

Land Use and Zoning Basics for Community Associations

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Recently, I detailed a variety of land use laws and land use regulations pertinent to community associations and community association managers.

The webinar, which is part of Ward and Smith's Community Association Building Blocks series, analyzes how municipalities and municipal governments utilize comprehensive zoning ordinances and land use plans to regulate development and how associations can best position themselves to address land use issues as they arise.

In short, the event's goal was to provide community association managers with the tools to address specific issues and how to issue spot potential land use matters in real-time. With that knowledge, community associations are in a much better position to communicate with planning staff and to determine the best course of action, including whether to obtain legal counsel.

Navigating Land Use Issues

A common issue for community associations is adjacent developments and potential impacts to an adjoining community. Understanding how to obtain concessions from a developer or the most effective way to oppose a development is critical. Of course, to do that, a community must first understand the size and scope of a new development.

Internal issues within an association are less frequent. These commonly refer to when an association or one of its members violates a zoning ordinance.

Concerning land use regulation enforcement, the association must defer to the municipality. However, deference does not mean complete abdication or avoidance. Rather, the association should communicate and work in concert with the municipality – including having a working understanding of the applicable ordinances. This empowers the association to communicate possible violations or enforcement actions to the municipality, which will then, in turn, utilize its enforcement regime to determine if a violation occurred.

When considering land use issues, associations should remember to:

- Work with the municipality

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- Not be overly aggressive when seeking enforcement
 - Ensure compliance with all municipal laws and regulations

However, if an association is implicated, or at-risk, by a potential violation, the association should be aggressive in addressing the violation and likely should seek out legal counsel to understand the scope of the potential violation, remediation measures, and potential exposure.

Understanding the Basics

Step one in the land use ABCs is figuring the jurisdiction in which the association is located. Knowing if the association and applicable property are in the city, county, or within an Extraterritorial Jurisdiction (ETJ) is essential in determining which laws apply to a certain scenario.

After determining whether the association is in a city, county, or ETJ, the next step is to perform due diligence concerning the jurisdiction and the zoning and land use regime. In doing so, it is paramount to consider the following:

- Uniform Development Ordinance (UDO) or Land Development Ordinance (LDO) – These are the core documents that set use restrictions, permitted uses, development standards, parking regulations, signage, height restrictions, buffering, and setbacks
- Comprehensive Plan – Plans which assess future land use for the jurisdiction, defining types of uses, desirable patterns, and trends for development; not legally binding but often reviewed by staff to evaluate specific requests
- Zoning Map – A map reflecting the current zoning of a parcel or parcels, as well as what the zoning may be for parcels adjacent to the association

Knowing who to contact is also critical. Every city, town, or county will have a dedicated planning and development department available to answer any questions from the association. Use them as a resource and do not hesitate to schedule meetings or conference calls with them to review pertinent land use matters.

There are three boards and commissions that consider land use related cases:

1. Planning Board/Zoning Commission - Volunteer board that takes a first look at cases and then makes a recommendation to the board of adjustment, city council, or county commission.
2. Board of Adjustment - Specialized board that hears a narrow subset of cases, such as variances, historical preservation issues, and special use permits.
3. City Council/County Commission - Makes final decisions on re-zonings and ordinance changes.

Zoning Issues and Special Use Permits

A UDO or LDO will define numerous districts, typically categorized as single-family, multifamily, office and institutional, commercial, and industrial. Certain uses will be prohibited or allowed within each district, including some that are permitted with certain conditions or subject to a special use permit.

A request for rezoning refers to a request to change the parcel's zoning district. The decision to rezone a property can be based on community input, economic impact, and potential community impact. Significant discretion is afforded to the Zoning Commission, City Council, and County Commission for these types of legislative decisions.

Similar to a standard rezoning, conditional rezoning is a request to change a parcel's zoning district. However, it varies from the standard rezoning insofar as additional conditions beyond those required by the UDO or LDO are incorporated into the request. For adjacent development, Associations should consider using conditional rezoning as a tool in working with developers. This can be a way for associations and developers to find agreement on how a development should look and be structured. Variance requests seek to vary from the UDO or LDO due to an undue burden and unfair hardship. In North Carolina, the standard is quite high and variance requests pose a significant evidentiary hurdle for applicants.

A special use permit (SUP) refers to a specialized process for approval or consideration of certain developments or uses whereby the applicant or developer must meet specific, heightened standards. To meet that burden, the applicant must show that the proposed use is in harmony with the surrounding area, that it will not have a negative impact on the health, safety, or general welfare of the surrounding area, and that it will not have a negative impact on adjoining properties or property values.

For property owners interested in challenging a land use request, I recommended keeping an eye out for public notices, as these are required when a development application is submitted, contacting the planning department, and performing due diligence on potential impacts.

Being specific and basing the challenge on applicable law is also critical. Additionally, I recommend having a clear understanding of the facts and engaging with the community to help address any concerns or questions about a proposed development.

Finally, work with planning staff and outreach with the developer. The association is an organizing principle that can address the concerns of the entire community through communication with staff, the developer, and the elected officials. Often, these communications – especially early on in the process – can resolve many of the issues an association may face from new development.

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