



KEY ZONING ASSESSMENTS, LLC

Common Questions: Zoning Due Diligence

KZA - Corporate Office

P.O. Box 469
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Conformance Status

- ✓ What does the property conformance status mean?
 - Legal Conforming: the existing site and current use(s) conforms to the applicable zoning requirements and can be rebuilt in its current form
 - Legal Nonconforming: the existing site and/or current use(s) does not conform to one or more of the applicable zoning requirements, but is legally existing and maintains limited restoration rights
 - Nonconforming: the existing site and/or current use(s) does not conform to one or more of the applicable zoning requirements due to an illegal site condition that may not be restored and may or may not be an enforceable violation

- ✓ What makes a property Legally Nonconforming?
 - Change in jurisdiction
 - Change(s) in the zoning ordinance
 - Approved in error or oversight on the part of the municipality
 - Built prior to adoption of the zoning ordinance
 - Age of the property
 - Lot line changes due to condemnation/ right-of-way expansion

- ✓ What does it mean to my transaction if the property is Legal Nonconforming?
 - The existing property may continue to operate
 - Restoration rights vary by municipality (often a 50 percent threshold based on assessed value at time of damage), but it is important to note the specific restrictions of each municipal zoning code
 - Restoration rights are limited to involuntary damage or destruction (i.e.: fire, flood, or natural disaster)
 - Voluntary expansion, redevelopment, or abandonment is not protected and is limited to the currently applicable zoning requirements
 - Additional Law & Ordinance Insurance maybe recommended by legal counsel to protect against risk

- ✓ Why is the property Nonconforming and not Legal Nonconforming?
 - Was constructed in error
 - Was expanded or modified without approval
 - Temporary structure(s) added without approval
 - Parking lot was restriped or modified to reduce the number of spaces
 - Survey/ measurement error during development or on survey or existing site
 - Each municipality has the prerogative to impose a violation against a nonconforming issue, some will take no action unless a complaint is filed, others will require remedy once issue is known
 - KZA works carefully to avoid bringing illegal nonconforming issues to the attention of municipal officials
 - Some nonconforming issues can be corrected (e.g.: remove temporary structures, stripe additional parking spaces, etc.)
 - Additional Law & Ordinance Insurance may be recommended by legal counsel to protect against risk
 - Legal counsel may recommend additional action by property owner to remedy issue to avoid risk of violation



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The Key Zoning Assessment (KZA)

- ✓ Why do I need a zoning assessment instead of just a zoning verification letter?
 - The *Key Zoning Assessment (KZA)* provides more information
 - The *KZA* formats all property information into a useful reference
 - The *KZA* provides a concise summary of zoning requirements and observed conditions that meets the 2021 Table A ALTA Survey requirements for zoning
 - The *KZA* can identify nonconformities not addressed by the zoning verification letter
 - The *KZA* provides thorough conformance analysis for use, building and parking setbacks, lot area, building height, density, and parking; analysis that is not provided in the zoning verification letter
 - The municipal official writing the letter may only have the approved site plan on file; the *KZA* reviews the approved plans AND the as-built survey, analyzing the existing characteristics for an accurate conformance analysis
- ✓ Why does the *KZA* not include landscaping, sign, or ADA compliance/ conformance?
 - Surveys do not provide sufficient information
 - Too many variables to provide accurate analysis (seasonal landscaping, zoning code design options for landscaping and signs, and variable design criteria for ADA)
 - The *KZA* provides site development conformance analysis compatible with the 2021 Table A ALTA Survey criteria and consistent with lender due diligence requirements
- ✓ Why does the assessment say "Indeterminate"?
 - Some type of information may be missing and *KZA* is unable to confirm conformance
 - Examples of missing information include:
 - Number of parking spaces not on survey
 - Building height not on survey
 - Tenant square footage not provided by client
 - The municipality may not make a determination regarding the conformance
 - Information about the use may not be available from the client
- ✓ Why does the assessment say "Subject to striping of additional parking"?
 - The assessment will state the conformance is subject to the striping of additional parking spaces when the site is missing parking, but there is sufficient room to add additional parking (a deficiency is considered remediable)
 - If the parking is not added, the site would not be legal nonconforming (it would be illegal nonconforming)
- ✓ Why does it seem like zoning is always the last due diligence item?
 - Zoning assessments are often ordered last
 - Survey is needed to complete the assessment
 - The majority of the work for zoning is completed upon receipt of the survey
 - Municipal turnaround times can vary greatly
- ✓ Why is a due date not provided for the zoning assessment?
 - Municipal limitations for document research and responses to questions
 - Completion of the assessment is dependent on receipt of the survey and *KZA* cannot control when the survey will be received
 - While *KZA* can and will persuade municipal officials to provide information quickly, their exact response date cannot be guaranteed