

# Why Zoning Changes Matter

New Jersey property owners and their legal counsel should actively pursue ways to protect the value of their properties from adverse changes in zoning.



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**Z**ONING GOVERNS MANY ASPECTS OF THE manner in which property can be developed and utilized. As such, it can have a substantial impact—positive or negative—on value. Given the importance of zoning, there are four simple steps property owners can and should take to help protect the value of their property from adverse changes in zoning—and thereby make it more attractive to a future purchaser, even if the property owner has no present plans to sell.

Under New Jersey law, when zoning changes result in existing legal uses or improvements becoming no longer permitted but allowed to continue, a situation called “legal nonconforming,” they are grandfathered and generally can remain forever, absent expansion, destruction or abandonment (situations to which special rules apply).

This differs substantially from many other states, in which nonconforming uses or structures may have to be brought into conformity with the new zoning regulations following an amortization period in which property owners are permitted to recoup their investment. For example, it was through zoning that New York City eradicated the adult entertainment businesses which once dominated Times Square.

Key to availing oneself of the protections accorded to legal nonconforming uses is becoming aware that the zoning has changed, determining how that change affects the property and understanding what steps should be taken to verify the property’s legal nonconforming status. Fortunately, there are some simple, inexpensive steps one can take to learn of proposed and recently enacted zoning changes:

**#1.** Watch for public notices in the mail to the record owner. Consider seeking professional advice to ensure you are correctly interpreting the public notice, the proposed action and how it may affect your property.

**#2.** Regularly check the municipality’s official newspaper(s) for public notices concerning zoning amendments. Published notice is always required for zoning amendments, but mailed notice is not, so it would be

unwise to conclude that no zoning changes are occurring simply because no notice was received by mail.

**#3.** If the property owner is an entity or organization, inform employees who receive and direct mail of how to route any notices that are received. Notice, whether published or mailed, is required as little as seven days or 10 days, respectively, prior to the public hearing. Thus, there is often very little time to react, and it is critical that the notice be identified and evaluated before the zoning action in question is completed.

**#4.** Contact the municipal zoning officer at least annually to confirm whether there have been any zoning amendments during the preceding year and, if so, whether they could affect your property. Even if the property itself has not been rezoned, other changes—such as to required minimum lot sizes, floor area ratio and even definitions of permitted uses—may have an equally significant impact.

If you become aware of a zoning change before it is enacted, you may have an opportunity to formally oppose it during the public hearing process, and if that is unsuccessful, to file an appeal seeking to invalidate the zoning change.

Finally, there is a process to apply for and obtain from the municipality a certificate of nonconforming use. During the first year following the zoning change, the certificate may be obtained administratively from the zoning officer, but thereafter, it must be obtained from the Zoning Board of Adjustment following a noticed public hearing.

A certificate of nonconforming use can be of critical importance years later when the property owner wants to sell the property, and the purchaser seeks an assurance that the nonconforming aspects are legally recognized by the municipality. The certificate provides this assurance and, thereby, helps to protect the property’s value following a change in zoning. ■

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