

In The Zone? Defining Your Place in Real Estate



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Your business thrived in spite of COVID and you need to relocate and expand your facility. So you found a suitable parcel of property on the edge of town – it's the right size and is served by all the necessary utilities. Now you need to examine zoning and land use requirements to determine if you are permitted to operate your business from the property. Here are some questions to ask.

Where am I?

Does the city or county have jurisdiction over the property? This may not be as simple as the location of the city limits. Cities have the right under Arkansas law to impose planning and zoning regulations on lands located outside its city limits. That right is often called exercising extraterritorial jurisdiction, or “ETJ.” The ETJ area ranges from one to three miles beyond the city limits, depending on the population of the city.

You must also determine if the property is subject to restrictive covenants imposed by the current or previous landowner. Private restrictive covenants are effective and enforceable, and if they limit the property's use to single family homes, it is unwise to build anything but that.

What am I?

After confirming who has jurisdiction, determine the zoning designation and applicable subdivision regulations. Some jurisdictions require a parcel to complete a formal platting process if the parcel is fewer than five acres, or is carved from a tract that will leave the seller with less than five acres.

Some property, particularly if located in the county outside the ETJ, may not be subject to any zoning regulations. That means you can do pretty much anything. It also means your neighbor can do pretty much anything, too. A commercial cookie factory next door may smell nice if you're an occasional passerby, but it may not be ideal all day, every day.

What do I do now?

If the zoning designation, e.g. “office” or “industrial,” includes your particular use in the list of permitted uses, then it is allowed as a “matter of right” and you are set. Obtain a letter from the city's planning department confirming the applicable zoning designation and build away.

If your use is not permitted as a matter of right, then you have three options. First, your use may be included in the list of “conditional uses” under the zoning designation. That allows you to use the property for your purpose with consent from the city, typically called a “conditional use permit” or “CUP.” A CUP is

typically obtained through action of the city's or county's planning commission, and the process requires public notice and a hearing. Expect 60 to 90 days to make this happen. If the planning commission does not permit the CUP, you can appeal the decision to the city council or board.

Your second and third options are more involved. You can attempt to amend the zoning ordinance itself so that it permits your intended use. Essentially, the ordinance is modified to include your use in the list of uses permitted as a matter of right, or to the list of conditional uses that requires planning commission action. This is a good option for newer uses, like a solar power generation facility, that were not contemplated when the zoning ordinance was adopted.

Finally, you can attempt to rezone the property from the current designation to one that permits your use, like from "residential" to "commercial." Some cities also offer an option to use a "planned development," sometimes referred to as a "PUD" or "PD," which is essentially a special zoning designation for your property. Both the zoning ordinance amendment and a rezoning require approval by the planning commission, and then an ordinance being adopted by the city council or board. With the required public notices and hearings, and three readings of the proposed ordinance, 60 to 120 days could be required to complete the process.

Addressing zoning and planning issues is often a tricky path to navigate alone. A good surveyor or engineer and an experienced lawyer make the best team to guide the process.

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