

EXHIBIT 8

References to Rathkopf's The Law of Zoning and Planning § 2:15 (4th ed.) Page 1 of 4

1 Rathkopf's The Law of Zoning and Planning § 2:15 (4th ed.)

Rathkopf's The Law of Zoning and Planning | September 2018 Update
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Chapter 2. Constitutional and Legislative Limitations on Zoning
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I. Legislative Limitations

§ 2:15. Zoning regulates the use of land—
Restrictions on manner or operation of use

References

Zoning enabling acts authorize not only regulation of the location of a land use, but also authorize restrictions on the use of land at an allowed location, such as lot size, setback, yard, and height requirements, in order to prevent possible harmful off-site impacts and to render the land use more compatible with adjacent or nearby properties.¹ Similarly, zoning enabling acts usually authorize the imposition of site-specific restrictions or conditions on a land use in connection with the grant of a variance² or special exception³ in order to mitigate the negative impacts of a land use upon neighboring property and the community. Also, enabling acts may authorize the imposition of site-specific restrictions or conditions in connection with rezoning of land,⁴ site plan review,⁵ or subdivision approval.⁶

In all of the above contexts, restrictions or conditions imposed on a land use must, to satisfy due process, be reasonably related to promoting some legitimate public purpose.⁷ However, beyond this due process issue, and even assuming that the governmental body involved has authority under enabling legislation to impose restrictions or conditions on a land use in a particular context, there remains the ultra vires issue of whether the restriction or condition imposed reasonably relates to the objects and purposes of the enabling legislation. While zoning enabling statutes generally are held to authorize a variety of types of land use restrictions, courts have held that a zoning enabling statute does not delegate plenary police power to a municipality.⁸ In this regard, a zoning restriction imposed for considerations or purposes not embodied in an enabling act will be held invalid, not as exceeding the scope of the police power per se, but as an ultra vires act beyond the statutory authority delegated.⁹