
Understanding Zoning For New Farm Enterprises

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Disclaimer: The following is intended for educational purposes only and is not legal advice.

Introduction

Choosing the right piece of land can be one of the most important parts of a new farm enterprise. Unfortunately, fully appreciating the zoning of a piece of property is not as easy as looking at a map. A single piece of property in Maryland can have multiple zoning and planning designations which all need to be understood to completely answer the question of whether it is the right property for a farm enterprise.

Local Zoning

Starting at the local level, a person interested in the zoning of a piece of property can visit the county, or the town if the property is within municipal limits, zoning office. Some jurisdictions have the zoning map online but, to be sure the zoning map is the most current version, it is advisable to confirm with a phone call or a trip to the local office. Every property has a zoning designation such as “Rural Residential” or “Rural Conservation.” In some cases, a piece of property may have more than one zoning designation, this is referred to as split zoned.

In the zoning ordinance, or applicable section of the local jurisdiction’s code, the zones will be described and the uses that are permitted, prohibited, conditionally permitted or permitted by special exception will be listed. Conditionally permitted uses are typically uses that are allowable subject to conditions found within the zoning code. A use that is permitted by special exception, will require a hearing and approval from the local board of zoning appeals. A hearing in front of a zoning board of appeals is a quasi-judicial proceeding which can be a challenge to navigate without legal representation.

For all uses, it is important to understand the full extent of what is permitted in the zone and to consider whether zoning restrictions will allow for the farm enterprise to operate fully. For example, if a farmer is contemplating incorporating a retail greenhouse component into an operation, it is necessary to ensure that both the use (retail) and the erection of the greenhouse building and any required parking area is permitted in the zone. If it is difficult to decipher whether a use is permitted from a review of the zoning ordinance, you can either consult the zoning staff or retain legal counsel to advise you.

If a property is not zoned to permit a use it can be very difficult to change the zoning designation. In Maryland, local jurisdictions undertake the comprehensive rezoning every 10 years. Outside of a comprehensive rezoning, in order for a property owner to be granted a change in zoning he or she must prove the zoning should change due to a substantial change in the character of the neighborhood or because of a mistake in the original zoning.

Types of Zoning

If the property in question is within 1,000 feet of the waters of the State's tidal waters or wetlands, in addition to the base zone, it will also have an overlay Critical Area zoning designation. Most farmland in the Critical Area is designated as a Resource Conservation Area (RCA), but if your property is adjacent to residential development it could be designated as a Limited Development Area (LDA). Critical Area designations add another layer of zoning restrictions on land such as buffers from sensitive areas.

Another layer of zoning designation in Maryland is the growth tier designation. Pursuant to the Sustainable Growth & Agricultural Preservation Act of 2012, all properties in MD should have a growth tier designation. The tiers are based on whether or not a property is served by a wastewater treatment plant, planned to be served by a wastewater treatment plant, could be developed with properties served by septic systems, or whether the land is planned for agriculture or conservation. Tier designations may not impact all farm enterprises, however, a tier designation is important if you plan to develop (build residences, subdivide, etc.) a property. Tier maps can be found at the local jurisdiction's zoning office or on the MD Department of Planning's website.

Planning Documents

Local jurisdictions also create long-term planning documents called comprehensive plans. Although comprehensive plans are technically planning rather than zoning tools, the plans can have a great impact on the use of property, both now and in the future. In these plans, a local jurisdiction classifies the current and future plans for all the property within and surrounding the political boundaries of the jurisdiction. Comprehensive plans are updated every 10 years and it is important to examine these documents to understand the jurisdiction's future plans for the property in question and the surrounding properties. For example, a comprehensive plan may indicate a property is bordered by land designated for future heavy industrial uses. Further, local jurisdictions are required to make zoning decisions which are consistent with the comprehensive plan. No one can predict future development with certainty, but looking at a jurisdiction's comprehensive plan can provide you with valuable information about the planned future uses of properties.

Conclusion

A person interested in a piece of property for a new farm enterprise should not assume, based on the current use, that the property is not necessarily zoned for either that use or related uses. When a local jurisdiction undergoes a comprehensive rezoning, in some instances, certain uses may be allowed to continue despite the updated zoning no longer allowing the use. These uses are referred to as non-conforming uses. Non-conforming uses are typically allowed to continue, but, are subject to limitations such as a prohibition on expansion and may be disallowed all together if the use is abandoned for a certain period to time. Although, a person who is interested in a piece of property for a farm enterprise can, by taking the steps outlined above, find out a good deal of information about the property, it is always a good idea to consult with an attorney experienced in land use and real estate matters before signing any contract or lease for a new farm enterprise.