What do you do when you've found the perfect location for your business or project, but you discover that it's not properly zoned for what you want to do or your use of the property is limited by local zoning ordinances?

The oldest saying in real estate is: The three most important words in real estate are "location, location, and location." Obviously, the location of any given property is its most important attribute. So, what do you do when you've found the perfect location for your business or project, but you discover that it's not properly zoned for what you want to do? What if your use of the property is limited by local zoning ordinances? The objective of this article is to provide you with some basic information on how to manage zoning problems by discussing:

- Zoning problems you may encounter; and,
- Basic strategies for resolving the problems.

**Typical Zoning Issues**

Zoning ordinances have a direct effect on land uses because they tell owners and prospective owners what can be built on certain property and how the property can be used. The general purpose of most zoning ordinances is to protect the health, safety, and welfare of the public and the expectations, economic and otherwise, of owners and prospective owners. Zoning ordinances can limit or prohibit desired uses when the property is considered to be non-conforming, the intended use of the property requires a conditional use permit, or the property requires a variance.

**Non-Conforming Use**

A property is considered "non-conforming" when its use complied with the applicable zoning ordinances at one time, but does not satisfy the current ordinances. In this situation, the use is considered to be "grandfathered" and is permitted as long as the use is not substantially changed. However, if a "grandfathered" use is allowed to lapse for a certain period of time (for example, six months), that use will no longer be permitted. For example, a small convenience store may continue to operate in an area that has been re-zoned for residential purposes. If the convenience store closes and does not re-open within a certain amount of time, the property can no longer continue to be used as a convenience store. The non-conforming use is considered to be abandoned and, thus, lost.

**Conditional Use**

A property may be used for a particular purpose that is not automatically allowed under the zoning ordinances when certain specified conditions are met. In order for the property to be used for that particular purpose, the owner must apply for, and be
granted, a "conditional use permit" or "special use permit." The applicable zoning ordinance must set forth the standards an owner must meet to obtain a conditional or special use permit. Most zoning ordinances employ a combination of general and specific standards. An example of a general standard is a requirement that the proposed use be "in harmony" with the surrounding area. On the other hand, specific standards would be minimum lot sizes, a required number of parking spaces, and landscape buffers. For example, the zoning ordinance may permit the operation of a small convenience store in a residential zone if the convenience store provides a minimum number of off-street parking spaces on its lot and vegetative buffers are installed between the convenience store and adjoining residential lots. If the property owner is able to satisfy the conditions, the permit must be issued.

**Variances**

A "variance" is a special exception to the requirements of a zoning ordinance, and allows a property owner to avoid the application of certain regulations when unusual circumstances exist. Zoning ordinances typically include provisions for granting a variance when unnecessary hardship results from conditions that are peculiar to the property and are beyond the ability of the owner to control, such as location, size, or topography. For example, a variance might be granted permitting the construction of a residence on an odd-shaped piece of property that cannot comply with any of the setback or yard requirements imposed by the applicable zoning ordinance.

**Basic Resolution Strategies**

Fortunately, the discovery of a zoning problem doesn't necessarily mean you can't move forward with your project. There are some basic strategies for resolving these problems and reaching your goal, such as obtaining support from the community, appealing adverse rulings, and filing a lawsuit.

**Seeking Support from the Community**

If your project will make positive contributions to the local economy, you should contact city or county officials, business or economic development groups, or the chamber of commerce. If they see your proposed project as an asset or benefit to the community, they may help steer you through the zoning approval process, and may even advocate on your behalf before zoning and planning officials. Talk with neighboring landowners and try to address any concerns or objections they may have before you commit to a location or submit an application for your project. Your neighbors may ultimately support your project and be willing to provide powerful testimony at subsequent hearings on your application. Finally, put together a team of experts to help you achieve your goal. Contractors, engineers, lawyers, and others who are familiar with the system and local personalities often know how to get things done and can be helpful.

**Appealing an Adverse Ruling**

In most cases, the decision of a zoning official or planning board isn't final. If the initial decision does not permit you to move forward with your project or plans, you may be able to have the decision reviewed and reversed by a board of adjustment or board of appeals. An evidentiary hearing is held by the board and a decision is rendered based on the evidence presented. The board can reverse, affirm (in whole or in part), or modify the decision appealed from and make any other decision or order required to be made by the applicable zoning ordinance or other laws, regulations, and court decisions. When the board makes its decision, it has all of the powers of the official who made the original decision. If your initial appeal to higher zoning officials fails, you may be able to appeal the matter to Superior Court for a determination by a judge.

**Filing a Lawsuit**

Zoning issues often are worked out through negotiation with zoning administrators and adjoining landowners, or through the initial appeals process. If a matter is not resolved through those means, it's possible in many instances to go to court. This can be very expensive and time-consuming. However, there are times when what you're seeking is so valuable and your
chances of success are so good that the benefit of getting a definitive ruling from the court outweighs the negatives of cost and time.

**Conclusion**

Although location may be the most important attribute of a parcel of land, zoning issues may limit or prohibit you from using the "perfect" parcel in the manner you desire. So, do your homework before you commit to a location.

First, make certain that your contract allows you a sufficiently long period of time to inspect the property and its allowable uses before you actually become bound to buy the property, leaving you an "out" if the land use or zoning issues are found to be insurmountable. Then, make sure to thoroughly research and analyze the applicable land use and zoning ordinances before your due diligence period expires.

If you discover any land use or zoning problems during your due diligence phase, seek the support of the community and try to resolve any objections or concerns that may exist before you close the deal. If your efforts fail and you decide to press on with the project, put together a team of experts to help you achieve your goal. The more you do to minimize the risks associated with a transaction or project before you close the deal, the more chance you will have of being protected to the maximum extent possible and of reaching your goal.

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