

DCA Releases Guidance On How to Process Land Use Applications and Conduct Land Use Hearings During the COVID-19 Pandemic

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Developers, homeowners, attorneys, and land use board members alike are all wondering how the land use process in New Jersey will continue during the COVID-19 pandemic now that many businesses and public buildings are closed. The New Jersey Department of Community Affairs (“DCA”) recently offered information to land use boards and applicants on how to ensure development applications continue to be processed and heard in accordance with the Municipal Land Use Law (“MLUL”).

The important provisions of the DCA’s guidance (the “Guidance”), which were released against the backdrop of recent amendments to the Open Public Meetings Act (“OPMA”) that permit public meetings to be conducted via video-conferencing or by telephone, are summarized below.

- MLUL Deadlines and Time Periods Remain in Effect. The Guidance provides that all deadlines and time periods set forth in the MLUL remain in effect. For applicants, this means, among other deadlines:
 - Applications must be delivered to a board secretary at least ten (10) days prior to a scheduled hearing to be heard on that date;
 - Notice of an application must be provided at least ten (10) days in advance of an application’s scheduled hearing date; and
 - A board must issue a completeness determination on an application within forty-five (45) days of its filing.

Importantly, the Guidance states that planning and zoning boards must continue to meet monthly and to do so via telephone or video conference, if necessary.

- Filing of Applications and Exhibits. During the pandemic, the DCA recommends that land use boards consider receiving plans electronically and posting them for public review on and through the municipal website, drop-box, or other electronic service that is accessible to the public at no cost. The Guidance notes that applicants should provide copies of their exhibits for the hearing at least two (2) days in advance of the meeting. The exhibits should be posted for the Board and public access prior to and during the video meeting.

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Public Notices. Public notice of hearings that will be conducted using electronic or telephonic access must provide conference call access or web-meeting access information. This includes telephonic dial-in information for individuals that do not have a computer or other means of utilizing video-conferencing software. Notices must also detail website addresses where the application and supporting plans and exhibits are posted and may be viewed, as well as contact information for the board secretary. The notice should further state that members of the public that cannot access application documents or remotely attend a virtual meeting should contact the board secretary for assistance in accessing the plans and the meeting.

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Public Participation in Meetings and Cross Examination. The Guidance provides that the public must be permitted to comment on applications and to cross-examine witnesses. The DCA recommends that a board chairperson encourage members of the public to inform the board in advance of any intention to cross-examine witnesses to facilitate the hearing.

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Records of Meetings. The Guidance states that land use boards must continue to record and publish minutes of hearings and that meetings continue to be recorded and made available to the public. The DCA recommends that a court reporter be retained to keep a record of the entire proceeding, if necessary.

For applications that consist only of “bulk variances” with a few witnesses and limited exhibits and the anticipation that there will be no objectors, limited requests for plan revisions, and no need for multiple meetings, it may be advisable to proceed with a virtual meeting to prevent being trapped in an eventual backlog of applications. Alternatively, for applications involving a “(d) variance,” or where there are a significant number of witnesses and application materials that will likely be presented over the course of a number of meeting dates, it may be advisable to postpone the presentation of the application until in-person meetings resume.

In any event, all applicants are encouraged to consult with an attorney on how to file and proceed with any land use application during this very trying time.