

## **Zoning Laws Pre-dated By Some Properties**

**October 5, 2014**

**Dear Dave:** We have a home in Anchorage, built in 1966, and one corner of the house sits only 2 feet away from the property line. My neighbor says that this will be a problem when we try to sell, as the zoning laws now state that structures must be a minimum of 5 feet from the property line on an R1 lot. Can you please advise us?

**Answer:** Since the home was built in the 1960's it may well be grandfathered as a non-conforming property, but this is not certain. Zoning laws came into effect progressively throughout the Anchorage region. Zoning regulations for some areas began as early as the 1940's, but as late as the 1980's for other parts of town.

To clarify your position you will need to lodge a 'Request for Nonconforming Determination' with the Planning Department of the Municipality of Anchorage (MOA). You will be required to attach a recent as-built survey, a fee of \$130, and a copy of the MOA 'Hard File' (this can be obtained from the counter at the Municipal Offices on Elmore).

Within a few days the MOA will provide you with an official notification of the exact status of your property. If the nonconforming set-back is grandfathered the letter will serve as a legal protection for all future owners. You might even want to have it recorded at the Public Recorder's Office.

If the setback is not grandfathered, though unlikely, you will have to apply for a 'Variance', which is quite a bit more complicated. An application for a variance takes several weeks to resolve, is costly, and may or may not be granted (though common-sense usually prevails). One way or another you need the Municipality to sign off on your set-back of 2 feet or you won't be able to sell the home. No buyer would want to assume your legal problem.

**Dear Dave:** My wife and I were having a debate over whether we should put rain gutters on our home as they were only installed across the garage and front porch by the builder. Are rain gutters necessary in Alaska?

**Answer:** Alaska has more surface and sub-surface water than almost any place on earth. Drainage of water from the foundation of your home is one of the most critical issues to consider when buying your home.

Builders go to great lengths to try to ensure adequate drainage on new homes with grading of soil and even sub-surface drainage where soil conditions dictate. Existing homes, ten or more years old, may be less likely to have adequate drainage.

In either case, rain gutters are a definite benefit if installed correctly. The object of the gutters and downspouts is to direct water away from the foundation. Always have splash-plates (preferably concrete) or extensions on the downspouts. Water should be diverted a minimum of four feet away from the foundation. If the bottom of the downspout directs water to within one

foot of the home, it can be more damaging than having no gutters at all. Also, be sure downspouts do not direct water onto a sidewalk or driveway.

When purchasing new construction, rain gutters other than the ones you mention in your question may not be included in your purchase price. On a home properly constructed there is no good reason not to add rain gutters as an additional insurance against moisture damage to the foundation, and also to prevent splashing of the siding from water falling from the roof, which could deteriorate the siding. For a cost of \$6 to \$7 a linear foot, including downspouts, or around \$800 total for an average house, this is a small price to pay for the benefits derived.

About the only case where gutters are not advisable is when you have an ice damming problem. This mostly applies to older homes and especially those with "hot" roofs (i.e. roofs without a ventilated attic between the roof and the ceiling), but even brand new homes can have ice damming problems, particularly if the design involves a complicated roof line. If you are experiencing ice damming along the eaves or roof valleys of your home, rain gutters could exacerbate the problem with ice build-up which eventually forces its way under the roof and turns back into water inside the structure.

**Dear Dave:** I signed a contract to buy a home in my wife's absence. We both thought she would like it but now she doesn't want to sign the purchase agreement. The sellers are making me buy it anyway. What can I do?

**Answer:** I can't see that the sellers can realistically make you buy the property. If you wrote up the offer in both you and your spouse's names, it is not a valid contract without your wife's signature. Sellers are in a precarious position until all parties have fully signed an agreement to purchase.

If you wrote up the offer in your name alone then the position is different. You obligated yourself to buy a property and your problem is domestic, with your wife, not with the seller. However, very few sellers actually follow through with their legal right to your 'Specific Performance' of the contract and you would probably just lose your earnest money.

We often refer to a legal expression - 'let the buyer beware' - when people are purchasing real estate. Your story is more a situation of 'let the seller beware!' It is far too easy for buyers to back out of contracts and too much cost and trouble for sellers to enforce performance. I strongly recommend more substantial earnest money be required of buyers, and access to that money by the seller made more certain in the event of buyer default by carefully wording the terms of the agreement. Your question is easily solved for yourself as buyer, but the seller is really up the creek without a paddle!