



Municipal Planning Boards:

WHAT ARE THEY AND
WHAT ARE THE ROLES AND
RESPONSIBILITIES OF ITS MEMBERS?

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BRIEF OVERVIEW OF PLANNING & ZONING IN N.J.

- ▶ Planning and zoning in the State of New Jersey is regulated on a local level. Most municipalities have their own, locally adopted zoning regulations. The New Jersey Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 et seq., is the legislation that enables municipalities to establish their own development rules through the adoption of a Zoning Ordinance and a Zoning Map.
- ▶ The ordinance and map are companion documents that determine what can be built within the municipality. The map shows the limits of each of the zones that have been established by action of the local governing body. The zoning ordinance provides the specifics of what may be built in each zone.

THREE BODIES INVOLVED IN PLANNING & ZONING

▶ Governing Body

- ▶ Introduces and adopts ordinances dealing with land use;
- ▶ Refers requests to designate areas in need of redevelopment or rehabilitation for study by the Planning Board;
- ▶ Holds discussions with developers about potential projects;
- ▶ Appoints members to the Board of Adjustment and Planning Board;
- ▶ Approves municipal budget with funds for work of BOA and PB;

▶ Board of Adjustment

- ▶ Hear and grant or deny "c1" and "c2" variance applications for one and two family residences, under N.J.S.A. 40:55D-70(c);
- ▶ Hear and grant or deny "d" variance applications, some of which are known as use variances. N.J.S.A. 40:55D-70(d); and,
- ▶ Provide an annual report to the Governing Body and the Planning Board summarizing cases heard and making recommendations.

▶ Planning Board

COMPOSITION OF THE PLANNING BOARD

- ▶ There can be a maximum of nine (9) regular members and two (2) alternates, including:
 - ▶ Class I – Mayor/Village President or her/his designee;
 - ▶ Class II – Municipal employee (generally, although alternate appointments permitted as per MLUL);
 - ▶ Class III – Elected official; and,
 - ▶ Class IV – Residents of the municipality (only Class IV members can be officers).

PLANNING BOARD FUNCTIONS

1. Prepare and adopt Master Plan.
2. Prepare studies and approve or reject designations of areas in need of redevelopment or rehabilitation.
3. Review proposed ordinances for consistency with the Master Plan.
4. Develop or review Capital Improvement Plan for consistency with the Master Plan.
5. Hear and grant or deny Subdivision and Site Plan applications.
6. Hear and grant or deny "c" variance applications, most of which are known as bulk variances. N.J.S.A. 40:55D-70(c).
7. Hear and grant or deny conditional use authorization applications.
8. Hear and grant or deny soil disturbance permit applications.

SITE PLANS AND SUBDIVISION

- ▶ **SITE PLAN.** A site plan application is required for the construction of one or more buildings and their related site improvements on a piece of property. One- and two-family dwellings are exempt from the requirements for site plan approval.
- ▶ **SUBDIVISION.** A subdivision application is required if one wishes to divide one lot into two or more lots.

ZONING PROCESS SUMMARY

Apply for Permit → Receive Zoning Officer
Denial Letter → Prepare & Submit
Application & Plans → Publish & Notify
Residents → Conduct Public Hearing →
Decision of Board → Commence
Construction or Appeal.

PLANNING BOARD VARIANCE REVIEW

- ▶ Planning Boards review applications for variances under section 70(c) of the Municipal Land Use Law, N.J.S.A. 40:55D-70(c).
- ▶ These variances are often called “c” variances or “bulk variances” because most of them involve an applicant seeking relief from a zoning ordinance requirement related to the size of the proposed building or site improvements, such as building setbacks from the property line or extent of impervious coverage, although these variances also include ‘non-bulk’ items like parking variances.

VARIANCE STANDARD OF REVIEW

- ▶ (c)(1) Where by reason of the size, shape, topographic conditions or other extraordinary and exceptional situation unique to the subject property, the strict application of the Ordinance requirement would result in peculiar and exceptional practical difficulties or hardship upon the applicant;
- ▶ (c)(2) Where the purposes of the Municipal Land Use Law would be advanced by a deviation from the Ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

VARIANCE STANDARD OF REVIEW (con.)

- ▶ In all variance applications, the applicant must also prove that the approval can be granted without substantial detriment to the public good and without substantial impairment of the intent and purpose of the zone plan and zoning ordinance.

HEARING PROCESS SUMMARY

- ▶ Completeness Review by Board Professionals
- ▶ Site Plan Review Hearing
 - ▶ Applicant or counsel summarizes the case;
 - ▶ Applicant or counsel presents and questions witnesses (e.g., applicant, architect, engineer, planner, etc.)
 - ▶ Board professionals, Board members and then general public are given the opportunity to question each witness, as presented (no comments!)
 - ▶ Applicant rests their case and public comment begins;
 - ▶ Public comment period is closed and Board deliberation begins;
 - ▶ Board Member proposes a resolution approving or rejecting the application with or without variances and/or design waivers and vote is taken; and,
 - ▶ Written resolution reflecting outcome of vote is voted on (normally at the following meeting).

ETHICAL OBLIGATIONS OF PLANNING BOARD MEMBERS

- ▶ As a Planning Board member your ethical obligations are governed by:
 1. the Local Government Ethics Law (LGEL)
N.J.S.A. 40A:9-22.1;
 2. common law; and
 3. the Municipal Law Use Law (MLUL)
N.J.S.A. 40:55D-23(b); N.J.S.A. 40:55D-69.

2C:30-2

Criminal Official Misconduct

- ▶ 2C:30-2 – A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure another of a benefit:
 - ▶ a. He commits an act relating to his office, but constituting an unauthorized exercise of his official functions, knowing that such an act is unauthorized or he is committing such an act in an unauthorized manner; or
 - ▶ b. He knowingly refrains from performing a duty which is imposed upon him by law or clearly inherent of the nature of his office.
- ▶ Official misconduct is a crime of the 2nd degree. If the benefit obtained or sought to be obtained, or of which another is deprived or sought to be deprived, is of a value of \$200.00 or less, the official misconduct is a crime of the 3rd degree.

Municipal Land Use Law

- ▶ No member of a planning or zoning board is permitted to act on any manner in which he has, either directly or indirectly, any personal or financial interest. N.J.S.A. 40:55D-23(b); N.J.S.A. 40:55D-69
- ▶ Requires disqualification of a public official from participating in proceedings in which the official has a conflicting interest that may interfere with the impartial performance of duties as a member of the public body. See Scotch Plains-Fanwood v. Syvertsen, 251 NJ Super. 566 (App. Div. 1991)

Municipal Land Use Law

- ▶ Also requires any corporation or partnership applying for a land use approval to disclose the names and addresses of any stockholder owning at least 10% of its stock or at least 10% of the interest in the partnership. This disclosure requirement is intended to avoid conflicts of interest. Failure to make the required disclosure will result in invalidation of any action taken on the application. N.J.S.A. 40:55D-48.1, 48.3

Conflicts of Interest

▶ There are 4 types:

1. Direct Pecuniary Interest (\$)
2. Indirect Pecuniary Interest (\$)
3. Direct Personal Interest
4. Indirect Personal Interest

Note: When a conflict of interest is discovered the entire process needs to start over. This is why it is very important to disclose any potential conflicts from the beginning!

Conflicts of Interest

- ▶ Disclosure is key to identifying and avoiding conflicts of interest in land use cases.
- ▶ Conflicts of interest determinations are fact sensitive so complete disclosure of all relevant facts is necessary to enable a Board, an applicant and the Board Attorneys to comprehend the extent and nature of a potential conflict.

Some Examples

- ▶ Conflict exists when a board member's mother lives within 200 feet of the applicant's property
- ▶ Board members who work for a bank which would benefit from a proposed ordinance change must disqualify themselves
- ▶ Board member who is manager of a title insurance company that did all the title work for an applicant must disqualify himself/herself.
- ▶ However, Board members appointed by the Mayor/Commissioners were permitted to hear a development application filed by the Mayor/Commissioners because public officials should be able to conduct business within their own municipalities.

Limitations on a Disqualified Member

- ▶ When a Board member has been disqualified for conflict of interest, the board member cannot participate in any fashion before the board.
- ▶ The disqualified member should not sit with the board if he or she remains at the hearing.

Waiver of Conflicts of Interest by the Parties

- ▶ Disclosure ordinarily does not cure a conflict – direct conflicts cannot be waived and render any action taken by the board void.
- ▶ However, disclosure of a conflict that may have existed in the past, but is no longer in existence and cannot influence the board member's impartial discharge of his or her duties may be waived by consent of the applicant and the board.