

Basic Procedures in Administration of Zoning Regulations: Making Applications

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Editor's note

The printed version of this publication includes illustrations.

This guide has been prepared as a training aid for city and county officials and citizens. It illustrates the basic sequence of events in situations commonly involved with administration of local zoning regulations. It indicates the normal place and function of the various officials and bodies in the different kinds of procedures.

The illustration available in the printed version of this guide and outlined below provides a framework that will help in considering many aspects and contingencies that ordinarily are a part of the zoning administration process. It is not intended to prescribe universally applicable procedures. Each city and county adopts its own set of zoning regulations, so the provisions of each specific zoning ordinance or order have to be taken into account for a thorough understanding of local procedures.

Brief commentaries on various elements shown in the illustration are included. These serve to clarify some basic points and provide supplemental information and assistance in evaluating administrative procedures.

Outline of application procedures for Certificate of Occupancy, Building Permit or Amendment of Zoning.

Certificate of Occupancy

From the information point, an application for Certificate of Occupancy is taken to the Zoning Enforcement Officer, or Building Inspector. If the proposed use complies with zoning regulations, the certificate is issued. If the proposed use does not comply with zoning regulations, the certificate is denied; this denial can be appealed to the Board of Adjustment.

Building Permit

From the information point, an application for Building Permit is taken to the Zoning Enforcement Officer, or Building Inspector. If the proposed structure complies with zoning regulations, the permit is issued. If the proposed structure does not comply with zoning regulations, the permit is denied; this denial can be appealed with the Board of Adjustment.

Amendment of Zoning

From the information point, a petition for Amendment of Zoning is taken to the Planning Commission. This is followed by a public hearing and recommendation. Then the legislative body (county court, city council and Board of Aldermen) decide whether or not the zoning regulations will be amended.

Commentaries on various elements of the application process

Refer to the chart inside to trace the numbered step procedures described below.

Note:

In Missouri, a number of cities have both zoning and building codes. Few counties have both. Under existing statutes, only first- and second-class counties have enabling legislation that would permit establishment of county building codes.

The term "building inspector" is frequently used as the formal title of this office. This can lead to confusion as citizens, officials, and sometimes even this officer, are left with the impression that he or she exercises some control over the construction standards for structures for which he or she issues permits. In fact, the officer only has authority relative to things covered by zoning, e.g. size, location, setbacks. Zoning does not regulate the structural details. A "building inspector," as provided for in zoning regulations, has no authority to inspect and pass on items like footings and framing. These are the types of things a "building inspector," provided for under a building code, would do.

1. Information point

For adequate Zoning administration there must be an easily accessible point where local citizens can get reliable information about all aspects of the zoning regulations. Understanding assistance should be available at this information point for individuals, firms and agencies seeking information on zoning.

2. Certificate of Occupancy

Typical zoning regulations provide for a "Certificate of Occupancy." When a new occupant or a new use is contemplated for land or structures, interested parties apply to the Zoning Enforcement Officer (Building Inspector) for this Certificate of Occupancy. If this officer finds the new occupant intends to use the property in conformance with the zoning provisions, or if the proposed use is permissible in the zoning district in which the land or structure is located, a certification of this fact is issued. If the proposed use does not conform, the certificate will not be issued. Without a Certificate of Occupancy, using the property would be a violation of the zoning regulations. Even though zoning regulations frequently have provisions for Certificates of Occupancy, many jurisdictions fail to implement them or only partially do so.

3. Building Permit

When construction of new structures, or additions to old ones of the type regulated by zoning, is contemplated, interested parties apply to the Zoning Enforcement Officer (Building Inspector) for a "Building Permit." If this officer finds the proposed structure conforms in size, location and use with the provisions of the zoning district in which the structure will be located, a Building Permit is issued. If the structure does not conform, the permit will not be issued. Construction without a permit would be a violation of the zoning law. Although the term Building Permit is commonly used in zoning regulations, it is a permit of a different nature from that issued under a building code. The zoning permit does not involve review of the structural details or materials. In most cases on-site inspections during construction are made by the Zoning Enforcement Officer, but these are for checking conformance with the zoning provisions and not construction standards. Different kinds of inspection are conducted when enforcing a building code.

4. Zoning Enforcement Officer (Building Inspector)

This officer is the nucleus of zoning administration. For orderly operations, the Zoning Enforcement Officer (Building Inspector) must have complete understanding of the content of the zoning regulations and be able to communicate them. The officer should have the capacity to remain calm, objective and understanding when involved in controversial issues. His or her discretion is limited. The officer cannot simply apply or fail to apply the zoning provisions in line with personal preferences, but must act in accordance with the regulations. However, the consistency and quality of the officer's administrative judgments make the difference between constant confusion about zoning and a

predictable administrative routine. It is impossible for this officer to work effectively if other officials (e.g. county court, city council, planning commission, or board of adjustment members) constantly intervene in the day-to-day functions.

5. Petitions for Amendment of Zoning

After adoption of zoning regulations, usually there are instances when a property owner or other party wishes to do something that is not permissible under the zoning. Such parties may petition for change in the zoning regulations. Usually, this is in the form of asking that a particular piece of property be changed in classification from one kind of zoning district to another, e.g. from residential to commercial. However, it might involve a request for changing the regulations in a particular kind of zoning district. A zoning amendment, then, may involve a change in the zoning district map, a change in the text of the zoning provisions, or both. Such petitions are referred to the Planning Commission (not the Board of Adjustment) for public hearing and recommendation to the legislative body (in the case of Counties, this would be the County Court. For cities it would be City Council or Board of Aldermen). After recommendation from the Commission, the legislative body alone has the authority to amend the zoning. The process of amendment is basically the same as that involved in the original adoption of the zoning regulations. Consideration of amendment to the zoning regulations can be initiated without a petition by the Planning Commission on its own or as directed by the legislative body. Thereafter, the process of amendment is the same as when a petition is filed.

6. Planning Commission

The Planning Commission has many functions beyond zoning. When zoning is in effect, however, a substantial part of its time usually is devoted to zoning considerations. Unfortunately, it is possible for a commission to become so involved in zoning that it takes no time for the planning process. Experience indicates that without continuous planning, on which zoning decisions can be based, zoning does not work well. The Commission that neglects planning only makes dealing with zoning policies more difficult and tends to be drawn into arbitrary zoning decisions. This creates more zoning controversies, and the commission gets caught in a web largely of its own making. The Commission must function as a planning body and consider all manner of policies and actions that will improve the conditions in the community and meet the problems at hand. Zoning is only one tool, and much of what the commission does and recommends may not deal with zoning at all. On the other hand, the commission has a responsibility to see that the zoning regulations are appropriate for the local area and serving the purposes for which they are intended.

7. The legislative body

The legislative body (county court, city council or Board of Aldermen) has to be concerned with many issues and cannot afford to allow zoning matters to absorb all its time. The Zoning regulations are law, however, adopted by the legislative body, and this body has the ultimate responsibility to see that zoning operates fairly and for the benefit of the community. Necessarily, the legislative body has to depend heavily on the Planning Commission, other officials and citizens to help develop a basis for decisions. It still has to make the decision to amend or not to amend the zoning and a variety of other types of decisions related to zoning, e.g. appropriations for zoning administration. In zoning matters, the legislative body should perform as a policy-making group, rather than getting involved in routine administration.

Related MU Extension publications

- DM7613, Basic Procedures in Administration of Zoning Regulations: Appeals
<http://extension.missouri.edu/p/DM7613>
- DM7614, Basic Procedures in Administration of Zoning Regulations: Roles of Enforcement Officer and Board of Adjustment
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