

Georgia Association of Zoning Administrators
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*Zoning & Land Use in Georgia:
How to Know the Zoning Ropes*

Presented by

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I. CONSTITUTIONAL CLAIMS

A. Taking under Georgia Constitution

The zoning ordinance is presumptively valid.

The significant detriment can be difficult to show.

After a plaintiff shows significant detriment, he still needs to prove that the current zoning is insubstantially related to the public health, safety, morality and welfare.

B. Zoning Standards Adopted by the Georgia Supreme Court

1. Existing uses and zoning of nearby property;
2. The extent to which property values are diminished by the particular zoning restrictions;
3. The extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals or general welfare of the public;
4. The relative gain to the public, as compared to the hardship imposed upon the individual property owner;
5. The suitability of the subject property for the zoned purposes; and
6. The length of time the property has been vacant as zoned considered in the context of land development in the area in the vicinity of the property.

C. Zoning Standards Adopted by the Georgia Legislature in O.C.G.A. § 36-67-3

1. Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property;
2. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
3. Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned;
4. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;

C. Zoning Standards Adopted by the Georgia Legislature in O.C.G.A. § 36-67-3 (continued...)

5. If the local government has an adopted land use plan, whether the zoning proposal is in conformity with the policy and intent of the land use plan; and
6. Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

II. VESTED RIGHTS AND NONCONFORMING USES

A. Fulton County v. Action Outdoor Advertising, JV, LLC, 189 Ga. 347, 711 S.E.2d 682 (2011).

Billboard companies had vested rights to issuance of permit upon filing application for lawfully permitted use.

II. VESTED RIGHTS AND NONCONFORMING USES ***(Continued...)***

- B. North Georgia Mountain Crisis Network, Inc. v. City of Blue Ridge, 248 Ga.App. 450, 546 S.E.2d 850 (2001).**

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.

II. VESTED RIGHTS AND NONCONFORMING USES (Continued...)

C. Meeks v. City of Buford, 275 Ga. 585, 571 S.E.2d 369 (2002).

The issue in this case is whether a property owner obtained a vested right to use undeveloped investment property in accordance with a variance granted in 1985, 14 years earlier.

II. VESTED RIGHTS AND NONCONFORMING USES ***(Continued...)***

D. Cooper v. Unified Government of Athens-Clarke County, 277 Ga. 360, 589 S.E.2d 105 (2003).

A property owner claiming a vested right to use property must make that claim to the local government before an appeal is made to the superior court.

II. VESTED RIGHTS AND NONCONFORMING USES (Continued...)

E. Union County v. CGP, Inc., 277 Ga. 349, 589 S.E.2d 240 (2003).

The issuance of a building permit results in a vested right only when the permit has been legally obtained, is valid in every respect, and has been validly issued.

II. VESTED RIGHTS AND NONCONFORMING USES ***(Continued...)***

F. Cohn Communities, Inc. v. Clayton County, 257 Ga. 357, 359 S.E.2d 887 (1987).

“The rule in Georgia is that where a landowner makes a substantial change in position by expenditures in reliance upon the probability of the issuance of a building permit, based upon an existing zoning ordinance and the assurances of zoning officials, he acquires vested rights and is entitled to have the permit issued despite a change in the zoning ordinance which would otherwise preclude the issuance of a permit.”

II. VESTED RIGHTS AND NONCONFORMING USES ***(Continued...)***

G. 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.

II. VESTED RIGHTS AND NONCONFORMING USES
(Continued...)

H. The Ansley House, Inc. v. City of Atlanta, 260 Ga.
540, 397 S.E.2d 419 (1990).

II. VESTED RIGHTS AND NONCONFORMING USES (Continued...)

I. Barker v. County of Forsyth, 248 Ga. 73, 281 S.E.2d 549 (1981).

“A landowner will be held to have acquired a vested right to continue the construction of a building or structure and to initiate and continue a use despite a restriction contained in an ordinance where, prior to the effective date of the ordinance, any reliance upon a permit theretofore validly issued, he has, in good faith, made a substantial change of position in relation to the land, made substantial expenditures, or has incurred substantial obligations. 3 A. Rathkopf, The Law of Zoning and Planning, 57-3”

II. VESTED RIGHTS AND NONCONFORMING USES (Continued...)

- J. Henry v. Cherokee County, 290 Ga.App. 355, 659 S.E.2d 393 (2008).

Nonconforming uses run with the land and benefit a subsequent purchaser of the property.

II. VESTED RIGHTS AND NONCONFORMING USES ***(Continued...)***

- K. City of Atlanta, et al. v. Starship Enterprises of Atlanta, Inc., 308 Ga. App. 700, 708 S.E.2d 538 (2011).**

Court found that adult business establishment could not be resumed as a nonconforming use when it sought approval following a permitted use.

III. MORATORIUMS

**City of Roswell et al. v. Outdoor Systems, Inc., 274
Ga. 130, 549 S.E.2d 90 (2001).**

IV. BUILDING INSPECTOR'S LIABILITY

A. Clive v. Gregory, 280 Ga.App. 836, 635 S.E.2d 188 (2006) cert. granted.

B. Vann v. Finley, ___ Ga.App. ___ (decided 12/01/2011).

Failure of building inspector to perform duty to inspect home before connected to electrical power is ministerial duty for which an inspector may be liable if failure to inspect is cause of injury or damages.

V. ADMINISTRATIVE DECISIONS

- A. Jackson County v. Earth Resources, Inc., 280 Ga. 389, 627 S.E.2d 569 (2006).

In reviewing a decision by a local government in either granting or denying a conditional use permit, the court is bound to uphold the decision of the local government where there is any evidence supporting its decision.

V. **ADMINISTRATIVE DECISIONS (continued...)**

B. **Jackson v. Spalding County**, 265 Ga. 792, 462 S.E.2d 361 (1995).

C. **City of Roswell v. Fellowship Christian School, Inc.**, 281 Ga. 767, 642 S.E.2d 824 (2007).

VI. FINALITY OF ADMINISTRATIVE DECISIONS

Taco Mac v. City of Atlanta Board of Zoning Adjustment, 255 Ga. 538, 340 S.E.2d 922 (1986).

VII. CONDITIONAL ZONING

Cross v. Hall County, 238 Ga. 709, 235 S.E.2d 375 (1977).

Conditions will be upheld if imposed for the protection or benefit of neighbors to ameliorate the effects of the zoning change.

VIII. ENFORCEMENT OF ZONING CONDITIONS

Cherokee County et al. v. Martin, 253 Ga.App. 395, 559 S.E.2d 138 (2002).