



# Location, Location, Location

## Politics

As Jewish communities, families, and institutions grow, finding roofs to put them under is an increasingly challenging proposition. What do we do when the

local zoning board comes along and says, “Do what you like, but don’t do it here”?

Isn’t a man’s home his castle? Do the neighbors have any say over whether you can build a new kitchen or a shul in your garage? Can people really form a new town just to prevent shuls from being built?

It depends, and not necessarily on what you think. A truism has it that the three most important factors in real estate investment are “location, location, and location,” but when it comes to how zoning affects that investment, a very close fourth is “timing.” Patience and a little humility play roles, too.

Whenever Jewish “industries” such as kollelim or shuls open in residential neighborhoods, or merely express their intention to do so, the first refuge of opposition by the locals — whether based in fear, prejudice, or completely rational protection of real estate values — seems to be the zoning laws. In a society like ours that is obsessed with finding legal solutions to complex social issues, resort to zoning law can be used to mask illegitimate goals. Proving that can be quite difficult, however. While a landowner can, of course, appeal a zoning board’s decision, courts go out of their way to avoid overturning such decisions, in order to protect the practical operation of government. The rationale is that if judges routinely second-guessed local officials, it would be impossible for cities and towns to get anything done.

The courts do, in fact, consider other interests besides the smooth functioning of municipal government, such as freedom of religion. Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA) over ten years ago to tip the balance somewhat in the direction of religious rights when weighed against land-use restrictions. But courts disagree on the extent of that protection, and litigation under the RLUIPA or for any zoning challenge is slow and expensive.

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Going to court over zoning is seldom the answer, and is usually avoidable if the sponsors of the project in question are willing to compromise on their initial vision of it. Springing a fait accompli on neighbors and local officials in the form of unauthorized or noncompliant uses or structures may not seem so problematic in the rough-and-tumble urban milieu, but it seldom achieves the desired results in the suburbs, where the most esteemed civic virtues are stability and neighborliness.

Using forethought before building, and demonstrating proper consideration of other people’s rights and sensibilities, are consistently the most successful approaches to address land-use issues. To the contrary, the ill will, extra layers of bureaucracy, rebuilding and litigation that result from an overly aggressive approach ultimately cause much greater delays in establishing a new place to daven, learn, or live than the sensible alternative of determining and planning what can be done, where it can be done, and at what cost, before building or adding anything.

Communities facing land-use issues need to communicate respectfully with affected neighbors even before seeking any necessary variances or approvals — and only then build. Consulting with experienced architects and planners, as well as neighbors and officials, usually results in a realistic understanding of what can be done, where, and at what cost. And if litigation is ultimately necessary, judges will view careful, deliberative, and inclusive steps taken to avoid conflict far more favorably than what may look like contempt for legal and communal norms.

Zoning regulations are laws like all others, and the best way to deal with them is seldom by testing them or those who enforce them. There will always be notorious discrimination cases, but most zoning issues are pretty mundane. And the more mundane that growing *kehillos* can keep them, the better. Planning, patience, and good citizenship are the right ways to find the right place to do the right thing. ●