

The Legal Foundations of Zoning in Georgia and the Role of the BZA

**ARC BZA Training
November 16, 2010**

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Why have zoning?

- ⦿ Land use restrictions aim to prevent problems caused by the "pig in the parlor instead of the barnyard." Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926).
- ⦿ Reserving land for single family residences preserves the character of neighborhoods, securing "zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974).

Why have zoning?

- ⦿ Prevent incompatible adjacent uses
- ⦿ Aesthetics
- ⦿ Control growth and development patterns
- ⦿ Encourage specific growth and development patterns

Constitutional Authority To Plan And Zone

The governing authority of each county and of each municipality may adopt plans and may exercise the power of zoning. This authorization shall not prohibit the general assembly from enacting general laws establishing procedures for the exercise of such power.

Ga. Const. Art. 9, §2, Para. IV

What is the relationship between zoning and planning?

- ⦿ Planning is mandatory; implementation is not
- ⦿ Depends on quality of staff and commitment of governing body
- ⦿ Zoning overpowers planning
- ⦿ Can be a partnership or anarchy

What is the role of the comprehensive plan in the zoning process?

- ⦿ Aspirational
- ⦿ Advisory
- ⦿ Non-binding
- ⦿ Potentially reinforcing

The Zoning Ordinance

- ⦿ Comprised of text and official zoning map defining zoning districts
- ⦿ Text should contain: purpose and intent; definitions; procedures for zoning hearings; standards for exercise of zoning power; zoning districts with area, height, setback requirements; table or list of permitted uses by district; amendment procedures; administration and enforcement provisions.

The Zoning Ordinance (cont'd)

- Text may contain: additional regulations for specific uses; development standards and development regulations for parking, streets, subdivisions; aesthetic standards; tree ordinance; sign ordinance; telecommunication tower ordinance.

The Zoning Ordinance (cont'd)

- Text may contain: creation of planning commission and procedures for review and recommendation including hearings; procedures for conditional uses and special exceptions; creation of board of zoning appeals and procedures for variances and appeals.

Boards of Zoning Appeals

- No statutory authority
- 1957 Planning and Zoning Enabling Act eliminated by 1976 and 1983 Constitutions
- Source of authority is Art. 9, Sec. 2, Para. IV, and general police power
- Lawful as long as serves a reasonable government purpose and not arbitrary

BZA versus Planning Commission

- ⦿ Authority to make decisions versus recommendations
- ⦿ Act in a quasi-judicial capacity
- ⦿ Make decisions based on evidence presented at the hearing, and standards in the ordinance
- ⦿ Application of law to fact

General BZA Process

- ⦿ Either appeal of administrative decision or variance
- ⦿ Can include appeals/variances of development regulations, sign ordinances, aesthetic standards, etc.
- ⦿ May include power to grant special exceptions (essentially non-hardship variances)

BZA Process: Initiation

- ⦿ Applicant is generally property owner affected or “aggrieved party”
- ⦿ Appeal generally has limited timeline
- ⦿ Variances by application cycle
- ⦿ Hearing is advertised, notice may be given by letter, sign may be posted
- ⦿ Not a “zoning decision” so not governed by Zoning Procedures Law

BZA Process: The Hearing

- Should be recorded
- Staff presents application and should present recommendation and reasons
- Applicant or appellant presents case
- Opponents given opportunity to speak
- Limited cross-examination should be allowed
- Time limits may need to be extended

BZA Process: The Decision

- ⦿ Deliberation and decision based on evidence presented to board
- ⦿ Ex parte evidence should not be considered
- ⦿ Ex parte contacts should be prohibited and disclosed if occurred
- ⦿ Reason for decision should be articulated

BZA Process: The Decision

- Example: “I move we deny the variance because the applicant has not demonstrated that he satisfies all the required standards set forth in Sec. 2-204 of the zoning ordinance.”

BZA Process: Appeal

- ⦿ After the decision, limited time to appeal
- ⦿ Appeal is on the record
- ⦿ Court considers whether there was “any evidence” to support the decision

RCG Properties, LLC v. City of Atlanta Bd. of Zoning Adjustment

260 Ga.App. 355 (2003)

- ⦿ Adjacent property owner filed appeal of special administrative permit for parking structure and variance.
- ⦿ The BZA was exercising quasi-judicial powers, and as such, on review the Superior Court was bound by the facts presented to the board.

RCG Properties (cont'd)

- The Superior Court determined 1) the controlling law, 2) whether record contained evidence to support the affirmance, and 3) whether the board acted beyond the scope of its discretionary powers, abused its discretion, or acted in an arbitrary or capricious manner.

RCG Properties (cont'd)

- In reviewing a decision by a zoning appeals board, the Superior Court is not the proper forum in which to present evidence and conduct discovery, since the facts of the action are determined at the hearing, and thus, no new evidence, whether offered by the aggrieved party or the board, will be permitted at this stage.

RCG Properties (cont'd)

- The issue of “standing” could not be raised for the first time in the superior court, because “[t]he superior court is not the proper forum in which to present evidence and conduct discovery, since the facts of the action are determined at the [board] hearing.”

Jackson v. Spalding County

265 Ga. 792 (1995)

- Court proceedings to view decisions by zoning board of appeals are derived from common-law writ of certiorari.
- Local ordinance can specify writ of certiorari as appeal procedure, otherwise mandamus is appropriate.

Jackson v. Spalding (cont'd)

- Court held that zoning ordinance's requirement that BZA's decision be appealed through petition for writ of certiorari did not violate due process guarantees; BZA exercised judicial powers in that it considered whether facts applying to specific piece of property warranted relief from zoning under standards set in ordinance.

Jackson v. Spalding (cont'd)

- ⦿ In exercising judicial powers, board of zoning appeals must provide due process to property owners who seek variances.
- ⦿ Procedural due process means notice and opportunity for affected parties to be heard.

Jackson v. Spalding (cont'd)

- Chairperson of zoning board of appeals may conduct variance hearing informally, since strict adherence to rules of evidence is not required in order to comply with due process guarantees; the goal is a fair hearing.

Due Process Requirements

- ⦿ Notice of hearing
- ⦿ Sufficient opportunity to present argument and evidence
- ⦿ Cross-examination of opponents
- ⦿ Record of hearing
- ⦿ Reasons for decision; written preferred

- ⦿ Verbatim transcript of proceedings of zoning board of appeals is preferred to assist courts on appeal.
- ⦿ Appeal is on the record.

Ethical Obligations

- ⦿ Improper Conflict of Interest: When a decision directly and immediately affects the official's pecuniary interest. A remote or speculative financial interest will not support a conflict of interest allegation.
- ⦿ Public officers are the trustees and servants of the people and are at all times amenable to them." Const. Art. I, §2, ¶ 1

Ethical Obligations

- ⦿ By-laws of BZA or City Charter may have other ethical guidelines
- ⦿ Conflict of Interest in Zoning Act does not apply

Examples of Ethical Issues

- White v. Board of Com'rs of McDuffie County, 252 Ga.App. 120 (2001) – bank officer on Board of Commissioners; not a conflict
- Dunaway v. City of Marietta, 251 Ga. 727 (1983) – VP of applicant disclosed but still presided; was a conflict.

Examples of Ethical Issues

- Crozer et al. v. Reichert et al., 275 Ga. 118 (2002) – Planning director sought approval, subordinate reviewed; was a conflict
- Wyman v. Popham, 252 Ga. 247 (1984) – Commissioners sold to applicant; was a conflict

Staying Out of Trouble

- ⦿ Avoid prejudgment
- ⦿ Avoid pre-hearing public comments
- ⦿ Avoid ex parte communications
- ⦿ Limit comments at hearing to relevant criteria
- ⦿ Disclose and recuse if conflict of interest is questionable

QUESTIONS AND ANSWERS

- Please feel free to call or email
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- Thank You!