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SPRINGFIELD

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FILE NO. S-1455

**ZONING:**

Non-Conforming Uses and Variances  
Authorized by County Zoning  
Enabling Act

Honorable William K. O'Connor  
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Dear Mr. O'Connor:

I have your letter in which you have asked for an interpretation of certain sections of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1977, ch. 34, pars. 3151-3162). You have asked whether upon the sale or transfer of real estate which is the subject of a nonconforming or special use or variance, the subsequent owner must apply for another special or nonconforming use or variance. In other words, you have asked whether the use runs with the land or whether the use applies only to the individual applicant.

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Power is given to counties to zone real estate in section 1 of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1977, ch. 34, par. 3151). Nonconforming uses are authorized in the second paragraph of section 1 which states as follows:

" \* \* \*

The powers by this Act given shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted: \* \* \* .

\* \* \* "

It is well established in Illinois that purchasers of property subject to lawful nonconforming uses are entitled to the same rights under a zoning ordinance as their grantors had. Schneider v. Board of Appeals of City of Ottawa (1949), 402 Ill. 536; People v. Smith (1976), 38 Ill. App. 3d 798; Village of Skokie v. Almendinger (1955), 5 Ill. App. 2d 522.

This is in accord with the general rule regarding nonconforming uses is set forth in section 183 of Title "Zoning" in Corpus Juris Secundum (101 C.J.S. Zoning §183 (1958)) which reads as follows:

"The right to continue a nonconforming use is not limited to the owner of the property at the time the ordinance was enacted, but extends to subsequent purchasers.

An express or implied provision excepting existing nonconforming uses from the operation of a zoning regulation is directed to the use of the land and buildings at the time of the

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adoption of the ordinance and not to the persons occupying the land and buildings at that time. The right to continue a nonconforming use is not limited to the person who owned the property at the time the zoning ordinance or regulation was adopted and such right passes to subsequent purchasers of the property. Likewise, lessees have the right to use the premises for a nonconforming use to the extent of the prior use of the lessor."

I am therefore of the opinion that upon the sale or transfer of real estate which is the subject of a nonconforming use, the subsequent owner does not have to apply for another nonconforming use. In other words, I believe that a nonconforming use established under the provisions of section 1 runs with the land.

The next type of use about which you inquired is the variance which is permitted by section 3.1 of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1977, ch. 34, par. 3154) which provides in pertinent part:

"The regulations by this Act authorized may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any of such regulations relating to the use, construction or alteration of buildings or structures or the use of land; or the regulations by this Act authorized may provide that the county board may, by ordinance or resolution determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any such regulations relating to the use, construction or alteration of buildings or structures or the use of land; however, no such variation

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shall be made by such county board without a hearing before the board of appeals. \* \* \*

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The statute does not expressly say whether or not a variance authorized by section 3.1 will inure to the benefit of a subsequent owner. Nevertheless, necessary implications and intendments from the language used in a statute may be resorted to in order to ascertain the legislative intent. (United States v. Jones (7th Cir. 1953), 204 F. 2d 745, cert. denied (1953), 346 U.S. 854.) In this connection it can be observed that the language of section 3.1 provides that a board of appeals or county board may vary the application of the zoning regulations. It is the zoning regulations which regulate and restrict the use of the real estate. The statute says that the regulations may be varied. Since the variance pertains to the real estate, I am of the opinion that the variance would run with the land and would inure to the benefit of a subsequent owner who would not have to apply for a new variance.

In section 257 of Title "Zoning and Planning" in American Jurisprudence (82 Am. Jur. 2d Zoning and Planning § 257 (1976)), it is stated:

"A variance is granted with respect to a particular piece of property and is not a personal exemption from the enforcement of

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zoning regulations. It is a legal status granted to a certain parcel of realty without regard to ownership. The grant of a variance runs with the land and is not a personal license given to the landowner. A variance passes with the land to a subsequent purchaser or to a successor in title.  
\* \* \* "

Courts which have considered the question as to whether a variance runs with the land, or is a personal license, have almost uniformly held that a variance runs with the land to a subsequent owner. One case that considered this issue is State ex rel. Parker v. Konopka (Ohio App. 1963), 200 N.E. 2d 695. In this case, the owner of certain property applied for and received a variance for an addition to be erected so that the building could be occupied by three families instead of two. The owner did nothing with the property to conform to the order of the variance. The property was later purchased by the plaintiff who desired to remodel the dwelling to conform to the order of the variance granted to the previous owner. The court held that the variance granted to the first owner ran with the land and was not extinguished by reason of the subsequent transfer of the premises to the plaintiff. Some other cases which have determined that a variance is a right that runs with the land are Garibaldi v. Zoning Board of Appeals (Conn. 1972), 303 A. 2d 743; Hickerson v. Flannery (Tenn. App. 1956),

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302 S.W. 2d 508; Industrial Lessors, Inc. v. City of Garfield et al. (N.J. Super. 1972), 290 A. 2d 737.

You have indicated in your letter that the variance procedure of your county ordinance is based on the authority of section 3.1 of "AN ACT in relation to county zoning" (Ill. Rev. Stat. 1977, ch. 34, par. 3154). Some county zoning ordinances, however, authorize special permits or special uses which are not based on the authority of section 3.1 of the Act but instead consist of a residual category of special uses and these special uses have been held to be a valid method of implementing the powers conferred by this statute. (See, Kotrich v. The County of DuPage (1960), 19 Ill. 2d 181; Brown v. County of Lake (1966), 67 Ill. App. 2d 144. In order to determine whether such a special use runs with the land it would be necessary to examine the pertinent provisions of the zoning ordinance and to analyze the circumstances which gave rise to the problem.

Very truly yours,

A T T O R N E Y   G E N E R A L