

## What to Do if You're Facing a Zoning Dispute

People purchase and develop real estate with ambitious visions of what they plan to do with it. However, owning the property does not entitle you to do whatever you want. No matter where the property is located, the property is subject to a complicated framework of state laws and local zoning ordinances that outline what can and can't be done on the property. Unfortunately, the parties don't always agree about what those laws mean or how they apply to their property. As a result, zoning disputes arise - namely disagreements over whether or not the property owner should be allowed to use the property in a certain way.

These disputes can quickly become very complicated, both the legal issues involved and the procedural aspects. And whether you are the petitioner or respondent, the stakes can be very high - an adverse decision can negatively affect your property value, harm your business, or destroy your quality of life. If you're facing a possible zoning dispute, the best thing you can do is speak with an experienced Atlanta zoning attorney to understand what you can do to protect your rights.

### Common Zoning Disputes

Zoning disputes can arise in various contexts, and in many cases, over things you wouldn't suspect. Signage, parking, or activity can all spark zoning disputes. Most zoning disputes fall into one of the following categories:

- **Variance requests.** This is when a property owner asks the zoning authority to make an exception to the zoning ordinance for a building they plan to construct or an activity they intend to undertake. Neighboring property owners are entitled to notice of the request, and disputes can arise when they object to the proposed use or construction.
- **Nonconforming use.** Some property owners don't do their research ahead of time or simply think it won't matter, and either develop or use the property in a way that does not comply with local zoning ordinances. These cases are often initiated by the local authorities, but can also arise when neighboring property owners file a complaint. For example, a property owner may not be able to operate a business in an area that is zoned strictly for residential use unless they qualify for a specific exception.
- **Setback and buffer disputes.** Zoning ordinances will determine how much distances there must be between buildings and the property lines, including things such as sheds, garages, or other outbuildings.

- **Building restrictions.** Zoning ordinances also restrict the size of buildings and how many buildings can be located on a specific parcel.
- **Occupancy violations.** The local zoning ordinance will also control how many people can occupy a residence.

There are other types of zoning issues that can arise in addition to the ones listed above, both in residential and commercial contexts. Whether you are the property owner or the neighbor, an experienced Atlanta zoning attorney can help you get your dispute resolved as quickly and cost-effectively as possible.

## Understanding the Legal Framework

The first step is to understand how state law and the zoning ordinance will apply to your dispute. You should also be aware that in certain cases, such as ones where there are environmental concerns, federal law may also apply.

The core of the dispute will likely involve your local zoning ordinance. It's important to understand that each locality will have its own unique ordinance with its own requirements. This can be confusing if you own property in different locations around the state - what is permitted in one area may not be permitted in another. If you are located in an urban area, you should also be aware that the city's zoning ordinance may be completely different from the county zoning ordinance. As a result, where the property at issue is located will be critical in determining the requirements that will apply to your dispute.

## Where to Start with Your Zoning Dispute

Your strategy for resolving the dispute will depend on which side of the dispute you are on and who has initiated the dispute. If the local zoning authority isn't yet involved, it's always worthwhile to try and resolve the dispute with your neighbor through open communication and compromise. Not only will this save you a considerable amount of time and money, but it will also foster a constructive relationship with your neighbors. Your relationship with your neighbors is often overlooked, but is a very important factor to consider, regardless of which side of the dispute you are on.

## The Zoning Dispute Process

Sometimes you are unable to resolve your dispute through conversation and negotiation. On the other hand, the dispute sometimes begins with a notice of zoning violation. In either event, the next step is to proceed through your local zoning process that is designed to resolve the legal issues of your dispute. While it is an administrative process that is perhaps less formal than proceeding through the courts, this does not mean that you shouldn't take the proceeding seriously. Instead, you should focus on winning your case every step of the way - if you have to ultimately file a lawsuit, success at the administrative level will help in litigation.

Generally speaking, your zoning case will revolve around a hearing in front of an administrative board of people who are experts in your jurisdiction's zoning ordinance. Some may be lawyers, some may be engineers, and others may simply be private citizens. They will receive advice from the zoning office regarding how the zoning ordinance applies to your case. If the proceeding is adversarial, the zoning administrator or county/city attorney will present their case as to why you are in violation. You will have the opportunity to present your case, call witnesses, and submit evidence.

If you lose at the first level, you can file an appeal with the local zoning appeal board. The appeal board will also consist of a panel of zoning experts with varied backgrounds. Again, you will have the opportunity to present your case, call witnesses, and submit evidence supporting your position.

Once you have exhausted the administrative process, the next step is to file a lawsuit in civil court. While we recommend working with an attorney throughout the process, it is very difficult to prevail when representing yourself in litigation. You will be required to follow the court's procedures and comply with the rules of evidence. In order to achieve a successful outcome, we recommend that you invest in experienced legal representation.

The zoning process is complex and can be difficult for non-lawyers to navigate. We recommend working with an Atlanta zoning attorney to help you through the process, as even a procedural mistake can jeopardize your case. The status of your dispute, what you need to accomplish, and where your property is located will significantly affect how you proceed.

## What If You Have Been Cited with a Zoning Violation?

If you have been cited with a zoning violation, the first step is to read the paperwork you received very carefully. The citation should reflect the nature of the violation and cite the specific section of the applicable zoning ordinance that you have violated. However, the paperwork is often very unclear as to why you are in violation.

As a result, you may need to call or email the relevant office to discuss the precise nature of the problem. You should request that they provide you with as much detail as possible, and ask them to put it in writing. Here are some common issues to watch out for:

- You have been cited for a violation that exists on property owned by someone else.
- The provision of the zoning ordinance cited in the violation is not applicable or they have cited the wrong provision.
- The issue cited does not actually violate the zoning ordinance.

Once you have a firm understanding of the violation, you then need to decide how to proceed. If it is something minor that you can easily address, you should work with the zoning office to resolve the violation as quickly as possible. If you disagree with the violation, you will need to contest the violation. In other cases, you may need to apply for a variance or pursue a parallel process. This is where your violation can become very complicated.

One of the most important things to remember is that you should attend any hearings that are scheduled, whether in court or before an administrative body (such as the Zoning Review Board), even if you think the matter is in the process of getting resolved. Failing to appear for a hearing will result in the matter being decided against you.

## Zoning Complaints

If you have an issue with a neighboring property that you haven't been able to resolve, the first step is to file a zoning complaint with your local zoning office. A compliance administrator will review your complaint and then conduct an investigation. If they issue a citation, you may not receive notice, but you can likely find out if you are willing to do your own research. In many jurisdictions, active zoning violations can be found online. While you may be subpoenaed to testify, you may not have any say in how the violation is ultimately resolved.

## What If You Have Been Notified of a Zoning Proceeding?

If a neighboring property is requesting a variance or undertaking some other action that requires zoning approval, it's likely that you will receive notice. The first step is to understand exactly what they are proposing to do. You should be aware that the applicant will almost always try to downplay any negative impacts and overestimate the benefits of their proposal. The zoning office may be neutral on the proposal. Unless your objections and concerns are heard, it's quite possible that the request will be approved without much thought, making it nearly impossible to undo later on. An experienced Atlanta zoning attorney can help you evaluate the request and determine whether you should get involved.

## How a Zoning Attorney Can Help

Obviously, an experienced zoning attorney will be familiar with the zoning ordinance that applies to your case and they will know how to successfully navigate the process. They will also be able to help you understand your options and gather the evidence you will need to build a strong case.

Almost as important, however, they will be familiar with how your local zoning board resolves these issues. They will know what arguments they find compelling, what resolutions they generally favor, and what you can do to help get the result you want.

## Zoning Disputes We've Handled

To give you a sense of the types of zoning disputes we've helped our clients resolve, below are three examples:

- Our firm represented Roswell Mayor Jere Wood in a lawsuit against the city of Roswell over whether Mayor Wood may be allowed to renovate his property in the Roswell historic district. Wood previously sought approval from the city's Historic Preservation Commission to build a 1.5-story, 3,000-square-foot frame house on his property. The commission initially approved the plans, but the city council overturned the decision. Mayor Wood challenged the council's authority to override the commission's decision, and the matter was later settled favorably.
- We represented a high-tech manufacturer who sought a city zoning variance to expand its facilities. Unfortunately, the client faced strong opposition from a neighboring property owner. We advised our client on the permitting process and dealt directly with the city attorney to address the potential objections. The client's permit was ultimately approved, allowing them to build the facility they need to grow their business.
- We represented the builder of a 124-unit senior living facility in a city zoning dispute regarding the type of construction required for the facility. We intervened and resolved the matter with the city, saving our client significant construction costs.

## Contact an Atlanta Zoning Attorney Today

Whether you have been cited for a violation or simply want to understand your options, the Atlanta zoning attorneys at Robbins Ross Belinfante Littlefield LLC can help you get your zoning dispute resolved quickly and cost-effectively. Aggressive and dedicated, we provide top-notch legal representation in sophisticated, complex zoning matters. If you'd like to learn more about how we can help you, contact us at 678-701-9381 to meet with us and discuss your case.