

HANDLING COMPLAINTS ABOUT ZONING ENFORCEMENT

by

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INTRODUCTION

It is 8:30 a.m. Monday morning. You sit down with your morning cup of ambition. The phone rings. “You the planner? The Mayor told me I should talk to you. I came home from work on Friday and found a red note on my new garden shed saying I can’t use it and it must be moved. They delivered it Friday and put it right where I told them to, on the back of the lot near my fence. Where you do get off saying I need to get a building permit and I have to move it? You can’t tell me what I can do on my land. What is this, Communist Russia? I have a lot of clout with the Mayor and the Board, and I don’t have to take this harassment. If you can’t straighten this out, I’m going to my lawyer and take you to court!”

Complaints about zoning enforcement actions are a part of the daily administration of the zoning ordinance. Every zoning administrator and some Plan Commissioners and elected officials will be faced with similar irate phone calls. A goal of good zoning administration is to resolve the matter so that the citizen is fairly treated and understands the reasons for the zoning decision. This article provides guidelines to remember when handling the irate complainant.

RULES FOR HANDLING AN IRATE CITIZEN COMPLAINT

1. Listen

According to zoning administrators, the most important thing to remember when faced with an irate resident is to let them talk. Usually they are upset that someone has told them they did something wrong and they have to follow certain rules concerning what they can do on their property.

According to Frank Zolp, Zoning and Code Enforcement Officer in Sauk Village, “it is best to let the complainant vent their frustration and get every thing off their chest. Usually, after they calm down we can begin the process of explaining the ordinance regulations and reasons they were enacted.”

2. Remain Neutral

We recommend remaining neutral and not take sides between the zoning inspector and the complainant. The complainant will immediately seek to establish that the zoning inspector is wrong and that the provision of the ordinance does not apply to them. At this stage of the process, it is better to let the resident continue to talk rather than begin to defend or debate the intent of the ordinance or its application to the situation.

You need to make sure that your zoning inspector understands your actions when listening to a complaint. You must be fair to the citizen, and at the same time be fair to your inspector. You trust your inspector to make fair and accurate field inspections. You should not undercut your inspector. But you must also give fair consideration to the citizen.

3. Obtain Information

In this stage of the discussion, ask questions to obtain information. Some possible questions might include: How big is the shed? Where was it purchased? How did you determine where you want the shed on your property? Did you let your neighbors know you were putting a shed in this location? Did you know that a permit was needed? Did you talk with anyone at the Village Hall? Were you aware the Village regulates the location of all buildings? Are you aware that sometime neighbors object to the location of a shed along their backyard property line? Could the shed block a drainage path? Did you know placement of a shed in a side yard is sometimes a problem for fire trucks reaching a home?

The purpose of asking question is to gather information. It also provides

the opportunity to give the resident some information in a nonthreatening manner.

4. Schedule an On-Site Meeting with the Complainant

The most important action to take is to meet with the resident and view the situation. This does several things. It brings the resident face-to-face with someone who intends to resolve the problem and it allows for a second visual inspection of the situation. According to Zolp, “it is easy for someone who is upset to take out their frustrations by phone since they don’t see who you are. We like to have the face-to-face discussion and to personally view the situation. We find that the level of frustration lessens when we meet face-to-face and show interest in resolving the problem.”

It is usually a good idea to have the zoning inspector at the meeting with the citizen. You can then quickly understand the viewpoint of both the inspector and the citizen.

5. Do Background Homework

Before the face-to-face meeting, Zolp recommends that facts be gathered. Which inspector issued the ticket? Did a neighbor file a complaint? What section of the ordinance is violated? What are the exact specifications required for the placement of storage shed in the rear yard? What are the required fees? Will there be a penalty fine? Does the installation require an inspection? What process would be required to seek a variance or special use permit allowing the installation of the shed? Has special permission been granted for similar installations in the past? Are there many similar sheds on similar locations in the neighborhood?

This information will be necessary for discussion with the resident and to offer options to resolve the violation.

6. Confirm the Facts - Omission vs. Commission

Upon completion of the face-to-face meeting, Zolp suggests a meeting be

held with the zoning officer who issued the notice of violation. Based on the visual inspection of the situation, and photographs of the situation all facts should be confirmed including permit requirements, location/set back specifications established by Village ordinance, and information about the current situation, ie: where the shed is currently located, dimensions of the shed, distance from property lines etc.

Was the resident simply ignorant of Village regulations and did not realize that the Village regulated sheds? A homeowner can be given more leeway than a builder or developer who routinely ignores permit requirements.

Or did the owner know that the Village ordinance regulated sheds, and chose to ignore the regulations, hoping that it would not be noticed? As one well know developer often says, "it is easier to ask for forgiveness than permission." You obviously treat a repeat offender who is in the building trades differently than a homeowner who may not have realized a permit was required.

7. Seek a Remedy - Identify Options

Zolp notes the "Village really wants the property owner to use his property in a way that pleases the homeowner. In a situation like this we would first try to identify a solution to move the shed to a spot where it would comply with the ordinance. If the resident did not know we regulate the location of sheds and was willing to move it we would likely dismiss the violation. However, if the resident willfully disregarded the ordinance we would recommend enforcement and penalties."

Zolp added that "if the applicant was not willing to comply with the terms of the ordinance, seek special permission or willfully disregarded the provisions of the ordinance, we would likely make a formal complaint and quickly move the matter to civil court for resolution."

You should also inform the citizen of his right to appeal your decision to the zoning board of appeals. The citizen should understand that he can appeal above your decision. This provides the citizen a path above you other than complaining to the elected officials or taking the matter to court.

8. Establish a Compliance Date

During the meeting with the resident, Zolp recommends that a date for the resolution of the matter be targeted and acknowledged. The date will in part be determined by the action to resolve the matter. Moving the shed might require the scheduling of a contractor and a two week compliance period may be sufficient. Filing a request for a variance or special use permit may require 30-90 days to complete. Taking action in court may require a longer period. Zolp notes “that regardless of the method used to resolve the violation, a date must be set for compliance. Progress must be monitored and if the resident cannot resolve the complaint within the schedule, legal action should be initiated. The resident should also be prohibited from using the shed while the matter is being resolved, so as to not give the impression to the resident or others that the Village is allowing use of the shed in violation of the ordinance.”

9. Reduce Everything to Writing

Immediately upon receipt of the first phone call, written records of all discussion actions and reasons for decision should be made. Photographs showing the location of the shed and dimensions to property lines and other important features should be taken to document the current situation. Periodic inspections with written findings should be made until the issue is resolved. Formal correspondence to the resident should be made identifying the violation, the agreed on resolution and expected compliance dates agreed-on during any face-to-face discussions.

10. Establish Permanent Records

A zoning decision made today establishes a decision which will be referred

to in the future. Each decision should be documented including the rationale of any solution which is offered and accepted by the resident. Every unique circumstance should be identified and an explanation established why permission was granted due to the unique circumstance. Decisions made today set precedent for decisions to be made in the future. If you do not want that precedent set then you should identify in writing why the decision made today is unique, and will not be routinely approved in the future.

CONCLUSIONS

Zoning enforcement is often a thankless job. While every community wishes to allow residents freedom to use their property as they wish, it is necessary to restrict some activities to protect the health, welfare and safety of the public. Most residents will comply with ordinance provisions when they are aware of the reason behind the ordinance and the specifications. Many residents do not realize that minor building activity such as the construction of a shed requires permits and inspections. A majority of the time gaining compliance simply requires educating the resident and helping find a solution within a reasonable time period.

However, zoning administration does require enforcement. Usually this occurs where a resident refuses to comply, even after attempts to find compliance solution have been made by zoning enforcement staff. In these situations legal action is required to gain compliance. Documentation of the process of meeting and working with the resident to resolve the issue will help demonstrate to the court that every effort was expended by the Village to gain compliance. Proper documentation of the case and proof that the Village acted fairly provide the rationale for a court ordered compliance solution.

About the authors

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