

Georgia Association of Zoning Administrators

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SPECIAL USES and CONDITIONAL ZONING

Presented by

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What's the difference?

- Historically, conditional zoning was a legislative decision; while special uses were administrative decisions.
- ZPL changes this in 1998- special use permits are legislative decisions.

Conditional zoning is when property is rezoned subject to conditions (which may or may not be listed in the ordinance).

Special use permits are issued when certain criteria are met.

In either case, you have a use that is only permissible by legislative permission, rather than right or administrative permission.

However, the procedure for judicial review may be significantly different.

Special use permit vs conditional use permit

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.

City of Atlanta v. Wansley Moving & Storage Company, 245 Ga. 794, 267 S.E.2d 234 (1980)

Special use permits and variances

- Distinguish special use permit from (administrative) variance.
- Use variances are illegal.

CONDITIONAL ZONING

CONDITIONAL ZONING vs. CONTRACT 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.

Is the condition imposed to ameliorate the effects of the zoning change?

Legal challenges...

- Procedural (did you follow ZPL?)
- Contract zoning?
- Is the conditional zoning constitutional? I.e., does it substantially burden the property in a way that is not rationally related to the public welfare?
 - Difficult to show.
 - New evidence at trial.
 - Judge decides.

Notice issues.

- Does the ordinance notify applicants and neighbors that uses may be permitted conditionally?
- Does the record show that the use has been granted conditionally?
- How do future property purchases and administrative staff discover the conditional zoning?

Long term issues...

- How do you enforce the condition?

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

- How do you change the condition?
- How long does the condition last?

Special Use Permits

Special use permits must be either approved or denied based upon standards listed in the ordinance.

Without standards, a special use permit ordinance is unconstitutional.

Unfettered discretion = unconstitutional

City of Atlanta v. Wansley Moving & Storage Company,
245 Ga. 794, 267 S.E.2d 234 (1980)

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

**Fulton County v. Bartenfeld, 257 Ga.
766, 363 S.E.2d 555 (1988)**

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

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

... but there must be some evidence to support the exercise of discretion.

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.

Gwinnett County v. Ehler Enterprises, 270 Ga. 570, 512 S.E.2d 239 (1999)

Compare to Guhl factors (you might reference in ordinance)

**Suddeth v. Forsyth County, 258 Ga. 773, 373
S.E.2d 746 (1988)**

Supports a discretionary balancing test:

“The benefits of and need for the proposed [land use] are greater than any possible depreciating effects and damages to the neighboring properties.”

Record review of special use permit decisions- this means the only evidence before the Court should be the evidence before the local government.

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

Any evidence standard (also called substantial evidence standard): the court is bound to uphold the decision of the local government where there is any evidence supporting its decision.

Vested rights and SUP's

- Enviro Pro, Inc. v. Emanuel County, 265 Ga.App. 309 (2004)
- Vested right to SUP arises when:
 - Legally obtained
 - Valid in every respect
 - Validly issued
- Compare to a use permitted as a matter of right.

Key recent decision:

- City of Suwanee v. Settles Bridge Farm, LLC, 292 Ga. 434: Does the mere existence of a special use permit requirement take property?
 - Moratoria
 - Exhaustion of Remedies
 - Damages

Discussion topics

- Should everything be a special use? Or just the “Dirties”?
- Problems presented by certain uses:
 - Churches (RLUIPA)
 - Telecommunication Towers
 - Adult Entertainment
 - Signs