Georgia Association of Zoning Administrators
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Legal and Legislative Update

Presented by
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I. NON-CONFORMING USES


Junkyard was non-conforming use since owner continued to operate in a manner identical to the prior owner who operated a similar business when the zoning ordinance was adopted.

A non-conforming use runs with the land.

Ordinance provision to prevent expansion of a non-conforming use: “no such non-conforming use of land shall in any way be extended, either on the same or adjoining property.”
II. **WRIT OF CERTIORARII**

*City of Statesboro v. Dickens, 293 Ga. 540 (2013)*

In ruling on an application for a variance:

- Board of Zoning Appeals exercises judicial powers as an administrative body.

- If the ordinance specifies, Writ of Certiorari is the proper vehicle for review by the Superior Court.
III. ETHICAL CONSIDERATIONS IN ZONING DECISIONS


Evidence that one member of the board of commissioners sold all the sand to a zoning applicant used in his business and another commissioner did all the applicant’s gutter work was sufficient to find fraud and corruption in commissioners’ vote to approve zoning for the applicant.
Raising the challenge of conflict of interest after the vote by commissioner may be considered by the superior court.


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IV. VESTED RIGHTS


Billboard companies had vested rights to issuance of permit upon filing application for lawfully permitted use.
A land use that is merely contemplated for the future but unrealized as of the effective date of a new zoning regulation does not constitute a nonconforming use.
3. **Corey Outdoor Advertising, Inc. v. The Board of Zoning Adjustments of the City of Atlanta, 254 Ga. 221, 327 S.E.2d 178 (1985)**

Property owner did not obtain a vested right to build a sign even though the city issued a permit if the permit was invalid because the location of the sign violated the sign ordinance.
V. MORATORIUMS


In adopting moratorium to zoning ordinance, local government not required to follow notice requirements of Zoning Procedures Law. O.C.G.A. §36-66-1, et seq.
VI. SPECIAL USE PERMITS


The terms “special use permit” and “conditional use permit” mean essentially the same thing. Both involve a special use authorized by the zoning ordinance, but the ordinance provides that such uses are allowed only upon condition that it’s approved by the appropriate local government subject to meeting certain standards or conditions.
Special use permits must be either approved or denied based upon specific standards.

Without standards a special use permit ordinance is unconstitutional.
Standards for Special Use Permits may be Objective or Discretionary

– Special Use Permit must be granted if the applicant meets objective standards.


– Discretionary standards give the local governing body discretion when deciding whether to grant a permit.
Examples of Discretionary Standards


The board may give a particular emphasis to the evaluation of the characteristics of the proposed use in relation to the immediate neighborhood and compatibility of proposed use with the neighborhood.
“The benefits of and need for the proposed [land use] are greater than any possible depreciating effects and damages to the neighboring properties.”
VII. **HANDLING ADMINISTRATIVE HEARINGS**


The administrative decision-making process is akin to a judicial act; the board determines the facts and applies the ordinance’s legal standards to them.

If there is any evidence to support the local government’s decision, it must be upheld.