AN OVERVIEW OF THE MUNICIPAL ZONING AND LAND USE PROCESS

Introduction.

The purpose of zoning is to promote controlled development of land. When the New Jersey Legislature enacted the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. ("MLUL"), it delegated much of the Legislature's constitutional power to regulate land to municipalities.

Once a municipality chooses to regulate the use of land in accordance with the MLUL, it must do so in accordance with the principles set forth in the statute.

Process of Zoning.

Under the MLUL, three separate municipal agencies exercise the zoning authority which has been delegated to municipalities: the Governing Body of the municipality, the Planning Board and the Zoning Board of Adjustment.

Generally, the first step in regulating land use is the role of the Planning Board because the Planning Board has the statutory authority to adopt a Master Plan, which serves as the blueprint for development of land within the municipality.

The Governing Body then uses the framework set forth in the Master Plan to create specific development standards for the various permitted uses in each zone and the Governing Body enacts the development standards and requirements into law by adopting a land development ordinance. A land development ordinance generally includes several components, including: site plan requirements, subdivision requirements, zoning regulations, and checklists that identify the documents required for submitting complete applications to the Planning Board and Zoning Board of Adjustment.

Once the municipal land use regulations are adopted and in effect, the municipality's Zoning Officer enforces the standards set forth in the ordinance to all properties located in the municipality.

Under the MLUL, the Planning Board and the Zoning Board of Adjustment have the statutory power to review applications that relate to specific pieces of property for conformance with the zone plan and zoning ordinance. Because no plan is perfect and not every parcel can meet all zone requirements, the Zoning Board of Adjustment and the Planning Board are often required to determine whether a "variance," should or must be granted to an applicant to allow a specific use or structure on a specific piece of property, consistent with the requirements of the MLUL.

Governing Body's Role.

The Governing Body's role in the land use and zoning process is to enact the municipal land development ordinance, as well as any amendments to that ordinance that the Governing Body deems necessary and appropriate to promote controlled development within the borders of the municipality in accordance with the MLUL.

Significantly, under the MLUL, once the Governing Body has enacted a land development ordinance, the Governing Body is prohibited from infringing upon the powers exercised by the Planning Board or the Zoning Board of Adjustment under the zoning ordinance.

Zoning Officer's Role.

The Zoning Officer plays an integral role in the land development regulatory process because the Zoning Officer is the municipal official charged with enforcement of the zoning ordinance. The Zoning
Officer inspects properties in the municipality for violations, or upon being advised of a potential zoning violation, the Zoning Officer investigates the alleged violation and when appropriate, issues cease and desist notices to property owners, and in certain cases, files complaints in the municipal court regarding such zoning violations.

In the context of the land development process, the Zoning Officer is usually the first municipal official consulted when persons or businesses wish to develop property for a specific use, or make changes in the use or structure of an existing building within the municipality.

If the Zoning Officer determines the use is a permitted use in the zone district in which the property is located, the Zoning Officer will issue a zoning approval. In the event the proposed use requires site plan or subdivision approval, the Zoning Officer will advise the applicant of the need to apply to the planning board for such approval.

If the applicant's proposed use is not a permitted use in the zone district in which the property is located under the zoning ordinance, or if the proposed structure or other improvements do not conform to the zoning requirements, Zoning Officer will issue a zoning denial. Under those circumstances, the Zoning Officer would advise the applicant of the need to apply to the zoning board of adjustment for variance approval.

**Role of the Municipal Boards.**

Although the Planning Board and Zoning Board of Adjustment are created by the Governing Body when it adopts a land development ordinance, once created the Planning Board and the Zoning Board of Adjustment are independent bodies, which have statutory power and authority under the MLUL to act in ways that are “quasi-judicial.”

While the boards are not courts of law, in the course of conducting hearings on applications or appeals that come before them, each board takes the testimony of witnesses under oath, examines and reviews exhibits and reports, and makes findings of fact and conclusions of law based upon the facts and evidence produced during the hearing, much like a court of law would do.

**A. The Planning Board**

Under the MLUL, among other things, the Planning Board is authorized to exercise the following powers:

1. **Adoption of the Master Plan.** Pursuant to N.J.S.A. 40:55D-28, the planning board plans, develops and adopts a municipal Master Plan, which includes a statement of objectives, a land use plan, a housing plan, and a variety of optional elements including a circulation plan, utility service plan, community facilities, recreation plans, conservation plans, economic development and sustained economic vitality, historic preservation and waste management.

2. **Site Plan, Subdivision and Conditional Use Applications.** A major function of the Planning Board is the review of specific applications for development to determine whether the property and proposed development conforms to the elements of the municipal land development regulations and zoning ordinance. These applications fall into three categories: Site Plans, Subdivisions, and Conditional Use applications.

   It is the Planning Board that exercises the power to conduct hearings on these applications and makes the decision whether to approve or deny an application consistent with the requirements of the land development ordinance and the MLUL.
In the case of a Conditional Use application, the Planning Board can only review those applications that conform to all the conditional use requirements in the zoning ordinance. A Planning Board is not permitted to grant variances, or deviations, from the standards set forth in the Conditional Use Ordinance; only the Zoning Board of Adjustment may hear such variance requests.

3. **Zoning Ordinance and Official Map Review and Recommendations** – Pursuant to the MLUL, the Planning Board is also responsible for reviewing and making recommendations to the Governing Body regarding the adoption of zoning ordinances and amendments thereto, as well as reviewing and making recommendations to the Governing Body regarding ordinances adopting the official map and amendments thereto.

B. **The Zoning Board of Adjustment**

Among other things, the Zoning Board of Adjustment is authorized to exercise the following powers under the MLUL:

1. **Variance Applications.** Under the MLUL, the Zoning Board of Adjustment has the power to grant “variances.” A variance is a deviation from a requirement or standard set forth in the zoning ordinance. There are two types of variances: (1) “bulk” or “c” variances and (2) “use” or “d” variances.

   a. **“Bulk” or “c” Variances** – Bulk variances pursuant to N.J.S.A. 40:55D-70c, affect the physical characteristics of property rather than the use of the property. Bulk regulations establish the minimum lot size and maximum building size and area within which a building can be located, including lot coverage, setbacks, height and yard requirements.

   b. **Use or “d” Variances** – The most common “use” or “d” variance relates to the granting of relief to allow a particular use or structure that is not expressly permitted in the zone district. However, N.J.S.A. 40:55D-70(d) actually enumerates 6 categories of relief that fall within the ambit of “d” variance relief.

C. **Ancillary Jurisdiction of the Boards**

In 1984, the MLUL was amended to include concept of “one-stop shopping” for municipal land use approvals. This allows applicants to apply to only one board to obtain all the necessary land use approvals.

Consequently, even though Planning Boards and Zoning Boards have primary jurisdiction to hear cases for certain enumerated types of relief under the MLUL as noted above, each board now also has ancillary jurisdiction to hear certain types of relief, which was previously reserved to the other board.

For example, the Planning Board can hear applications for “bulk” or “c” variances in connection with site plan or subdivision applications filed with the Planning Board. Similarly, when the Zoning Board of Adjustment is reviewing an application for “use” variance or other variance relief within its exclusive jurisdiction under N.J.S.A. 40:55D-70(d), the Zoning Board of Adjustment may hear and decide subdivision or site plan applications.