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## **Division of Local Government Services (DLGS)**

“The Division strives to help all local governments achieve excellence, efficiency, and long-term fiscal stability in their operations”

## **DIVISION OF LOCAL GOVERNMENT SERVICES (DLGS)**

### **Planning Board and Zoning Board of Adjustments Operational Guidance - COVID-19: N.J.S.A. 40:55D-1**

#### **Recommendations for Land Use Public Meetings in New Jersey**

The Division of Local Government Services issues this guidance document to ensure continuity of Land Use application procedures while New Jersey’s Executive Order 103 and Executive Order 107 are in effect, to ensure due process is afforded during Planning Board and Zoning Board of Adjustment hearings and to remind local units to adhere to appropriate social distancing and health measures as they implement this process. There are many options available to Planning Boards and Zoning Boards of Adjustment to facilitate virtual and telephonic public meetings. Planning Boards and Zoning Boards of Adjustment are also reminded of their continuing obligation to comply with N.J.S.A. 10:4-6 (the “Open Public Meetings Act,” or “Act”); please consult the Division’s [Guidance for Remote Public Meetings](#) for further discussion on specific means of conducting electronic meetings in compliance with the Open Public Meetings Act.

N.J.S.A. 40:55D-9 governs the meetings of municipal agencies. It requires, in short, that every municipal agency must have regular, at least monthly, public meetings, and they may have special meetings, as appropriate. All business must be conducted with a quorum; action must be taken in accordance with a majority vote, except as otherwise specified within the governing statutes; and minutes must be prepared and made available to the public.

Every Planning Board and Zoning Board of Adjustment is required to grant or deny approval of applications pending before it within prescribed times, or within a further time as may be consented to by the Applicant. If the Planning Board or Zoning Board of Adjustment does not

approve or deny an application within the prescribed or agreed upon time, it shall be deemed to have granted approval to the application. The statutory timeframes are as follows:

#### Application Submissions:

1. Certification by Administrative Officer of list of property owners following applicant's request – 7 days
2. Time during which plans are to be on file prior to a hearing – 10 days
3. Publication & mailing of notice of public hearing – 10 days
4. Copy of Board decision to be mailed to applicant or attorney after decision – 10 days
5. Time to appeal decision to governing body – 10 days
6. Certification of complete application – 45 days
7. Time for governing body to conclude review of record on appeal – 95 days

#### Time for Board to act once the application is deemed complete:

1. Minor subdivision application – 45 days
2. Preliminary subdivision application of 10 or fewer lots – 45 days
3. Preliminary subdivision application of more than 10 lots – 95 days
4. Preliminary site plan approval where plan involves 10 acres of land or less, or 10 dwelling units or less – 45 days
5. Minor site plan – 45 days
6. Preliminary site plan approval where plan involves more than 10 acres or more than 10 dwelling units – 95 days
7. Time of protection of an approved minor site plan – 2 years
8. Time of protection against zoning changes for a minor subdivision – 2 years
9. Planning Board approval for application seeking variances or relief – 120 days
10. Time period during which a Planning Board shall grant or deny an application for conditional use – 95 days
11. Maximum number of days for Zoning Board of Adjustment to decide on an application that has been certified complete where a variance is coupled with another form of development – 120 days
12. Time of approval of a General Development Plan – 95 days
13. Maximum term for the approval of a General Development Plan – 20 years

#### Approvals:

1. Time during which statutory rights exist under a preliminary major subdivision or site plan approval – 3 years
2. Maximum number of 1-year extensions to a preliminary approval that may be granted by a reviewing board - 2
3. Time during which statutory rights exist under a final major subdivision or site plan approval – 2 years

4. Maximum number of 1-year extensions to a final approval that may be granted by a reviewing board – 3
5. Variance once granted runs with the land

Currently, these timeframes remain in effect. Should future executive or legislative action authorize modification of these timelines, further appropriate guidance will be promulgated.

Given that procedural requirements and deadlines remain in effect, it is imperative that local units continue to assure public hearings are conducted timely and without procedural defect. To this end, the Division offers the following recommendations:

**Recommendations regarding filing plans and application materials:**

All plans and application materials must be on file with the Board Secretary for review by the public at least ten (10) days prior to the hearing. In the present circumstances, the local unit should consider receiving plans electronically, and posting them for public review on and through the municipal website, drop-box, or some other online service that is accessible to the public, free of charge so that the ten day public access period is maintained. The local unit should also publicly post, and post online, a phone number and email for the Board Secretary. Members of the public should be advised that they may contact the Board Secretary to receive a hard copy of the plans and application materials by mail or via an exchange site such as a drop/pick up box by appointment at a secure, public location such as the police station or at the municipal building, subject to any standard fees or charges.

**Recommendations regarding providing adequate public notice:**

Under the MLUL, a public notice must state the time, place and location of a public hearing, and where submitted plans can be found for public inspection. At this time, the notice must provide conference call access or web-meeting access information. Dial-in information should be provided to individuals without computer access or mobile device. The notice should also identify the websites on which plans are posted, contact information for the Board Secretary, and all available means of achieving public access to all documents and the meeting itself. The notice should state that individuals lacking the resources or know-how for technological access should contact the Board Secretary for assistance in accessing the plans and the meeting.

**Recommendations regarding conducting hearings and facilitating public participation:**

Given the restrictions currently limiting in-person public meetings, hearings will likely need to be conducted by alternative electronic means. Given the visual nature of the materials used in planning and zoning meetings, Zoom, Facebook, YouTube or some other video-conferencing technology will provide the most appropriate forum for hearings. All parties should consider coordinating in advance to assure applicants' exhibits can be provided no less than two days in advance of the meeting and posted for Board and public access prior to and during the video meeting. The Board, its professionals and secretary will need to coordinate with the applicant and their professionals, as it is likely that the applicant's attorney, engineer, planner, etc. may not all be presenting from the same location. This deviation from the standard practice of concurrent introduction and discussion is recommended to ensure adequate information sharing and clear

labeling for Board and public participation in the session.

Planning Boards and Zoning Boards of Adjustment conducting electronic meetings must facilitate public comment on applications, as well as the public's ability to cross-examine witnesses. At the beginning of an electronic meeting, the Board Chair should announce a standard limit on public comment (e.g. time limit, length or number of text comments) for each individual. Cross-examination of witnesses by the public may require relaxing the standard limit, but in all cases the Chair should limit redundant comments and questions to ensure orderly remote public participation. Members of the public should be encouraged to advise the Chair in advance, if possible, via email or phone call to the Board Secretary, of their intention to undertake cross-examination, to ensure technological needs are accommodated and documents that will be referenced are available for review by all participants.

Please consult the Division's [Guidance for Remote Public Meetings](#) for further details on video-conferencing and facilitating public participation through video-conferencing platforms.

**Recommendations regarding the record of proceedings:**

Local units have a continuing obligation to record and make public the minutes of public meetings. They must also continue to transcribe quasi-judicial proceedings. To maintain compliance with these obligations, a court reporter should participate in any virtual hearing, transcribing the video session. Additionally, a record of the entire proceeding can be retained using the adopted virtual meeting technology. New Jersey's Courts have employed remote hearings for essential functions, which may be of interest to local units seeking to conduct statutorily compliant hearings under the present constraints: <https://www.njcourts.gov/>; <https://www.njcourts.gov/notices/2020/n200315a.pdf>.

**Conclusion:**

Planning Boards and Zoning Boards of Adjustment have options available to ensure the continuation of public business during this challenging time. The Division encourages local officials to review this guidance with their Board secretaries and professionals. Should you have any further questions or seek additional information, please contact the Division by email at [DLGS@dca.nj.gov](mailto:DLGS@dca.nj.gov) or by phone at 609-292-6613.