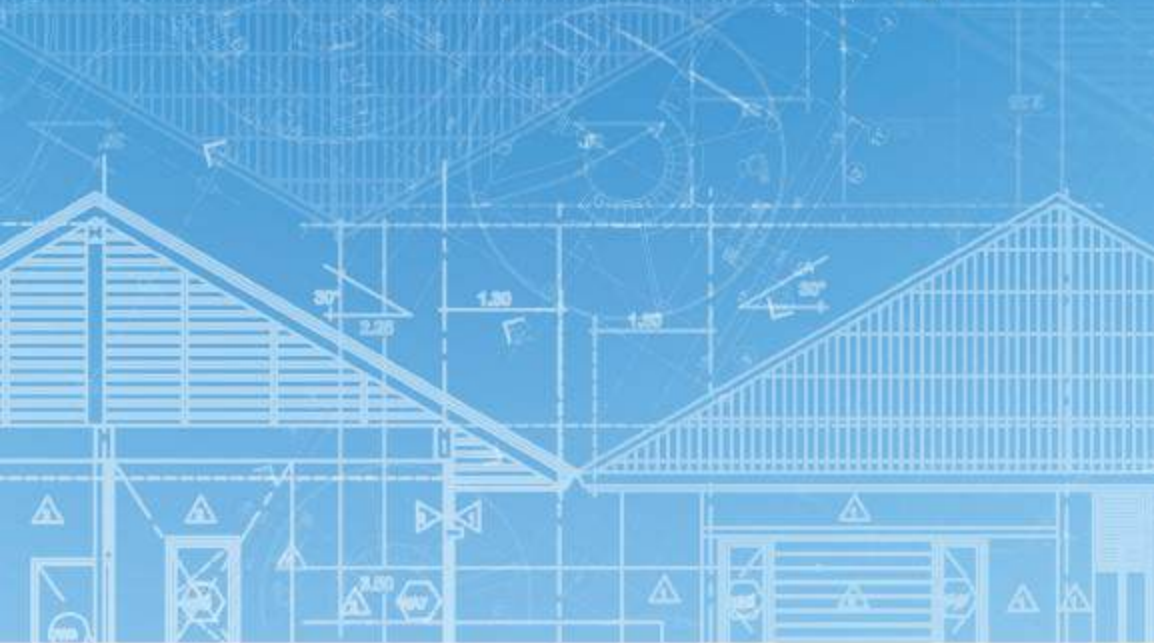


A NON-LAWYER'S GUIDE TO NEW JERSEY

LAND USE ZONING & PLANNING

M. Brian Hall, Esq. and John H. Shindle, Esq.



From Application to Approval

WARD, SHINDLE & HALL | ATTORNEYS AT LAW

A NON-LAWYER'S GUIDE TO NEW JERSEY

LAND USE ZONING & PLANNING

**M. BRIAN HALL, ESQ.
AND JOHN H. SHINDLE, ESQ.**

Copyright © 2026 by Ward, Shindle and Hall

All rights reserved. This book or any portion thereof may not be reproduced or used in any manner whatsoever without the express written permission of the publisher except for the use of brief quotations in a book review.

Disclaimer

The information contained in this book is provided for general informational purposes only and is not intended to constitute legal advice. While the authors are licensed attorneys, reading this book does not create an attorney-client relationship between the reader and the author or any affiliated entity. The content herein should not be relied upon as a substitute for seeking personalized legal advice from a qualified attorney licensed to practice in your jurisdiction.

Laws and regulations, particularly those governing land use in New Jersey, are subject to change and may vary based on specific circumstances. Readers are encouraged to consult with a licensed attorney to address their unique legal needs and ensure compliance with applicable laws.

By reading this book, you acknowledge and agree that no attorney-client relationship is formed, and no confidential or privileged information is being exchanged.

CONTENTS

INTRODUCTION..... 1

STARTING THE PROCESS; UNDERSTANDING THE BOARDS INVOLVED 6

 Zoning Board..... 7

 Planning Board 8

BULK VARIANCES 10

 What is “bulk?”..... 10

 Bulk Variances..... 13

 Types of Bulk Zoning Variances..... 14

SUBDIVISIONS AND CONSOLIDATIONS 18

 Subdivisions 18

 Consolidations 22

SITE PLAN REVIEW 23

USE VARIANCES..... 30

CHANGE OF USE APPLICATION.....	35
How to Approach Your Application	37
The Application Itself.....	38
THE APPLICATION PROCESS	40
Introduction.....	40
Ownership	41
Tax Verification.....	42
Escrow Agreement	42
W-9 Form	43
Development Checklist.....	43
Submission of the Application	45
Public Notice	45
Applications for a Zoning Interpretation.....	47
THE HEARING PROCESS.....	52
Overview	52
The Hearing Procedure.....	53
Experts.....	54
Presentation of Your Application	56
The Board's Decision	58
Appealing an Adverse Decision.....	59
SPECIAL CONSIDERATIONS IN LAND USE AND ZONING RELIEF REQUESTS	61
Introduction.....	61
Affordable Housing.....	62
Wetlands Development.....	63
Contaminated Site Development	65

COSTS AND FEES	67
-----------------------------	-----------

CONCLUSION: NAVIGATING NEW JERSEY LAND USE LAW WITH CONFIDENCE	70
---	-----------



INTRODUCTION

YOUR LAND USE PROJECT can take many forms. It may be a home or garage modification — major or minor. Maybe you want to build an alternative dwelling unit, subdivide your property, or open a business in a part of town that does not currently allow one. The better informed our clients are, the better they understand how we can serve them. That's why we wrote this book.

We will present a broad overview of the steps necessary to comply with the regulations and other factors to consider in successfully navigating the completion of your property goals. Our approach must be general, of course, since those goals will differ vastly among readers.

The touchstone of New Jersey land use law — zoning and related issues — is the Municipal Land Use Law (MLUL). For better or worse, the MLUL allows every municipality great authority to create its own

zoning and land use regulations tailored to its specific circumstances and preferences. Local control over land use — within the bounds set by the MLUL — is the foundational principle upon which local zoning and related ordinances rest.

These local rules define how your property can be used, or not used. They differ greatly, so it's impossible to offer exact or specific “how-to” guidance that applies equally to every town in New Jersey. Therefore, before you begin any project, it's essential to understand each and every requirement of ***your*** local ordinance to avoid unanticipated delays and expenses.

But since your local boards and decision makers are bound by the Municipal Land Use Law, let's begin by examining the purposes of the MLUL stated in the law itself:

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;
- b. To secure safety from fire, flood, panic and other natural and man-made disasters;
- c. To provide adequate light, air and open space;
- d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole;

- e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;
- f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;
- g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;
- h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight;
- i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;
- j. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;
- k. To encourage planned unit developments which incorporate the best features of design and relate

the type, design and layout of residential, commercial, industrial and recreational development to the particular site;

- l. To encourage senior citizen community housing construction;
- m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;
- n. To promote utilization of renewable energy resources; and
- o. To promote the maximum practicable recovery and recycling of recyclable materials from municipal solid waste through the use of planning practices designed to incorporate the State Recycling Plan goals and to complement municipal recycling programs.

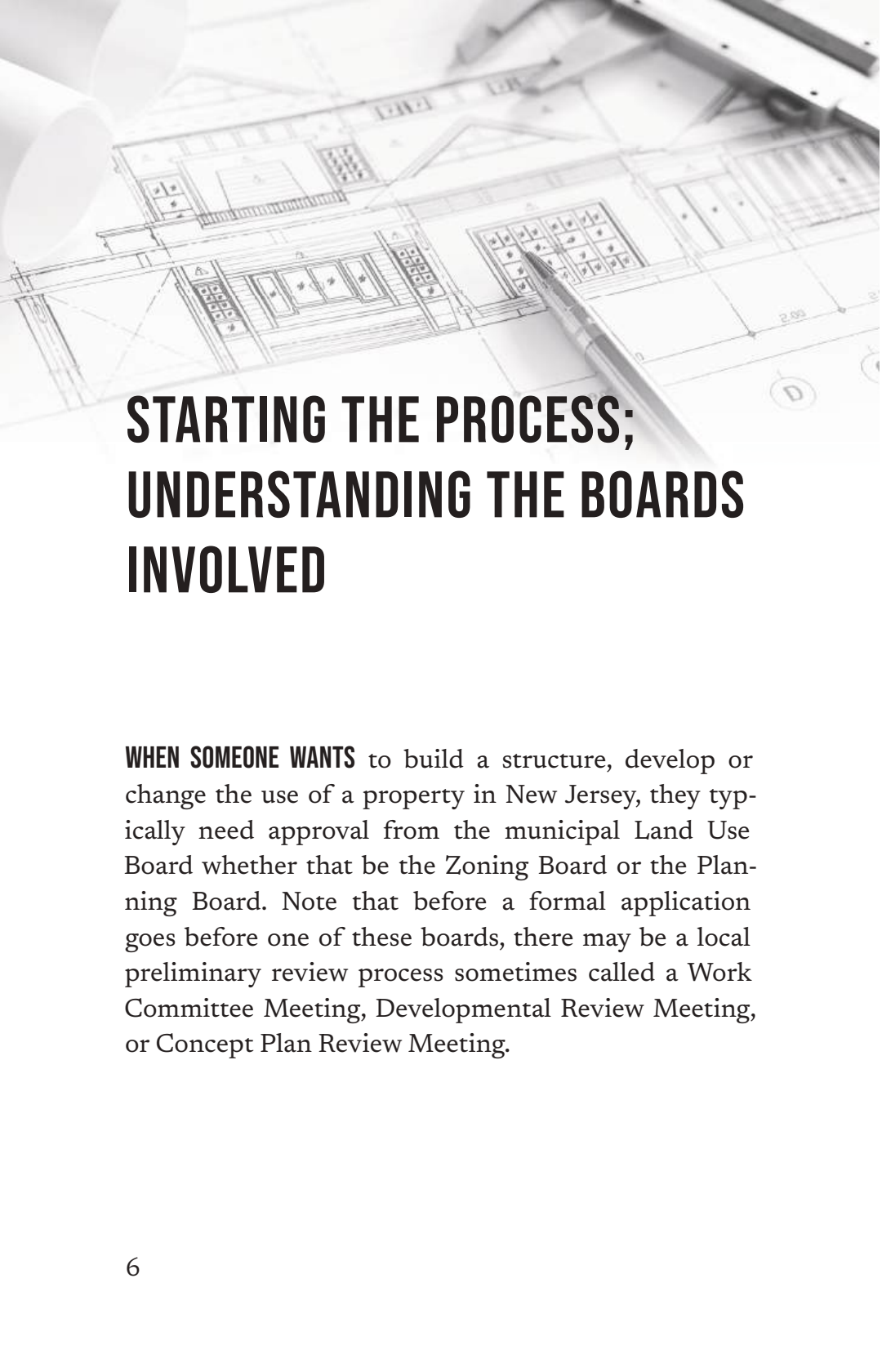
Virtually all land use projects within New Jersey require some kind of permit from local authorities if the project involves more than general maintenance. Therefore, the bottom line is that your project is likely to be more complicated than you might have expected. The journey from concept to completion of your project can be a tough, complex, and expensive slog.

Normally, the necessary applications and forms can be found online, but whether or not the local municipality provides a user-friendly, “do-it-yourself” guide

is not guaranteed. Citizens are on their own to ensure they meet the legal requirements to submit and process a complete land use application.

Moreover, an over-arching feature of the MLUL is the importance of public participation in the land use process. This includes public hearings and notice requirements. A property owner must be able to properly present, explain, and address any questions by Board members or objections from the public concerning his or her land use project.

We have years of experience in this process and hope you will choose us to help. But whether you do so or not, you would be wise to understand the general regulatory “lay of the land” that will apply to your situation — no pun intended.



STARTING THE PROCESS; UNDERSTANDING THE BOARDS INVOLVED

WHEN SOMEONE WANTS to build a structure, develop or change the use of a property in New Jersey, they typically need approval from the municipal Land Use Board whether that be the Zoning Board or the Planning Board. Note that before a formal application goes before one of these boards, there may be a local preliminary review process sometimes called a Work Committee Meeting, Developmental Review Meeting, or Concept Plan Review Meeting.

ZONING BOARD

Zoning is the local process for dividing land into areas for various defined uses — e.g., commercial, residential, industrial, agricultural, etc. Zoning laws (i.e., ordinances and regulations) are the rules pertaining to how you can use a piece of land. This includes a multitude of specific characteristics related to it, such as the maximum size, occupancy, number of structures permitted on it, etc.

Zoning Boards are primarily concerned with interpreting and applying those local rules to the specific circumstances of your property and/or proposed project. Your municipal Zoning Board also has authority to resolve your questions — or disputes initiated by others — about the meaning or application of a particular zoning regulation to your specific property and/or proposed project.

The Zoning Board also hears and rules upon appeals when a property owner or other interested party claims an error was made in a decision by a zoning or other administrative official in the interpretation or enforcement of a zoning ordinance.

If you want to develop property, establish a business, add an addition to your house or make other alterations to your property that does not adhere to the rules, you might be able to do so by formally requesting and being granted a zoning variance or waiver. A variance is an exception to a zoning ordinance that allows you

to do something that would otherwise not be permitted under the zoning regulations. The Zoning Board makes decisions on requests for variances.

All of this is why you'll probably want to begin by checking with the Zoning Officer to determine if your contemplated project is currently permitted in your zone. Most municipalities consider common additions "compatible" with residential zoning and they are therefore permitted. But the "devil is in the details" imposed by your town or city. So be mindful of those details before you begin work on anything.

You may find that your town's zoning website gives information about its members and public meetings, but does not post the relevant laws themselves. Many municipalities, however, post their zoning ordinances online using a commercial service, ecode360.com.

PLANNING BOARD

Like municipal Zoning Boards, your local Planning Board was created by the MLUL. Its primary purpose is to guide the long-term planning and overall development of the community. Accordingly, it makes recommendations on amendments to zoning ordinances, and is the primary body that must review and approve subdivision and site plan applications, which are discussed more fully later in this book.

The Planning Board also develops and periodically updates the municipality's Master Plan, which outlines

the municipality's vision for future land use. In other words, it designates the proposed location, size and nature of development for various land uses, e.g., residential, commercial, industrial, agricultural, recreational and open spaces, etc.

Think of the Master Plan as the overarching guiding framework for the physical, economic, and social development of the municipality. It is the community's detailed vision for its future and it outlines goals and strategies for how land should be used and developed over the next 10-20 years.

Finally, please note that some municipalities have combined Land Use Boards that serve both functions of a Planning and Zoning Board.



BULK VARIANCES

WHAT IS “BULK?”

It’s important to define what “bulk” means before we look at “bulk variances.” A structure’s “bulk” refers primarily to its physical features and placement on one’s lot. The limitations on the bulk characteristics of a structure are detailed in your local zoning ordinances. Note that regulations regarding a structure’s “bulk” do **not** deal with its **use** (e.g., Is the structure a factory or a single-family home?). We’ll examine property “use” later.

The law uses the term “structure” **very** broadly, so we need to define it. Be sure you understand this before starting your project. If it’s considered a structure, there will be paperwork involved — permit applications, etc.

The Municipal Land Use Law defines “structure” as: “a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above, or below the surface of a parcel of land.”

In other words, virtually anything you might want to add to your property can be considered a “structure.” But the details of what is allowed — and the specific dimensions and other requirements pertaining to it — vary greatly from town to town. So, as we remind you frequently, check with your local Zoning Office before starting any project.

Even after reading the legal definition above, the word “structure” still might not come to mind when folks think of some common projects, so we’ll list a few you might not have expected:

- Swimming pools (both above and in-ground)
- Carports
- Driveways
- Central air conditioning units
- Generators
- Fences
- Sheds

Bulk standards limit the size of a structure, including its maximum height, as well as its total floor area and overall volume. There are typically regulations on “setbacks” — the minimum distances from your proposed project to your property lines, streets, and other

structures. The goal is to prevent overcrowding and ensure green areas, with sunlight, and ventilation.

These regulations are aimed at controlling how densely land can be developed by limiting the size and coverage of buildings on a given lot. (“Coverage” is the percentage of the lot covered by structures.) Bulk regulations often mandate a certain amount of open space on a property.

Related zoning ordinances also limit the amount of impervious coverage allowed on a lot. (An “impervious surface” is any hard surface that prevents water absorption into the ground.) Such limits are also considered a “bulk” characteristic of a structure.

Bulk regulations are a substantial part of zoning ordinances in New Jersey. A primary goal of bulk zoning is to maintain a consistent visual environment — i.e. the ambience of a neighborhood — its “character.” These regulations are the reason you won’t likely find a big box store or warehouse in the middle of a pleasant residential block in New Jersey.

Public welfare is also a consideration when the Zoning Board issues regulations. Besides a better aesthetic look, setbacks and open space requirements ensure room for emergency vehicles and reduce the risk of a fire spreading between buildings. Limitations on impervious surfaces help manage water runoff during storms, mitigating drainage and flooding problems.

In sum, bulk zoning helps stabilize and protect property values by ensuring orderly development and

compatible building size, placements, and other features in a community.

BULK VARIANCES

A bulk variance is a deviation from the specific dimensional or physical requirements of a bulk zoning ordinance. In other words, a bulk variance is formal, legal authorization to build or place something on your property in a way that doesn't precisely meet the size, location, or other rules of the zoning district. Examples would be deviations from the requirements for setbacks from property lines, structure size, height, or percentage of the lot that is covered by structures, etc.

Any deviation from a zoning ordinance requires a variance from either the planning or zoning board depending on your type of application. For example, your proposed bedroom addition might be one foot closer to the property line shared with your neighbor than the setback distance provided in the local ordinance. If so, you'll need a variance before you can proceed.

Note that just because you or a former property owner got away with a project without obtaining a variance, does not mean that the ordinance cannot be enforced at a later date. When a zoning violation is alleged against a property owner, it is often initiated by a local resident's complaint. Upon receiving a complaint, a representative of the Division of Zoning or

Code Enforcement will conduct an inspection of the property to verify the violation and issue a Notice of Violation (NOV) if warranted. The NOV will detail the specific ordinance violation that has occurred and provide a deadline for the owner to correct the violation.

There will then be a follow-up inspection. If the violation has been remedied, the owner is usually off the hook. If the homeowner fails to satisfy the inspector, the situation will be assessed on a case-by-case basis, which could involve municipal fines. Property owners have the right to appeal the decision or seek a variance from the Zoning Board.

If, unfortunately, you find yourself in this situation, you would be wise to retain legal representation if you haven't done so already. The municipality might try to work with the owner to reach compliance with the ordinance. If the violation is significant or dangerous, or if the owner is unresponsive, the municipality might pursue the matter in court.

TYPES OF BULK ZONING VARIANCES

There are two main types of bulk variances. They are nicknamed “C(1)” and “C(2),” after the section numbers in the MLUL that authorizes them. A C(1) variance is also called a “hardship” variance. A C(2) variance is referred to as a “Flexible C” variance.

C(1) VARIANCES

A C(1) (“hardship”) variance is appropriate when a parcel of property presents an exceptional physical condition that make it very difficult or impossible to fully comply with zoning regulations. These conditions might include the property’s narrowness, unusual shape, or some other unique features. The property owner must show in the variance application that these physical characteristics create a hardship that prevents “reasonable use of the property” under the local zoning rules.

So, what is a “reasonable use of the property?” It depends — it’s up to the Zoning Board. A bedroom or toolshed addition are — arguably — reasonable uses, for example. A roller coaster for your kids, not so much.

What is a “hardship”? Again, it depends. But the hardship must relate to the physical characteristics of the land. The Zoning Board will likely not give you any relief just because zoning compliance would be a personal inconvenience or financial burden. Also, please note that Boards are very hesitant to grant variances for self-imposed hardships that are created by the applicant.

The Board might find a valid hardship, for example, if you wanted to build an “ordinary” house on a lot with a weird shape or steep slope, such that anywhere you could place the structure, it would violate the setback ordinance, i.e., be a bit too close to your property line.

Another hardship situation might exist when the property already has a non-compliant structure that was okay under older zoning regulations. Your proposed addition might require further deviation from current rules.

C(1) hardship variances require a detailed, formal application and a public hearing. You will have to show the positive criteria that the variance would advance a purpose of the MLUL and also overcome “negative criteria.” That is, you must show that your requested variance can be granted without causing a substantial detriment to the public good, and that if the variance is granted, it will not substantially impair the purposes of the municipal zoning plan.

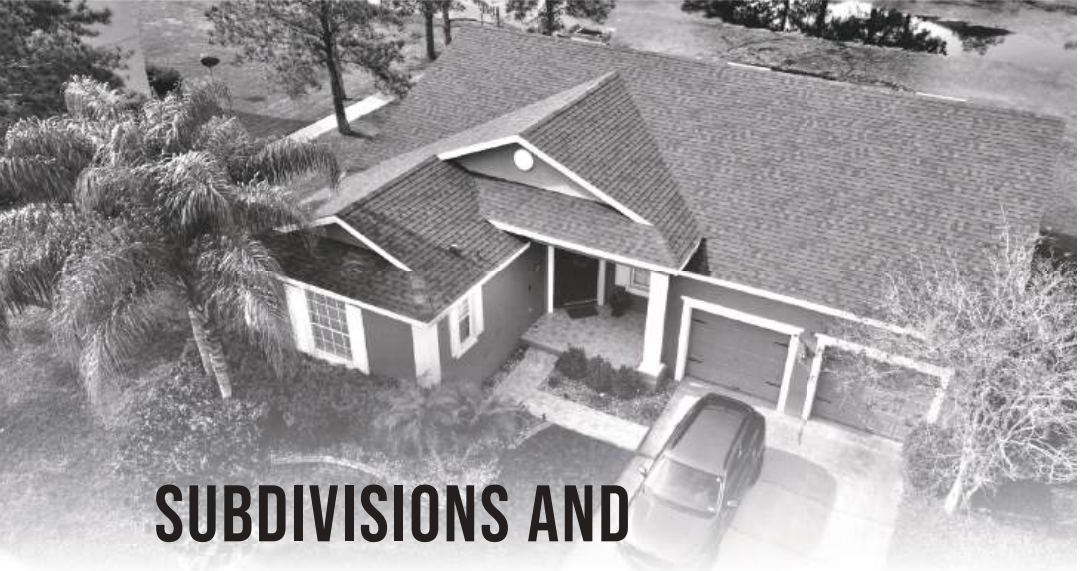
C(2) VARIANCES

The applicant does not have to prove hardship for a C(2) variance, but must show that the benefits of granting the bulk variance would substantially outweigh any factors contrary to the public good. Instead, it must be shown that the variance would — in some way — benefit the community at large and advance one or more purposes of the Municipal Land Use Law (listed previously). These are also called “Flexible C” Variances because there is no single criterion that must be met. But a C(2) variance will not be granted when it benefits only the applicant.

More common is the homeowner seeking a C(2) variance, for example, when a small setback variance

of several feet in a back yard is needed to allow a home addition to be built in scale and harmony with the character of the rest of the immediate community.

In this situation, the variance application should show how approval of the project will maintain an appropriate population density (a goal of the MLUL), and how it blends nicely with the other houses in the neighborhood. The applicant must show that these benefits outweigh any detriment that the requested small setback variance would cause.

An aerial photograph of a single-story suburban house with a dark roof and light-colored siding. The house features a two-car garage on the right side, with a dark car parked in the driveway. To the left of the house, there are several palm trees and other landscaping. The overall scene is a typical residential neighborhood.

SUBDIVISIONS AND CONSOLIDATIONS

SUBDIVISIONS

A subdivision under the MLUL is the division of a parcel of land into two or more lots, thereby allowing the sale or development of those lots.

A professional developer might want to make money by turning a large piece of land into multiple smaller lots for resale to residential homebuilders. A family might want to give or sell part of their larger lot to an adult child to build a home so the growing family can live near each other.

There are two types of subdivisions: “major” and “minor.” A minor subdivision is one defined by local ordinance as the division of property into the maximum number of lots permitted. For instance, a local

ordinance might define a minor subdivision as only two lots plus the remainder. Anything greater than a minor subdivision would then be a major subdivision.

Applications for minor subdivisions are far less complicated than applications for major subdivisions. That's because minor subdivisions usually involve fewer new lots and don't require new streets or off-site infrastructure. Minor subdivisions will probably involve a less rigorous and shorter review process by your local Planning Board than would a major subdivision.

But "less complicated" is a relative term. The actual requirements for a subdivision approval are established by each municipality and virtually all have formal checklists that set forth the specific requirements for a subdivision, which you can also probably find online. You don't have to go to law school to complete this checklist properly, but great attention to detail is necessary.

Under New Jersey law, the municipal Planning Board is responsible for reviewing and ruling on applications for subdivision of land. If an application for a minor subdivision meets the requirements set forth in the local ordinance, the applicant is entitled by law to approval. To ensure your application goes smoothly, however, it is highly recommended to set up an informal pre-application meeting with your local Planning Board to discuss your proposal. This can help clarify local requirements and potential obstacles or issues right away.

Note that if the proposed subdivision does not meet certain bulk requirements of the local zoning ordinance (discussed previously — e.g., lot and structure size, setbacks, etc.) a bulk variance will also be necessary. Usually, bulk variance applications are determined by the Zoning Board, but when they arise out of subdivision requests, the Planning Board will consider bulk variances as part of the subdivision application.

Once a minor subdivision is approved by the Planning Board, a final subdivision deed or in some cases a plat must be filed with the County Clerk's Office to officially create the new legal lots. A "plat" is a detailed map prepared by a licensed New Jersey Land Surveyor using specialized equipment to precisely measure and mark the property.

Plats are public records used by individuals and local governments to engage in commercial transactions, resolve property disputes, and plan construction projects. A minor subdivision plat shows the boundaries, dimensions, setbacks and other essential information for the original and newly created lots and any remaining land. Basic drainage features and utility connections will be indicated, but the more detailed engineering plans required for major subdivisions are usually not necessary.

Major subdivision applications are a much bigger undertaking than minor subdivision applications. This is because they often involve the creation of more lots, new streets, infrastructure (e.g., sewer, water, drainage),

and other public improvements. Therefore, major subdivisions require much more elaborate plans and plats. They require detailed engineering plans for street design — grading, stormwater management, utilities and other infrastructure. (If the major subdivision will require improvements like extending utilities beyond the property lines, this must also be detailed on the plat.)

Additionally, due to their larger scale, major subdivisions often require more thorough environmental studies. The plans must reflect any environmental constraints, such as wetlands, floodplains, and critical areas, along with proposed mitigation measures.

Similar to other land use applications, a major subdivision requires a public hearing. Any local resident or group is entitled to come forward with a gripe about even a well thought-out plan. “Not in my back yard” is a common theme. These concerns must be addressed thoroughly and respectfully, but it’s easy to get caught flat-footed if you haven’t done this before.

In a nutshell, applying for major subdivision approval is a major production. As stated, a pre-application meeting with your local Planning Board to discuss a minor subdivision proposal is a good idea. Such a meeting to discuss a major subdivision is almost indispensable and often mandatory. We have the experience to guide you from this initial meeting through the public hearing and beyond.

CONSOLIDATIONS

There are any number of individual reasons why a property owner might want to consolidate (combine) multiple adjacent lots into a single parcel. A larger, consolidated parcel might offer more flexibility for future development or sale, for example.

Since combining lots will result in a larger contiguous area, it might make possible a bigger house or other structure than zoning ordinances would allow on any of the individual, smaller pre-consolidation lots. A larger parcel offers greater flexibility in designing the layout of buildings, parking, landscaping, and other site features.

Consolidation of real estate parcels is generally easier to accomplish than subdivision and sometimes does not even require a land use application or hearing. This is typically the case when an individual owns two contiguous residential properties and simply wants to combine them. The local ordinance may provide that such a consolidation can be accomplished simply by filing a consolidation deed.

As stated before, whenever you are planning any type of land use project, it is recommended to speak to your local Zoning Officer as a first step to determine your best and most efficient course of action.



SITE PLAN REVIEW

SITE PLAN REVIEW IS AN INVOLVED PROCESS by which the Planning Board ensures that proposed developments are compatible with the municipality's Master Plan and zoning ordinances. The board evaluates a wide range of factors.

Under the MLUL, Site Plan review is a mandated process for any "development" as defined by the law (explained below). It is the way in which a municipal Planning Board (in some situations, the Zoning Board is also involved), examines an applicant's plans for a proposed real estate project to ensure compliance with the municipality's zoning regulations, Master Plan, and other applicable ordinances and standards.

A Site Plan is a visual representation of the physical characteristics of a property and its surrounding area. In broad terms, it is a drawing or map that outlines the layout and features of a parcel of land,

including property boundaries, structures, and proposed improvements. Note that a detailed “Site Plan” is sometimes confused with a less detailed “plot plan.” A plot plan is a basic survey that might suffice for simple zoning or construction permits. A plot plan will not be sufficient for a larger development.

We will refer here to the “Planning Board,” which the MLUL expressly gives Site Plan review authority. But note that in some municipalities a Joint Land Use Board may perform the functions of both the Zoning and Planning Board.

Through Site Plan review, the Planning Board ensures that a proposed development is properly designed and constructed, while any potential negative impacts are mitigated. The goal is to safeguard public health, safety, and general welfare. Local ordinances dictate specific development design standards related to building and parking layout, noise, traffic flow, environmental issues, safety, fire protection and aesthetics — the “look” of the project and how it fits in with the surrounding area.

As developers plan for these larger scale considerations, they must remain mindful of the common ordinances we have presented earlier, related to location of structures, setbacks, height, density, coverage, etc. Also, while the MLUL designates the Planning Board as the primary review body, an applicant should be aware that applications may be required to other local entities (MUA, Fire, Police) or county and state agencies during the review process. A large project

might involve the input of a multitude of other professionals like engineers, various types of planners, traffic experts, etc. As a result of this input, the Planning Board might impose conditions on its approval of the Site Plan to ensure compliance with regulations and mitigate potential negative impacts.

So, before we go further, let's discuss who is likely going to need a Site Plan review application. The specific triggers and circumstances are ultimately defined and specified by individual municipal ordinances.

The average homeowner who wants to add a bathroom or bedroom won't have to go through this. Site Plan review is a concern primarily for developers thinking about larger projects like:

- Most Non-Residential Development
- New commercial, industrial, and institutional buildings
- Multi-Family Residential Development, like apartment buildings, townhouses, and other multi-dwelling unit projects — especially those requiring new streets, parking areas, sidewalks, drainage facilities, and other site infrastructure
- Certain Changes of Use: to ensure the existing site layout and facilities are adequate for the new use's demands (e.g., increased parking needs).

The MLUL provides specific exemptions for common projects:

- **Minor Residential Development:** Single-family detached or two-family detached dwellings on individual lots or a small number of contiguous lots can usually bypass Site Plan review. These projects are allowed by the MLUL but must meet specific criteria. Keep in mind, however, that local rules may be stricter.
- **Small Additions or Alterations:** Minor additions to existing buildings or interior renovations that do not significantly impact site features are exempt.
- **Replacement Structures:** Rebuilding an existing structure within a similar footprint without major site changes usually doesn't require Site Plan review.
- **Agricultural Uses** (often with specific exemptions).

To determine if a specific real estate project requires Site Plan review under the MLUL, you should consult the specific zoning and land development ordinances of the municipality where the property is located before you do anything else. These local regulations provide the details applicable in your area to the project you're considering.

One must consider how the term "development" is broadly defined in the MLUL: "The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration,

relocation or enlargement of any building or other structure, or any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land.”

Note that — apart from structures themselves — the law is concerned with land disturbance activities that may be part of a project. Clearing of vegetation, excavations, grading, demolitions, etc. are reviewed for potential environmental impacts such as drainage, erosion, and sedimentation.

Your development project is probably not going to be the first in New Jersey history to be completed with absolutely no objections or curveballs. Learning early the possible issues early can help you deal with them as inexpensively and efficiently as possible. We know what to expect and can help get your ducks in a row for this review.

As mentioned earlier, many municipalities have an informal preliminary review mechanism. Such a committee is a helpful resource provided by the local government to assist developers with applications for development. An informal, pre-application review of the above-referenced project design considerations can be immensely helpful. This allows for early feedback from the Planning Board professionals before a formal application is submitted.

A Site Plan review might also be required before a change in the use of a property. Even without any physical modifications, a change in the type of business

or activity on a site can trigger a review to ensure the existing site layout and facilities are adequate for the new use — think parking, drainage, or other environmental impact, for example.

In a nutshell, the MLUL mandates Site Plan review for most significant real estate development activities and changes of use in New Jersey. You would therefore be wise to inquire about the need for a Site Plan review of any proposed project that involves more than a modification of or addition to your own single structure or lot.

The detailed examination of a real estate Site Plan review often reveals instances where a proposed development or other project does not comply with existing zoning regulations. We have discussed variances previously. Indeed, developers and property owners often desire projects that they know from the start cannot fully adhere to every single zoning regulation, for various reasons — like site constraints, design objectives, economic considerations, etc.

The Site Plan itself often calls attention to project features which do not meet the specifications of the current zoning ordinance(s). This will necessitate that the applicant seek one or more variances from the municipal Planning Board (or Zoning Board, depending on the type of variance).

So, variance requests are a frequent result of Site Plan reviews. Common specific issues include setbacks, lot coverage, structure height, inadequate parking,

signage (e.g., size, location, or illumination restrictions) and landscaping or “buffering” of a proposed structure(s) from existing ones.

Fortunately, applications for Site Plan approval and variances can be submitted and reviewed at the same time. The Planning Board has the authority to grant certain “C” (bulk) variances that are an essential part of a Site Plan application. If the application requires a “D” (use) variance (e.g., permission to use the land in a way not permitted in the zone) the application will be heard by the Zoning Board.

Submitting both applications together streamlines the review process for both the applicant and the municipal Planning Board and/or Zoning Board. Reviewing them at the same time allows the board to understand the complete scope of the project and how the requested variances relate to the overall Site Plan.

This combined Site Plan review aims to ensure that even with granted variances, the overall project aligns with the intent and purpose of the Master Plan and zoning ordinances. It allows the Board to review at one time crucial project elements like traffic flow, parking, landscaping, environmental impacts, and public safety.

Site Plan review is a critical step in any project developer's plan. The factors to be considered are many and the process itself is complex. If your project Site Plan is rejected, you have several options in trying to move forward. In that event, we can help you evaluate and follow through with the best course of action.



USE VARIANCES

FIRST, SOME EXPLANATION IS IN ORDER. Local zoning ordinances dictate the way specific parcels of land can be used and developed. Hence, we normally do not see a massive office building in the middle of a quiet residential neighborhood.

There are situations, however, when property owners and developers envision a project that current zoning laws do not allow. An example might be a new supermarket in that quiet residential neighborhood, when the nearest ShopRite or Costco is miles away and folks are unhappy about the inconvenient drive.

Such a use of land in the neighborhood is currently not permitted. What to do? A developer could apply for a “use variance” — special permission from the local Zoning Board to build a structure that is not currently allowed. In other words, a property owner seeks an exception to the zoning laws to allow him or her to use

a parcel of real estate in a way not authorized by the zoning ordinance as it stands today.

Use variances are nicknamed “D” variances, after the sections of the MLUL that authorizes them. You will see that the nature of some “use” variances seem to overlap with the “bulk” variances previously discussed. These differences are based on specific definitions in the law and understanding them is crucial.

The following is a brief introduction to the use variances authorized by the MLUL:

D(1) variances allow a use or principal structure in a district that does not currently allow that use or principal structure.

D(2) variances allow an expansion or addition to a previously permitted use or structure that would not be allowed under the current regulations. I.e., The use or structure had been “grandfathered,” and now the property owner wants to add to it. The pre-existing use or structure is no longer permitted but is being “grandfathered.”

D(3) variances allow a “conditional use.” A permissible conditional use is allowed by ordinance if the proposed use satisfies certain conditions. If the property owner is unable to meet all these conditions, then he or she will need a conditional use variance.

D(4) variances are required to build or add to a structure that exceeds the maximum floor area ratio (FAR) allowed on a lot. This might seem like a bulk variance scenario but it's a use variance because the intensity of the use (as measured by FAR) would exceed what the ordinance allows.

D(5) variances seek permission to exceed the currently allowed "density" of a property. It's a measure of how much development is proposed relative to the size of the property.

D(6) variances request permission to build structures that exceed the maximum permitted height by 10 feet or 10%, whichever is less.

For all the (D) variances, the property owner must offer proof that "special reasons" (also called "positive criteria") exist for the use variance being sought. The MLUL defines some special reasons directly, and the courts have refined and expanded them. There are "inherently beneficial" uses that automatically satisfy the positive criteria such as hospitals, schools, child-care centers, or renewable energy structures.

If the use is not inherently beneficial, generally, there are sufficient "special reasons" for the grant of a (D) variance when a proposed project carries out a "purpose of zoning" as defined by the Municipal Land Use Law. We previously presented the list of such purposes, but they can be summarized as follows: "To encourage

municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare.”

Sometimes, however, a particular piece of property cannot be used for a permitted purpose without “undue hardship.” The variance applicant must prove that the current zoning laws make the available land unreasonably burdensome or practically impossible for an otherwise desirable purpose. These situations are unusual and often difficult to prove.

Additionally, a (D) variance applicant must prove that granting the variance will not cause harm to the public good or impair the intent of the local land use law. The owner must show, for example, that the proposed project will not negatively affect neighboring properties’ light, air, privacy, or property values. The project must not create problems with traffic, parking, noise, or drainage, among other things.

One major note on use variances: in contrast to the simple majority required in a vote on a bulk variance application — a D (use) variance request requires a “supermajority” or mandatory five “yes” votes for approval. No matter how many board members are present, a use variance must be approved by at least five members to pass. This can cause problems if less than the full complement of Board members is present.

Given the complexities involved in obtaining a use variance, you would find it very helpful to consult a

land use attorney for guidance. We also have relationships with other professionals who you might need to navigate the application process, gather necessary evidence, and represent you at the public hearing.



CHANGE OF USE APPLICATION

A NEW JERSEY CHANGE OF USE APPLICATION is a formal request to a municipal land use board (typically the Zoning Board) seeking approval to change the use of a property from its current permitted use to a different permitted use. It sounds straightforward enough. Keep in mind though, as with all land use matters in New Jersey, municipal rules differ and they always reign supreme.

We previously discussed use variances, so you might be wondering, “What’s the difference between an application for a use variance and an application for a change of use?” In fact, a “use variance” and “change of use” are related concepts. But they are not the same. These examples show the difference:

A use variance is required if you want to use property in a way that is not permitted at all in your zoning district. Maybe you’d like to open a small restaurant in a residential zone, for example. The idea sounds

good — and your neighbors have even encouraged you. But a restaurant is simply not currently allowed in that zone. So, you'd need to apply for a use variance even for a "good" idea. That's just how use variance applications go.

By contrast, let's say your property is in a commercial zone and you'd like to convert a jewelry store into a few small offices to rent. Or maybe you own a recently vacated warehouse, and somebody approaches you about opening a gym there. In each situation, you're proposing to change from one already permitted use of your property to another permitted use. These scenarios would require an application for a change of use.

An uncomplicated request for a change of use faces an easier path to approval than an application for a use variance. Still, be aware that even when both uses (current and proposed) are allowed in your zoning district, different projects can have different impacts on the immediate neighborhood (e.g., parking, traffic, etc.). So, for reasons that you may not have anticipated initially, your particular change of use project might indeed require a use variance as well as a site plan review and approval from the local Planning Board. If variances are needed, therefore, keep them as minor and well-justified as possible.

Recall that site plan review ensures compatibility with the municipality's Master Plan. Be prepared to prepare a site plan for review if the new use you're proposing changes traffic patterns, demand for parking,

signage, the building's footprint, or a change expressly listed in your local ordinances. Fortunately, a change of use project likely will not need full site plan review if any proposed alterations are entirely inside the building and have no impact on the outside.

HOW TO APPROACH YOUR APPLICATION

Be proactive. There are ever-present basic questions and issues that must be addressed before your change of use project can be approved. Remember our “devil-in-the-details” warning. There are dozens of factors a proposed change of use potentially brings into play — things that would impact the neighborhood, like drainage, traffic, parking, signage, lighting, etc., etc. These things might not be apparent at the start but would very likely need approvals.

As we have said, informal contact with the appropriate local land use authority (i.e., Zoning Officer, or Zoning Board/Planning Board Secretary) is highly recommended. Be sure to get clarity from the appropriate people. Nail down specifically what the Planning and/or Zoning Board will require of you regarding any change of use application filing. Please keep in mind, any verbal promises or statements by a planner or a municipal representative are not necessarily binding. Meaning, that someone promising there will be no issues when you apply is not likely enforceable, as the appropriate application needs to be submitted in compliance with

the municipal regulations and then approved by the controlling Board.

THE APPLICATION ITSELF

The contents of the application for a change of use will depend greatly on the municipality and the nature of the proposed project. Of course, it will require basic applicant information and property location. It will ask for details about the nature of the current property use and the proposed changes.

Most applications have space for your narrative description of the proposed use. For example, what activities will take place? What are the proposed hours of operation, number of employees, etc. What, if any, structural changes to the building or site are proposed, e.g., interior renovations, signage, landscaping, and lighting. Will the new use create noise, increase parking demand or affect traffic? Will there be any environmental issues created? You should gather all the necessary information (studies, maps, etc.) to submit with your application — don't make the Board ask for additional material.

Very commonly, a change of use application will require a bulk variance of some kind. For example, we referred above to a commercial zone in which a retail shop owner wanted to convert to a small suite of rental offices — both are permitted uses in that zone. But what if the owner also wants to widen the small

parking lot by paving some of her adjacent land that is now a vacant patch of grass? In addition to a change of use application, this owner will very likely have to apply for a bulk variance because she would be increasing the “impervious surface” coverage of her property.

In sum, it's wise to go into your change of use project with open eyes. Recognize the many different community impacts a particular proposal could have. Understand early the questions and concerns the Board and your neighbors will surely have. Begin a dialog with the right officials from the start. We have experience with this and would be happy to guide you every step of the way.

A black and white photograph of a hand holding a pencil, poised to write on a document. The background is blurred, showing what appears to be a desk with some papers and a stapler.

THE APPLICATION PROCESS

INTRODUCTION

Whether you're applying to a Zoning Board, Planning Board or some other entity — for whatever you might be seeking — the application forms and application process are highly dependent on the local municipality. Each town has different forms and requirements. But painting with a very broad brush, we can say that the general application process is basically the same across the state, despite the differences in local details. Wherever you are and whatever you want to do, however, count on plenty of paperwork.

As mentioned previously, many municipalities in New Jersey encourage applicants to request an informal pre-application meeting with the Board's professionals and staff. These meetings are sometimes called a

work committee meeting or a developmental review meeting. Pre-application conferences are intended to assist applicants in identifying applicable regulations and submission requirements. This will help clarify what approvals you'll need for your project (e.g., a bulk or use variance), and whether your project is feasible at all. Some municipalities have a standalone work committee application while others simply use the board application.

Assuming you already completed the work committee session, you will then need to complete the basic land development application for your project type. Are you applying for permission to subdivide your property or a zoning variance to allow a home addition or swimming pool, for example? Whatever you want to do, there's an application for it. The relevant application will ask for general information about you, the property (its location, present use, etc. etc.) and your proposed project. Most applications provide space for you to answer specific questions in narrative form.

Here are some items common to all applications:

OWNERSHIP

You will need to identify who owns the subject property. Very often, a corporation, partnership or other legal entity — not a human being with a pulse — will be the landowner applying to a Zoning or Planning Board approval. Therefore, all applications contain a

“corporate disclosure” statement, either on the basic application or a separate form. The law (as always, the MLUL) requires that the application disclose the names and addresses of anyone who owns more than 10% of that entity. The point is transparency — to prevent hiding the “true” ownership of the subject property behind business entities.

TAX VERIFICATION

Of course, no Zoning or Planning Board will give you the time of day unless your property taxes are paid in full. So, you’ll need to have a Tax Certification Form completed by the local Tax Collector’s Office that shows you are current and no tax is due on the property.

ESCROW AGREEMENT

An escrow deposit is required for applications to municipal Zoning and Planning Boards. It is used to cover the municipality’s costs of reviewing your application. For example, the Board will engage an engineer, planner, attorney, traffic or environmental consultant to help evaluate your project and whether your application should be approved. This is set out in a short and straightforward escrow agreement.

The amount of the escrow deposit depends on the municipality and the nature and complexity of your project. Will a traffic study be necessary, for example?

Likely yes, if you're applying for a major subdivision and housing development. No, if you're building a deck for your home.

Since the exact cost of the professional consultants cannot be known in advance, you might be required to replenish the escrow fund as review of your application proceeds. But you'll be entitled to a refund if the escrow account has money remaining after all application review costs have been paid. Note that a denial of your application does not entitle you to a refund of money spent. Also note that if you take issue with the amount charged by municipal professionals against your escrow account, you only have 45 days from the date you receive a copy of the professional's informational voucher to file an appeal.

W-9 FORM

A W-9 Form is an application for a Taxpayer Identification Number from the IRS. The municipality needs this for holding application-related fees in escrow (e.g., for the above-mentioned professional reviews by engineers, planners, or lawyers) and/or issuing escrow refunds.

DEVELOPMENT CHECKLIST

The MLUL requires a development checklist to be submitted with land-use applications. Think of this as a

“completeness checklist.” As usual, the exact list varies by municipality, but the core components are consistent. It’s simply a list of the things that must be notated on your plans or that need to be submitted to the land use board you are applying to. You must either submit the required checklist items or request a waiver of submission if you have good reason. If your application is missing anything on the checklist, it may be deemed incomplete, which could lead to delays.

The checklist will also include municipality-specific items and reports or surveys from professionals. These “supporting documents” will vary, depending on what kind of application you are submitting. For example, you would need to provide more — and different — information for a major development project than for a bedroom addition. We’re talking here about everything from simple floor plans to complex drainage and traffic studies.

The items on the development checklist are required so the Zoning or Planning Board can make an informed decision on your request. If you are requesting a variance, for example, you should be able to explain the pros and cons of your project (i.e., the positive and negative criteria). The application gives you a chance to do this on paper. You’ll have to do it in person later, at the public hearing on your request. We’ll cover that shortly.

SUBMISSION OF THE APPLICATION

Multiple copies of the application and supporting forms and other documents are always required — review your municipality's application carefully to determine how many copies of each application document are required. Once an application is submitted, the Board will send it to the appropriate professional(s) (e.g. an attorney, surveyor, engineer, environmental consultant, etc.) who must conduct an initial review of the project proposal to determine whether it is complete. They will also advise you whether they support any waivers of particular rules you might have requested.

If an application is not complete, it will not be scheduled for hearing until the missing materials and information are submitted. You can avoid delays by taking your time and paying careful attention to the submission requirements so as to get it right the first time.

PUBLIC NOTICE

Once you have submitted your application to the Zoning or Planning Board and they tell you it is deemed complete, you must make public notice of your hearing date. The public needs to be informed and given the chance to make comment at the hearing.

Public notice includes publication in a local newspaper designated by the Board, as well as mailing certified

letters to all neighbors within 200 feet of your property. Your municipality (probably the Tax Assessor) will give you a certified list of these property owners. This is very important and must be done at least 10 days in advance of your hearing before the Board.

Most municipalities will provide you with a form notice, but generally speaking you must provide complete details, including:

- Name of the Applicant
- Street address and tax lot/block of the property
- Municipality and county
- Date, time, and location of the public hearing
- Board hearing the application
- Nature of the application
- Type of relief sought: e.g. “use variance,” “bulk variance,” “site plan approval,” etc.
- Where your application can be reviewed e.g. at the municipal building

Once you’ve complied with the public notice requirements, you must submit proof of doing so to the Board. That would be your white certified mail receipts and an Affidavit of Publication from the newspaper.

Your public notices must be 100% correct and must be mailed to every single person within 200ft of your property or the board will not have jurisdiction to hear your matter on the scheduled hearing date. If your notice does not include a required detail or if you

send a notice to the wrong address, your hearing will be adjourned so that you can re-notice and re-publish. The cost of the mailing the notices alone is often hundreds of dollars, and not something you want to do more than once.

APPLICATIONS FOR A ZONING INTERPRETATION

In New Jersey land use law, zoning “interpretations” are decisions made by a local Zoning Board when a property owner is uncertain and asks how the municipal zoning ordinance applies to a particular property or proposed use — perhaps because the ordinance is unclear, for example. Zoning Board interpretations are also necessary when other interested parties dispute the property owner’s personal interpretation and his or her proposed project.

A zoning interpretation is simply a formal ruling on how a given zoning ordinance should be read or applied to a particular plan or project. The interpretation doesn’t change the ordinance — that would require a rule change by the appropriate law-making body in the municipality. An interpretation just clarifies what the ordinance means when applied in a specific context. The Zoning Board thus serves as the initial “judge” of the ordinance language.

As with most land use matters, state law does not provide a uniform procedure a property owner must follow. The MLUL grants municipalities authority to

establish their own procedures for how zoning interpretation requests are handled there.

WHEN ZONING INTERPRETATIONS ARE NEEDED

The best way to explain zoning interpretations is to understand how they fit into the land use picture. Keep in mind that no rule or regulation at any level can be written so that it precisely covers every conceivable situation where it might come into play. That's why we have judges and other decision-making bodies like Zoning Boards to interpret laws.

What, then, is a property owner to do when planning a project and there is some ambiguity in the relevant ordinance that needs further interpretation? When a property owner is not sure if a contemplated project complies with zoning ordinances, common sense dictates it's wise to resolve that basic question at the start by requesting a zoning interpretation. In practice, most municipalities require an applicant to make a request to a single, designated Zoning Officer before requesting a formal zoning interpretation. That officer is a "gatekeeper" of sorts. Their function here is to interpret the ordinance in question and either issue a zoning permit or deny it.

If the applicant's proposal is denied by the zoning officer, only then (in most places) is he or she permitted to file a request for a zoning interpretation — i.e., an appeal of that denial — to the full Zoning Board. Courts always have the final word, but they usually

defer to a Zoning Board's interpretation of its own ordinance, as long as it's reasonable. An applicant might not be happy with this reality, but at least it helps avoid expensive and lengthy litigation.

INTERPRETATION REQUESTS

Zoning interpretations most often arise in a few general categories of situations. An arguably ambiguous wording of a zoning ordinance is among the most common bases for an interpretation request. Very broadly speaking, zoning restrictions are construed in favor of property owners' free use of land — with an important “if.” The property owner has a much better chance of a favorable zoning interpretation if his or her project proposal is consistent with both the zoning ordinance's intent and the community's Master Plan.

A favorable interpretation depends a lot on whether the proposed project can proceed with no variances needed. If a project requires both a “friendly” zoning interpretation, as well as a use variance, the project will face a tougher approval process and must meet a higher standard for approval. This is simply because use variances by themselves generally face tougher scrutiny than other land use questions.

HYPOTHETICAL INTERPRETATION SCENARIOS

We've presented a few generalities, but it's worth taking a closer look at an example project where zoning issues often arise. Even if your project is not identical

to the example below, you will get an idea of questions and concerns that frequently pop up elsewhere and what you might expect.

FAST FOOD RESTAURANTS:

This type of project provides a good general illustration.

“Fast food” — and “restaurant” generally — are often all too “fuzzy” zoning concepts in New Jersey. Many zoning ordinances don’t bother to define “fast food” or “restaurant” at all. Some ordinances just refer to “restaurants.” Unfortunately, many ordinances offer no guidance, or definitions that seem arbitrary, unclear, unreasonable, or unfair.

Some ordinances do provide clearer criteria in these definitions that help determine where a proposed project fits into the zoning regulatory scheme. They might refer to counter service, table service, drive-through service, disposable utensils, or other specific features that help to characterize a business that serves food in some fashion.

The clarification of zoning issues when food service is involved will always depend on exactly what your ordinance says in black and white. When we help a client, that’s where we start. We look at those definitions and first see if we can develop a line of reasoning that presents your project as compliant with existing zoning rules.

Of course, that reasoning has to be credible and persuasive. We will explain both the favorable and unfavorable factors you'll likely face going forward so you can make an informed decision.

We can help evaluate, for example, how your zoning ordinances would treat a convenience store with a food section offering carry out pizza slices, sandwiches and drinks. How about a pizza shop with a carry out location? Does it matter if you want a pizza place that offers sit-down service, but also has quick take-out counter service?

Ultimately, resolving the zoning interpretation request depends on the Boards interpretation of the plain language of the ordinance and the intent of the local zoning scheme and deciding whether a proposed use "fits in." If you are unsatisfied with the Board's interpretation, you have the ability to appeal to the Superior Court for a final decision.



THE HEARING PROCESS

OVERVIEW

Finally, after all the advance planning and application-related paperwork, a property owner will get his or her big shot — a hearing on their request for zoning “relief” before the local Zoning Board or Planning Board. At this point, it’s worth reminding yourself exactly why you’re here and what the goal is.

The hearing is intended to allow property owners to ask for a ruling on a request for approval of a land use application. We have examined the various types of applications above such as subdivisions, consolidations, site plans, bulk variances, and use variances. Some applications may be “by right” without any request for variance relief, but most times applicants find themselves before a Board it is because they are seeking variance relief.

A land use hearing operates something like a courtroom. There will be evidence presented, and interested parties will have a chance to advocate for their positions, but it is not like a family debate at the dinner table. There are rules that call for orderly procedures that must be followed.

At the hearing, *the burden is on you* to support your request for zoning relief with substantial, competent evidence *you* place in the record. In reaching a decision, the Zoning Board must make findings of fact based on this evidence.

Be aware that if “you” — the legal party formally seeking relief — are a corporation or LLC, New Jersey law requires that such an entity be represented by an attorney. If the hearing is based on an application for relief filed in your individual name, you are permitted to represent yourself.

THE HEARING PROCEDURE

When your case is called, you or your attorney will present your application to the Board. This presentation typically begins with an explanation of what relief you are seeking and why you need it. Then, you should demonstrate as precisely as possible how your proposal satisfies the relevant legal criteria for granting your requested relief. Maybe your property has a unique shape, topography, or other feature that makes strict compliance with the setback ordinance very difficult or

impossible. (We have reviewed these elsewhere in this Guide.)

Like judges in a courtroom, Zoning Board members will probably not allow you to proceed from start to finish without interruption. A hearing presentation will seldom be a speech. Expect questions throughout, even from left field. They may inquire about specific aspects of your proposal, alternatives you considered, or impacts on neighboring properties.

Even if their tone is not hostile, these inquiries can easily throw off your train of thought and result in confusion. It is important to be prepared and rehearse your presentation so you can remain calm and poised throughout your presentation. It is best not to argue with Board members or members of the public. A professional attitude and composure are key.

EXPERTS

There is a good chance that your application will require you to retain professionals such as engineers, architects, or planners to testify as expert witnesses in support of your application. These experts, of course, must present their professional qualifications to the Board's satisfaction in order to be recognized. They — and anyone who testifies at a Zoning Board hearing — must do so under oath.

Even though your experts are qualified to provide expert testimony on the matter, the Board will call

upon its own experts (municipal professionals) to provide the Board with guidance. The Board evaluates your expert testimony and other evidence against the municipal professionals' input and the MLUL standards. The municipal professionals will have examined your application and written a review letter to the Board in advance of your hearing.

Obviously, the types of experts needed by both you and the Board depend on the particular project proposal. There are some experts that frequently participate in these meetings:

- **Municipal Planner** — Usually this is a licensed Professional Planner (P.P.). He or she advises the board on the planning implications of the request. They evaluate whether the variance or other requested zoning relief is consistent with the Municipal Land Use Law and the municipality's Master Plan. They review the positive and negative criteria for variances discussed earlier in this Guide.
- **Municipal Engineer** — This will be a licensed civil engineer who reviews the technical aspects of your plans. Their focus is on things like drainage, stormwater management, traffic flow, utilities, and public safety. They ensure the project adheres to local, county, and state engineering standards. The engineer may recommend

technical modifications to your plan as a condition for Board approval.

- **Traffic Engineer** — For commercial or large residential variance applications, a Traffic Engineer might be needed. They review the impact of a project on traffic flow, parking adequacy, and traffic safety.

Of course, no hearing would be complete without a lawyer. The Zoning Board will have an attorney (sometimes called a solicitor) to ensure the Board is following the procedural requirements of the MLUL. The Board Attorney advises the Board on the legal sufficiency of the application, evidentiary standards, conflict-of-interest issues, and the interpretation of the zoning ordinance.

PRESENTATION OF YOUR APPLICATION

The Board will consider factual testimony and submissions from the applicant along with expert testimony and reports from professionals. The Board will analyze that evidence against the relevant legal backdrop (local zoning ordinance and MLUL) in making its decision. In other words, Board decisions are evidence based. They are not made based on whether an applicant's plan just seems to be a "good idea" or not. So, it's important that you have your ducks in a row for the presentation of

your witnesses and the material they will be offering into evidence.

As in a formal courtroom trial, the witnesses should be called in an order that makes sense. They should be properly prepared for the questions they may be asked by the Board members or Board professionals. It's not a good look — to say the least — if your expert is caught flat-footed in addressing a challenging question that they were not ready for. Preparation is critical as these hearings can be stressful.

Finally, the hearing is opened to public comment. Neighbors and other interested parties can ask questions about the testimony given or make statements in favor of or against the application. All speakers must provide their name and address for the record, and comments must relate to the application. This is an important part of the process, as the Board considers community input when making decisions. Members of the public may speak directly or may be represented by an attorney.

If objections are raised, you'll have the opportunity to respond and address concerns. Sometimes applicants agree to modify their proposals or accept certain conditions in response to neighbor concerns. Any such changes can make the proposal more acceptable to all and be made part of the Board's approval decision.

THE BOARD'S DECISION

Once all testimony, documents, and public comments are in the record, the Board members make their decision. They are required by law to deliberate in public, discussing whether the application satisfies the legal standards for granting the requested relief (some Boards deliberate more than others so do not be surprised if they simply move toward a vote without much discussion). In addition to any applicable particulars, the Board's fundamental decision is whether the applicant can be granted relief without detriment to the public good, and without impairing the intent and purpose of the zoning plan or ordinance.

After discussion, a Board member may make a motion to approve the application as submitted or subject to conditions or modifications recommended by Board experts. If no motion is made to approve, a motion to deny may be made.

A simple majority is sufficient to approve most requests for relief, but a use variance requires a "super-majority" (generally, five votes) on the Zoning Board in favor. When granting or denying relief, the Board must make specific findings of fact and conclusions of law as to its decision. These findings become part of the written resolution documenting the Board's decision. If your application is approved, you'll need to obtain all necessary building permits and comply with any conditions imposed by the Board. If it is denied, you may

have the option to modify your proposal and reapply, or you can appeal the decision.

The Board's "specific, written findings of fact and conclusions of law" are required so that if there is an appeal, the reviewing court will have adequate information upon which to make a judgment. The written document is called the resolution, and it is normally approved and executed at the following month's Board meeting.

APPEALING AN ADVERSE DECISION

The "appeal clock" for a court challenge starts when the notice of Resolution is published in the town's official newspaper. You then have 45 days from publication of the Board's Resolution to file an appeal in the Superior Court located in the County in which the matter occurred.

The Court will review the Board's decision based only on the record created during the public hearings. It will not provide a new hearing on the merits of your zoning application. In other words, appealing a Zoning Board decision in court is not a "do-over." The grounds for appeal are very narrow.

The Court's job is not to substitute its judgment for that of the local Board. The Board's decision is presumed to be valid, and you, the appellant, have a heavy burden to prove that the Board's decision was fundamentally flawed.

The Court will only overturn a Board's decision if it finds that based on the record below, the decision was "arbitrary, capricious, or unreasonable." This means the Board's decision was not at all supported by the evidence in the record (the sworn testimony and exhibits) or was a result of a willful disregard of the facts, the Municipal Land Use Law, or the municipality's own zoning ordinances.

In the next section, we'll examine some special, ever-present issues all Zoning Boards consider in every request for zoning relief.



SPECIAL CONSIDERATIONS IN LAND USE AND ZONING RELIEF REQUESTS

INTRODUCTION

In the earlier sections of this guide, we presented the questions and issues all Zoning Boards consider in a variance application. We presented the Zoning and Planning Boards' "thought process" only in general terms. We described the Boards' examination of negative and positive criteria. I.e., The Board will always ask: Does the project serve a legitimate land-use purpose? Can the variance be granted without substantially impairing the intent and purpose of the zone plan and zoning ordinance? Does it avoid harm to neighbors? Is there competent, credible expert evidence to support

the request? Is the relief justified by unique site conditions or community benefit? Is it consistent with the Municipal Land Use Law?

There are, however, a couple of recent developments in land use law that deserve to be examined in greater detail because all Zoning and Planning Boards are required by law to consider them. Local control of zoning has been greatly impacted by several major statewide land use laws and court decisions in the past few years. Unfortunately, there is an unavoidable tension between them, and it puts the squeeze on both decision-makers and property owners.

AFFORDABLE HOUSING

Recent changes to one law — New Jersey's Fair Housing Act — mandate that "affordable" housing be provided within all municipalities. The law's intent is to remove zoning practices that exclude low and moderate-income housing units. As the Fair Housing Act states:

"Since the urban areas are vitally important to the State, construction, conversion, and rehabilitation of housing in our urban centers should be encouraged. However, the provision of housing in urban areas must be balanced with the need to provide housing throughout the State for the free mobility of citizens."

This encourages increased development of residential projects that many property owners have and will oppose. There are also affordable housing fees

that must be paid by applicants of projects other than affordable housing.

WETLANDS DEVELOPMENT

Wetlands are more prevalent than you may think in New Jersey. If you are thinking about doing a project near a wetland, buckle up for a regulatory ride. First, understand that to be a “wetland,” the water level will be at, above, or just below the surface of the ground for some duration of time at least once per year. In other words, a wetland does not have to be wet constantly. So don’t associate “wetlands” with an image of a swamp or marsh.

Many property owners are surprised to learn their land is classified as wetlands, even when it looks dry most of the year. The state’s wetland rules, enforced mainly by the New Jersey Department of Environmental Protection (NJDEP) under the Freshwater Wetlands Protection Act, rely on specific criteria that might not be obvious to the average person. The only way to confirm the status of a site is through a Letter of Interpretation (LOI) — an official NJDEP determination that delineates wetland boundaries and their regulatory buffers.

Wetlands are indeed an extremely valuable natural resource that provide essential benefits for people, animals, and the environment. About 20% of our state is wetlands. Each wetland is surrounded by a “transition area” — a buffer zone — of at least 150 feet.

Even as the “Garden State,” New Jersey as a whole is densely populated. So residential and other land development is causing much concern about the preservation of wetlands. The NJDEP takes this very seriously. The DEP website contains a great deal of information on the subject — but it can be downright scary to developers. See <https://dep.nj.gov/wlm/lrp/wetlands/#wp>. The FAQ page is also very informative. Just a glance shows how complex this issue is: <https://dep.nj.gov/wlm/lrp/faq/#application>.

Here are two quotes from the website that sum it up:

“To ensure the protection of our wetlands, a permit or approval is required for any activity that may impact this critical and vulnerable ecosystem. There are three categories of permits and approvals for wetlands — coastal wetlands permits, freshwater wetlands permits, and transition area waivers.”

And

“Common types of activities that require a freshwater wetlands permit or transition area waiver include construction activities (such as houses and swimming pools), disturbances to the soil (such as excavation), disturbances to the water level (such as draining or ditching), the dumping of materials

(such as filling), and disturbances to the vegetation (such as cutting down trees or spraying herbicide).”

In a nutshell, there are all sorts of places and ways in which a planned project can require a lot more regulatory time and expense than first expected. You need to be aware of these possibilities — perhaps before even acquiring a parcel of property at all. Nobody wants to spend a ton of money on land and find out later that 90% is unusable due to wetlands.

CONTAMINATED SITE DEVELOPMENT

This is another area of heightened environmental regulatory concern, especially — but not only — for commercial developers. Because of the long history of industrialization in much of our state, contaminated areas are a significant factor in land use decisions.

New Jersey has a high concentration of decades-old contamination and pollution. We have 115 “Superfund” sites — the most in the country. (An environmental Superfund site is an abandoned hazardous-waste location such as an old manufacturing facility, processing plant, landfill, etc. These properties still have unacceptable levels of toxic substances.)

The U.S. Environmental Protection Agency (EPA) has authority over the cleanup of these sites, pursuant to the 1980 Superfund Program. But the NJDEP plays a key role in the program. It is responsible for various

functions, including site oversight and directing remediation (i.e., cleanup) activities.

NJDEP maintains a public database of about 12,000 known contaminated sites. There is also a database that tracks past and present hazardous substance storage tanks — whether contamination has resulted or not. Zoning Boards, Planning Boards, and municipal engineers routinely check these when reviewing applications. Once again, a complete presentation of the rules and regulations is impractical here.

The gist of the story is that — as with wetlands — both large scale commercial developers and individual homeowners must be mindful of a wide variety of state and local environmental regulations, ordinances, and permits in seeking zoning relief.

Perhaps more importantly, the same applies if you are contemplating the sale or purchase of property. (Even the removal of home heating oil tanks is regulated. Keep that in mind before buying an older house.) As with wetlands, property owners take a chance by facing this regulatory minefield without experienced guidance.

In sum, the law specifically sets forth a very wide range of environmental issues that Zoning and Planning Boards must consider.



COSTS AND FEES

WE RECOGNIZE THE IMPORTANCE that costs factor into your decision to proceed with any planning or zoning application. It is obvious to say that the bigger the project, the more escrow and application fees will be incurred. Unfortunately, even for simple, residential matters, the applicant will likely expend a couple thousand dollars on application fees, expert fees, escrows fees, and costs.

Every Land Use Board application comes with an associated application fee, the amount of which depends on the type of application. You should be able to easily determine the application fee by reviewing your municipality's website and application documents.

There will also be escrow fees required that pay for the municipality's professional review. Every municipality requires applicants to post escrow deposits in advance pursuant to the escrow agreement discussed earlier. The amount of the initial deposit is set by local

ordinances and is based on the complexity and size of the project (e.g., a complex commercial use variance requires a larger deposit than a simple residential bulk variance).

The Board attorney will invariably be involved and must be paid for time spent reviewing your application and attending your Board hearing. The Municipal Planner and Engineer will also almost always be involved and will be paid for their time preparing reports and attending meetings.

The Board's professionals regularly submit itemized vouchers to the municipality, specifying the service, who performed it, and the time spent. The town is required to provide the applicant with regular statements showing activity in the account, including deposits, disbursements, and the running balance. If the escrow balance falls below a threshold set by local ordinance, you must replenish the account or the Board will simply stop the application review. If the project gets more complicated than it first appeared, you must keep replenishing.

Applicants have the right to challenge any specific charge they believe is unreasonable or improper within 45 days of receiving the informational voucher from the professional.

Once the variance process is complete (e.g., the decision is final and any conditions have been satisfied), the municipality must render a final accounting. Any unused funds and accrued interest (above a statutory

minimum) are refunded to the applicant. If the final professional bills exceed your escrow balance, the town bills you for the shortfall. Assuming your request has been approved, you must square-up with the town before you'll be issued any building permits tied to the approval.

In addition to the costs and fees levied by the municipality, you will also have to cover the costs and fees associated with your own professionals. You may need to retain a surveyor, civil engineer, planner, traffic consultant, or landscape architect assist with your project. Each of those professionals will have their own hourly rates or flat fees to help with certain projects. You are encouraged to do your homework and figure out the approximate total cost of retaining your own professionals. Unfortunately, when you add up all of the costs associated with a land use project in New Jersey, it can be quite expensive. Therefore, careful planning and preparation will help avoid surprises.



CONCLUSION: NAVIGATING NEW JERSEY LAND USE LAW WITH CONFIDENCE

AS WE CONCLUDE THIS GUIDE, it is our hope that you now have a clearer understanding of the complexities and nuances of land use law in New Jersey. Whether you are a homeowner planning a modest addition, a developer envisioning a large-scale project, or a business owner seeking to establish or expand your operations, the journey through New Jersey's land use process can be challenging. However, with the right preparation, knowledge, and professional guidance, it is a journey that can lead to success.

The MLUL serves as the backbone of land use regulation in New Jersey, granting municipalities significant authority to shape their communities through zoning

and planning. This local control ensures that land use decisions reflect the unique needs and character of each municipality, but it also means that no two towns are exactly alike in their requirements. Understanding the specific ordinances, procedures, and expectations of your local jurisdiction is critical to achieving your goals.

Throughout this guide, we have emphasized the importance of preparation and attention to detail. From understanding the roles of zoning and planning boards to navigating the intricacies of variances, site plan reviews, and subdivision applications, every step of the process requires careful planning and compliance with local and state regulations. Public participation, environmental considerations, and the overarching goals of the MLUL all play a role in shaping the outcome of your project.

We have also highlighted the value of seeking professional assistance. Whether it is consulting with a land use attorney, engaging expert witnesses, or working with engineers and planners, having experienced professionals by your side can make a significant difference and can sometimes be required. Your professionals can help you anticipate potential challenges, present a compelling case to the appropriate board, and ensure that your application meets all legal and procedural requirements.

As you move forward with your land use project, keep in mind the broader purposes of zoning and

planning: to promote public health, safety, and welfare; to preserve the character of neighborhoods; to encourage sustainable development; and to balance the needs of individual property owners with the interests of the community. By aligning your project with these principles, you increase your chances of success while contributing to the long-term vision and vitality of your municipality.

Finally, remember that the land use process is not just about rules and regulations—it is about creating spaces where people can live, work, and thrive. Whether you are building a home, starting a business, or developing a community, your project has the potential to make a positive impact. With the right approach, you can turn your vision into reality while navigating the legal landscape with confidence.

We hope this guide has provided you with the foundational knowledge and practical insights needed to embark on your land use journey. Should you require further assistance, our firm is here to help. With our experience and dedication, we can guide you through every step of the process, from initial planning to final approval. Together, we can achieve your goals and help shape the future landscape of New Jersey.

The End

Thank you for reading. If you would benefit from formal legal representation in your land use matter, feel free to contact Ward, Shindle & Hall to schedule a consultation.

www.wshlawyers.com

856-853-7771



Navigating the maze of New Jersey's land use and zoning laws can be overwhelming. That's where this comprehensive guide comes in. This book demystifies the complexities of land use regulations and empowers you to achieve your property goals.

New Jersey's Municipal Land Use Law and a patchwork of local zoning ordinances significantly regulate what you can and cannot do on your property. This book provides a clear roadmap to help you understand the essential steps, avoid common pitfalls, and successfully navigate the legal and regulatory hurdles of your project. From zoning variances and site plan reviews to subdivision applications and environmental considerations, this guide covers it all.

Inside, you will discover:

- **The Basics of Zoning and Land Use**
- **Step-by-Step Guidance**
- **Key Legal Concepts Made Simple**
- **Practical Advice for Success**

With this book in hand, you'll be ready to take the first step toward achieving your property goals. Let us guide you through the process and help you make informed decisions every step of the way.

Your project starts here.