



## Zoning Glossary Terms

1. **Accessory Structure**– a building on a lot that is secondary in use to the principal structure. (e.g. detached garage, maintenance shed, and leasing office).
2. **Code Violations**– Open issues such as violating fire-life safety, building, zoning, and code enforcement ordinances. Violations vary in severity from allowing grass to grow too high to faulty sprinkler systems.
3. **Floor Area Ratio (FAR)**– A measurement derived from dividing the building area by the total acreage of the lot. FAR limits are employed by local municipalities to regulate the maximum floor area that can be built on a lot. While most municipalities utilize gross building areas, some codes allow for the deduction of mechanical, common, or storage areas.
4. **Gross Building Area**– The total square footage occupied by a building.
5. **Improvement Conformance Status**– A property’s building, parking areas, and other structures, as it relates to a local municipality’s adopted zoning regulations.
6. **Legal Conforming**– A property considered in compliance with applicable codes enforced by the local municipality. This generally means that the property was either developed under the current zoning regulations or was granted to exist in its current condition. (e.g. new development that adheres to the bulk requirements and use standards applied to a district).
7. **Legal Nonconforming**– A property that does not meet all aspects of the current ordinance but is considered to be grandfathered in under the previous version of the code. (e.g. a warehouse established prior to the adoption of regulations that limit or prohibit the use within a zoning district; A structure built prior to the adoption of minimum setback requirements that encroaches into a required yard setback).
8. **Impervious Surface Coverage**– The area occupied by roofed structures and paved parking surfaces on a lot. A local municipality can utilize this to require a certain portion of the lot to be maintained as open or green space.
9. **Lot Coverage**– The area occupied by a building at grade, exclusive of any additional floors.

10. **Lot Width**– The mean horizontal distance between the side lot lines of a lot. This is often applied at the frontage of a property to regulate the minimum length of a lot that abuts a street line.
11. **Maximum Height**– The vertical distance measured from a specified point on the ground to a defined, fixed, or average point on the structure. Typically, this is the highest point of the structure; however, some codes will allow the vertical distance of parapet walls to be excluded from the measurement, or the measurement may be to the midpoint of a ridgeline for sloped/pitched roofs. Building height may exclude architectural elements not intended for habitation, such as penthouses that house mechanical and elevator equipment, wireless communication facility antenna arrays, smoke and ventilation stacks, flagpoles, etc. A zoning code may prescribe a maximum height either in stories, feet, or both.
12. **Net Rentable Area**– The total useable square footage available for lease in a building.
13. **Off-street Parking**– Vehicular spaces located on a property. A local municipality will provide a minimum ratio requirement by usage to require a certain number of spaces for a property. Some municipalities are now implementing maximum levels as well.
14. **Principal Structure**– the main building occupied by the primary/intended use on a lot.
15. **Property Jurisdiction**– The agency or local municipality that has the authority to establish and enforce regulations on a property.
16. **Setback**– The distance between the nearest point of a structure and the property line. This area must generally remain open and free from obstructions unless exceptions are granted by the local municipality.
17. **Title of Ordinance**– The adopted name of a local municipality’s zoning code.
18. **Unified Development Code**– A document adopted by a local municipality that often combines zoning regulations and other code regulations intended for the development of a new property.
19. **Use Conformance Status**– A property’s use, as it relates to a local municipality’s adopted zoning regulations (e.g. an apartment building in a district where multifamily dwelling uses are permitted would be legally conforming for use).

20. **Variance**– An administrative or discretionary action typically carried out by a local municipality’s designated governing body to allow a condition that isn’t explicitly permitted by the code to continue. A variance can be granted to allow a setback reduction, to allow a greater density than what’s permitted in a zoning district, or to allow a reduction in required off-street parking spaces.
21. **Yard**– Open areas along the perimeter of a lot, between a structure and the lot line, that must remain free from obstructions.
22. **Zoning Letter**– A document prepared by the local municipality to confirm the zoning district designation of the property, and, in some cases, details its development history and any entitlements approved for the property. Not all municipalities will issue zoning verification letters. Municipal fees for such letters vary wildly and can cost over \$1,000.
23. **Zoning Requirements**– Regulations adopted by a local municipality to control the development and use of new and existing properties.



## What Can a Zoning Report Uncover?

A zoning report is essential to any real estate transaction. Savvy investors, lenders, and buyers are looking closely at a few elements that may become potential roadblocks. If findings in the report deviate from applicable standards outlined in the zoning code, lenders will often request that the borrower purchase supplemental insurance to protect the lender against any loss of investment. In the worst-case scenario, a severe code violation could hinder a transaction. Unlike Property Condition Assessments or Environmental Site Assessments, there is no ASTM standard for a zoning report. There are eight items that you should look for in your zoning report:

### 1. Zoning Letter

A zoning letter is a document issued by the municipality that confirms the subject property's zoning designation. Municipality's responses vary from very basic to a detailed history of a property's development. The zoning letter may include confirmation of any approved entitlements such as site plans, variances, conditional use/special exception use permits, etc., and outline if the subject property's use is permitted by right in its zoning district.

### 2. Certificate of Occupancy (CO)

A Certificate of Occupancy (CO) is a document issued by the local municipality that allows a building to be lawfully inhabited or operated for its intended use. When a CO is unavailable, there should be an explanation of its absence and whether the absence of a CO is considered a code violation. When multiple buildings or tenants occupy multiple sites, the zoning report can aid in clarifying if a CO or a set of COs are required for all tenant spaces or buildings. For new construction where a building may not have received all necessary final inspections, a Temporary Certificate of Occupancy (TCO) is frequently issued.

### 3. Bulk and Off-Street Parking Requirements

A zoning report will verify whether an existing property or a planned project can meet basic development standards outlined in the zoning code. These items include but are not limited to the following: minimum and maximum setbacks of the front, side, and rear; minimum lot depth, lot width, lot area per unit, open space; and, maximum unit density, lot coverage, impervious surface coverage, floor area ratio (FAR), and height/number of stories.

### 4. Zoning Conformance Conclusion

The zoning report should verify whether the subject's current use and structures are permitted by the current zoning code or through the issuance of a special use permit, use variance, or conditional use permit. A zoning consultant could assist with exploring and attaining explanations for why a structure deviates from a code requirement.

When a property is conforming, there is generally no further action required because the subject property's use and improvements are in compliance with the applicable codes.

If the property's status is Legally Nonconforming, it means that the property met the necessary bulk requirements and use standards at the time it was built but no longer does due to a change in the code. Setback encroachments, unit counts that exceed the maximum density allowed, off-street parking, and lot area deficiencies are all common legal nonconforming features identified in a zoning report. Please note a property's conformance status cannot be assumed to be Legal Nonconforming solely based on its age. Depending on the risks involved in rebuilding after a casualty i.e., a fire, additional coverage, such as ordinance and law insurance may be required in a transaction to protect against any loss in investment.

Immediate action is required if the subject property's use and/or improvements are no longer in compliance with the applicable codes. When there is a potential violation or nonconformity, it's important to identify if it is a material concern. It's advisable to address issues with the municipality and resolve them during the due diligence period.

#### 5. Damage and Reconstruction Threshold

One of the ways lenders assesses a potential loss of property or investment is by considering the worst-case scenario and how they would recoup their investment in such an event. A zoning report can help to outline what aspects of the property deviate from the code, the extent to which they do, and what the feasibility of full site restoration will be for them. In instances where the language in the code requires additional interpretation or explanation, further guidance and clarity on the policy should be sought from the municipality planner, and the statements from the discussion should accurately reflect in the report.

#### 6. Building, Fire, and Zoning Code Violations

The zoning report identifies any open issues on-site that may require additional action or attention. As part of the report research process, public records requests are submitted to the municipality with jurisdiction. The responses received can vary, from a written statement confirming that there are no open or unaddressed code violations to a printout of an inspection report provided by the municipality without explanation or context. Certain metro areas like New York may require an expediter to work with the inspector to determine which items must be prioritized and which are eligible for closure.

#### 7. Planned Public Improvement Projects

The zoning report should include a search for any proposed or scheduled public improvement projects (right-of-way expansions, median installations, pedestrian amenities, etc.) or land condemnations either occurring or set to occur in the proximity of the Subject Property. It is imperative to watch out for these planned projects because they could impact the placement of

property lines, disrupt traffic flow, and/or impede access to the subject property for an extended period.

#### 8. Pre-development

The zoning report will confirm the proposed use of the property, and if it is permitted by right. If the use is one that is not permitted, there will be a recommendation for additional entitlements.

The zoning report cannot speak to whether or not a project is shovel-ready. For additional entitlements, it is advisable to consult a local council or a development firm that has an intimate working knowledge of the local developmental plans and policies.

Zoning regulations frequently evolve to reflect the needs, objectives, values, and visions of each community. Bear in mind that there isn't a set rule on how much information each municipality will provide, and many states, such as Michigan, do not require new documents to be created in response to any request for information. The zoning report is a snapshot of a property's status at a given time. A report issued more than 12 months ago, may not reflect the latest amendments to the code adopted by a municipality. A well-researched zoning report should address the above items. A reliable zoning report should contain information researched by trained professionals and then confirmed by the municipality.



## California's New Laws to Speed up Affordable Housing Production

### SB-6 and AB-2011 Allow Affordable Housing in Current Commercial and Industrial Zoning

Lack of housing security is a major issue in the state of California for decades. As the state has weathered the effects of a global pandemic and its homeless population hit an all-time high, lawmakers continue to look at ways to combat the unmet demand for new, residential development. To ease the housing crisis and to incentivize homeless, affordable housing, and multifamily residential development throughout the state, two bills, SB-6 and AB-2011, were signed into law this September. With the relaxed zoning requirements, the bills will give developers more options to preserve and repurpose vacant, abandon, and existing structures and hopefully establish a sustainable path for affordable housing growth in the state.

[SB-6](#), the Middle-Class Housing Act of 2022, first introduced in 2020 and enacted into law on September 28, 2022, is set to take effect on July 1, 2023. The bill allows for multifamily residential and mixed-use development projects to move forward in existing structures within office, retail, or commercial zones, as long as the projects were able to meet certain specified conditions and requirements. Projects that include in their square footage any hotel, short-term leased units (30 days or less), or other transient living uses are excluded from consideration under this bill.

[AB-2011](#), the Affordable Housing and High Road Jobs Act of 2022, authorizes local municipalities to offer two options for development projects that qualify under a specific set of requirements. The bill provides for conditions under which the need for a Conditional Use Permit may be eliminated.

The bills streamline the redevelopment process and allow affordable housing in current commercial and industrial zoning designated properties.

SB-6 gives local municipalities the option to offer an expedited development process to avoid the property remaining vacant. This could mean that areas previously occupied by big box stores and office buildings could be revived with multifamily and affordable housing projects.

AB-2011 could also aid in limiting the amount of time these structures remain unoccupied in areas where prior to its adoption, the local municipality would have required a Conditional Use Permit to be issued or for the project to be rezoned into a district where the proposed use is permitted by right.

Under the new laws, there are different zoning requirements for new affordable housing projects.

Under SB-6:

- The density for a new housing development located within an existing office, retail, or parking property shall meet or exceed the applicable density that is appropriate to accommodate housing for lower-income households.
- The new housing development will need to comply with its respective zoning, parking, design, density requirement, other ordinances, local code requirements, and processing and permitting procedures.
- It allows for affordable housing within any commercial, industrial, or parking subject property, the parcel must be considered a legal parcel and the project site must be 20 acres or less.
- The subject property must not be adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial use.

Under AB-2011:

- It allows developers to apply for a multifamily or mixed-use residential use without the issuance of a Conditional Use Permit.
- Local municipalities can offer two potential development paths for interested developers:
  - Projects with 100% of units intended for lower-income households, or
  - Projects with mixed-income units along a commercial corridor.

While neither bill guarantees that development can move forward, they both contribute to more favorable conditions for affordable housing development and eliminate some of the obstacles that have hindered the past progress.

While SB-6 and AB-2011 are specific to California, many similar laws are being discussed across the country. Local municipalities are examining their existing laws to determine if more can be done to encourage growth in their areas. Understanding the specific zoning regulations within each municipality that the subject property is governed by is crucial for ensuring the viability of any development project and any real estate transactions associated with them. It also helps to identify and mitigate any potential risk that could result in a future loss on investment or construction delay.





## Check Zoning Uses Before Getting into the Cannabis Business

As more states have legalized cannabis, dispensaries and production facilities are seizing a sizable real estate market share nationwide. This profitable business venture is expected to grow exponentially in the next five years. Municipalities are amending code regulations to adapt to the new laws. They are also looking to ensure that the uses established will have the least disruptions to the future daily lives of their constituents. Entrepreneurs interested in navigating this new market should understand the types of uses they may encounter before jumping into these opportunities.

The two most common uses established are cannabis dispensaries and cannabis cultivation/production facilities.

- Dispensaries are typically limited to retail or wholesale uses and are solely to sell and distribute cannabis-containing products. Typically, with these uses, on-site consumption is not permitted.
- Cultivation/Production facilities are of different use and may often be in a separate location from the dispensary. With cultivation/production facilities, there also needs to be an examination of the distribution access, and whether waste materials or other potential nuisances will need to be considered in such practices.

Municipalities can limit the number of dispensaries in a particular area, the distance from these dispensaries to schools and community facilities, hours of operation, and strictly define what uses are allowed within the facility.

Savvy investors should verify if the use is permitted by right if there are any additional conditions to adhere to, and if the municipality has plans to amend the code to restrict the use.