no-growth policies to protect community values. They often raise quality-of-life issues and open-space concerns. If possible, contact these groups before any scheduled zoning meeting to expose community concerns that you can address prior to the public hearing.

The boards and the public officials who appoint them are subject to the whim of public opinion and want to avoid making politically incorrect decisions. Many communities now broadcast board meetings and required public hearings on local community-access cable television channels.

Zoning/planning boards typically want to approve development projects that create infrastructure improvements at no cost to the community. The creation of needed new roads, sewer systems, landscaping, and donations of land to be used for other community projects are considered the developer's cost of doing business in the community. The creation of an additional tax base and jobs must, at a minimum, offset the cost to provide municipal services to the proposed project.

Existing roadways must be able to readily accommodate additional vehicle traffic created by the project. If not, the developer must pay for any needed roadway improvements.

Zoning enforcement is a legal form of discrimination against those uses perceived to be detrimental to local community values. Published zoning codes and local ethics merge so that often the word value encompasses both local real estate value and local moral values. Uses permitted in one city would not be acceptable in another even though the physical configuration and surrounding uses and structures might be identical in both cities. A typical example is exclusionary zoning requirements that limit or prohibit adult entertainment facilities, gambling parlors, or uses that would permit the consumption of alcoholic beverages. Zoning/planning boards are a barometer of public opinion and can use the power vested in them as a means of both protecting and enhancing local values.

Another example would be overbearing parking or landscaping requirements that can severely limit potential property uses. Often, communities grant parking and landscaping variances from the published code, but they



prefer to keep a stiff requirement on the books to more easily reject uses perceived to adversely impact local values.

In some communities, parking requirements are correlated to building size, while in other towns, the code considers the anticipated number of employees or residents at the site or a combination of both methods of determining how many parking spaces will be needed. Still other jurisdictions use the number of patron seats for retail establishments such as theaters, restaurants, entertainment complexes, and sport facilities to determine minimum parking needs.

Nearly all jurisdictions have a legal forum to challenge existing approved uses as well as to update and improve existing statutes. In our rapidly changing surroundings, certain zoning provisions can become outdated by technological, geographical, legal, and environmental issues that were unknown when the existing zoning statutes were adopted. A few years ago, video film rental stores and pizza carryout/delivery-only stores did not specifically fit into many zoning classifications in most cities. Thus, zoning codes may be frequently revised to reflect the desires of the local population.

Give and Take

Many communities have municipal ordinances that require land developers to donate a percentage of their land for development of public recreational areas. Sometimes a cash donation to the community substitutes for a land donation. Developers often offer open space as an incentive to win board approval of their project. Planning boards are acutely aware that open space is one of the most efficient deterrents to overcrowding and urban blight.

On large and small developments, extensive landscaping requirements and control of the type and color of building materials is the clout that boards have to assure aesthetically pleasing additions to the community. Unfortunately, the cost of meeting those board directives can render your proposal financially unsound.

The developer must identify all of the various community groups' desires, meld them with ordinance requirements, and then negotiate an economically palatable agreement that will permit development of the project. Winning board approval of your plan within your budget is the goal.

Obtaining that approval may mean convincing the zoning/planning board to grant a variance to the existing ordinances or approve a special-use permit to allow development of your project in a zoning jurisdiction that normally would not accommodate your project.

The process of obtaining a zoning variance or a special-use permit is often the same as applying for a change to the existing zoning designation assigned to a parcel.

The Presentation

Zoning/planning boards hold public meetings at regularly scheduled times on at least a monthly basis. Those public meetings will act on your proposal using written material provided by you prior to the meeting.

Whether at a regularly scheduled meeting or a public hearing, you should always plan to deliver a concise, preplanned presentation of your project, augmented with visual props, accurate statistics, and a well-rehearsed script.

Because no two communities have the same zoning codes and ordinances, tailor each presentation to the specific municipal authority with jurisdiction over the site. The easiest way to communicate development plans is to provide each member of the hearing committee and members of the audience with color copies of the proposed building. Make color copies of any proposed signage to leave with committee members. If committee members can see for themselves what you plan, it could help, for example, get a single-panel sign approved when the typical standard requires individual letters.

Actual photos of existing community buildings and signage may bolster your argument if you are seeking a variance to existing ordinance requirements. Mount these on a display board that can easily be passed among committee members. Instead of prepared statistical information, use input from local citizens and designated employees to provide a more accurate scenario of the anticipated impact on a neighborhood. Ideally, take a person involved in managing a similar site, office building, factory complex, or apartment property to hearings to answer operations-related questions.

Audience participation is strongly encouraged at the early stages of the hearing process. Audience input can have a tremendous impact on the decision regarding your proposed project.

Always be truthful and never argue with a zoning/planning board member. Arguments create controversy and adverse public opinion that will surface in any appeal process. Consider yourself a guest in the community in which you're making a presentation and act accordingly.

Take notes of all objections, and if it is apparent that a vote on the subject of that meeting would be unfavorable, perhaps ask to have the hearing tabled in order to continue it at a later date. This tactic allows you to contact the objectors and to present alternative plans before the next regularly scheduled zoning/planning board meeting. By working one on one with concerned people and groups, developers have been able to turn public opinion around by alleviating all objections to a planned project that were raised at the initial hearing. In the final analysis, zoning changes have to be a win-win negotiation to be profitable for all parties.

A Community Project

Winning approval of your project from zoning/planning boards is done by obtaining the consensus of all interested groups. You should strive to gain total community support to have your project accepted by its citizen/governing

boards.

The ongoing success of a project after it is built is often due to a commitment of support received before the commencement of construction.

Lastly, accept defeat graciously so that you can try for approval again through available appeals processes or at a later time when a different group of citizens serves on the zoning/planning board. Sometimes, once the seeds of development or redevelopment are planted in a community, events may occur outside the boundaries of a subject parcel that can lead to constructive reevaluation and eventual approval of your project. Brokers, developers, and investors often need to wait until the local populace catches up with their visionary concepts. When that happens, your previous experience with the zoning and planning boards will prove to have been worthwhile.



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