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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”

Planning Board and Zoning Board of Adjustments Operational Guidance - Covid-19: Facilitate Electronic Land Use Public Meetings in New Jersey

Governor Murphy has declared a state of emergency via [Executive Order 103](#) in response to the coronavirus outbreak. [Executive Order 107](#) institutes various restrictions on public places and gatherings. To ensure continuity of Land Use Applications moving forward, and at the same time maintaining due process during Planning and Zoning Board of Adjustment hearings, moving of board meetings while maintaining the necessary social distance to avoid the spread of COVID-19, the Division issues this guidance document to remind Planning & Zoning Board of Adjustments and affiliates of the options available to assist them in conducting virtual and telephonic public meetings – as well as to reiterate Planning and Zoning Board of Adjustment hearings continuing obligation to comply with [N.J.S.A. 10:4-6](#) (the “Open Public Meetings Act,” or “Act”).

Every Planning Board and Zoning Board of Adjustments in New Jersey is required to schedule at least one public meeting per month. The New Jersey Open Public Meetings Act requires that a schedule of regular meetings be adopted and notice be provided to the public. The Act requires that the meeting schedule be filed with the municipal clerk, posted on the municipal bulletin board, and sent to two newspapers, one of which is the official newspaper of the municipality. If these notice requirements are not followed, this is grounds for dismissal of any hearing and the voiding of any action taken by the Board during such a meeting. Special meetings that are normally not part of the monthly agenda also require notice to the public within a 48-hour period. **All Zoning Board and Planning Board hearings are to be open to the general public, unless extreme circumstances exist.** Minutes must be taken and made public as well.

Every Planning Board & Zoning Board of Adjustments shall grant or deny approval within the time frame listed below or within such further time as may be consented to by the Applicant. Otherwise, the Planning Board or Zoning Board of Adjustments shall be deemed to have granted approval.

Municipal Land Use Law Time

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 take action once the application is deemed complete:

1. Minor subdivision application – 45 days
2. Preliminary subdivision application of 10 or few 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 # of days for Zoning Board to make a decision 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

In order for Planning and Zoning Board of Adjustment meetings to take place, items below is a guideline needed to be done in order to assure the applicant and the public that the meeting is a valid public hearing without procedural defects.

(1) Plans and Application Materials on file - Typically plans and all application materials are on file with the Board secretary for review by the public at least ten (10) days prior to the hearing.

Change During Emergency: During the emergency, plans would have to be filed on the municipal website or some other online service that is accessible by the public free of charge (still maintaining the 10 day requirement). If a member of the public does not have a computer, or access to technology, the member of the public shall inform the Board secretary that they are interested in receiving the plans and application materials. If a member of the public does make such a request, the Board secretary should drop off the Plans at the Police Station to allow the Public to view in their lobby, or set up a bin outside of the Municipal Building, for the public to view with instructions that they are to view the plans in their vehicle and cannot be removed off premises. Or the applicant shall mail a complete set of the plans to the person requesting the materials.

(2) Public Notice - Under the MLUL, a public notice must state the time, place and location of a public hearing and where the plans can be found for public inspection.

Change During Emergency: During the emergency, the public notice would state that the plans are on file online and list the website where they can be found. If the person does not have access to technology, the notice should state that the Board secretary can be contacted to request a viewing of the plans or that they be mailed to the person. The notice would also need to indicate that the meeting is virtual and provide a website that a person can log into to access the meeting. The notice should also provide the dial-in information for those without a computer or mobile device. In addition, the notice should also state that if someone wishes to participate in the virtual meeting that they contact the Board secretary to advise that they wish to participate so that person can be set up.

(3) Hearings - Normally hearings take place in the municipal building.

Change During Emergency: The hearings would need to be done by Zoom, Facebook, youtube or some form that allows participation that is visual (see samples below under **web-based Conference Calls**). The Board, its professionals and secretary will need to coordinate this with the applicant as it is likely that the applicant's attorney, engineer, planner, etc. may not all be presenting from the same location. Exhibits will need to be filed by the Applicant at least two days prior to the hearing so that they are available for public and Board review when presented at the public hearing.

(4) Record of Proceeding - Proceedings are always recorded and a court reporter is required for all
(d) Variances. Minutes must be taken and made public as well.

Change During Emergency: The technology used for the virtual meeting shall be able to record

the entire proceeding.

(5) Public Participation

Change During Emergency: The public shall be limited to a certain amount of time to ask questions of each witness and/or make a statement about the application. Limitation on typical (and redundant) comments. The amount of time shall be established by the Chairperson at the beginning of the meeting but should remain flexible depending on how many witnesses they may have questions for.

Strongly encouraged to limiting the agendas to:

- Items that do not require visual displays, such as master plan amendments/reexamination reports/ordinance referrals.
- Minor applications, e.g. minor site plans/subdivisions the case of Planning Boards, and minor variance applications (e.g. sheds or pools or small additions) in the case of Zoning Board of Adjustments.
- Controversial or significant applications should be put off to May/June (obtain an extension from applicant if deemed necessary), by which time things will either be returning to normal, or the public/board members/applicants will be more at ease with the concept of virtual meetings.

We have been strongly encouraged to conduct all public meetings subject to the Open Public Meetings Act exclusively using communications equipment (e.g., telephonic conference call-in connections, internet streaming, etc.) for the foreseeable future without providing a physical meeting place.

All Boards are still required to provide notice at least forty-eight (48) hours prior to its public meetings; however, during a declared emergency, electronic notice pursuant to N.J.S.A. 10:4-9.1 (electronic notification via the internet at least 48 hours prior to the meeting giving the time, dates, location, and, to the extent known, agenda, etc.) satisfies the notice requirement in lieu of the “adequate notice” provision of N.J.S.A. 10:4-8. P.L. 2020, c.11.

Meetings noticed pursuant to P.L. 2020, c.11, limit, “to the extent practicable” the meeting “to matters necessary for the continuing operation of government which relate to the applicable emergency declaration.” While the language is broad, it does attempt to place some limitations on action taken at electronically noticed meetings.

Specific Guidance in relation to the Open Public Meetings Act:

- N.J.S.A 10:4-8(b) authorizes Planning and Zoning Board of Adjustment hearings to conduct public meetings through use of streaming services and other online meeting platforms.
- Planning and Zoning Board of Adjustment hearings are required to provide at least forty-eight (48) hours of advance notice prior to all public meetings, unless a meeting on shorter notice is compelled by emergent circumstances. In emergent circumstances, the meeting must be held in a manner consistent with N.J.S.A. 10:4-9(b).
- Planning and Zoning Board of Adjustment hearings must ensure that the public retains the ability to attend and provide comment at public meetings. Therefore, Planning and Zoning Board of Adjustment hearings should provide instructions to the public regarding how to

access a remote meeting and the procedures for commenting through whatever equipment or medium is utilized.

- Planning and Zoning Board of Adjustment hearings holding remote meetings are advised to avoid executive or closed sessions, unless the topic of concern is urgent, directly affects the health, safety, or welfare of residents, or is an allowed exception under N.J.S.A. 10:4-12. If executive or closed session is imperative, Planning and Zoning Board of Adjustment hearings should consider having a separate conference line available for that session.

Common Means of Conducting Remote Public Meetings

I. Office Conference Phone

This traditional teleconferencing option is readily available to many Planning and Zoning Board of Adjustment hearings and generally requires no additional expenditure because the Planning and Zoning Board of Adjustment hearings can use existing office equipment. To hold a meeting by teleconference, persons wishing to observe or participate in the public meeting would be required to call into a designated conference line and enter an access code. These numbers would need to be advertised to the public to ensure participation is possible.

Steps to Conducting a Public Meeting Through an Office Conference Phone

1. Decide which telephone number will host the call.
2. Turn on the designated conference phone.
3. Enter the access code.
4. Wait for all participants to ‘Dial-in,’ enter the access code, and ‘Join’ the call.
5. Begin meeting.



Potential Downside of Office Phone Conferencing

- Requires the Planning and Zoning Board of Adjustment hearings to have access to conference phone equipment and a conference line.

- It may be difficult to determine who is participating in the call throughout and at any individual point during the meeting. Verifying participant identities may be a related challenge.

II. Web-based Conference Calls

This option also enables Planning and Zoning Board of Adjustment hearings to conduct teleconference meetings using a publicly advertised ‘Dial-in.’

Commonly used web-based applications include (hyperlinks to helpful tutorials/FAQs are provided):

- Skype ([Getting Started](#))
- ZOOM ([Video Tutorials](#))
- GoToMeeting ([Frequently Asked Questions](#))
- Cisco Webex ([Help Center – Getting Started](#))
- Google Hangouts ([Get Started with Hangouts – Video included](#))
- FreeConferenceCall.com ([Video Tutorials](#))
- Audio Conferencing in Microsoft Office 365 ([Frequently Asked Questions](#))

It should be noted that some of these options require the ‘Host’ of the conference call to maintain a paid subscription in order to access the program’s full capabilities and maximum call capacity. For example, a free subscription to ZOOM allows for a maximum of a 40-minute meeting with 100 participants at one time. Certain paid subscriptions on the same service allow for between 500 and 1000 participants to attend a call with no limit on call duration, and expanded meeting capabilities.



Steps to Conducting a Public Meeting Through a Web-based Conference Call

1. Decide on an application (i.e. Google Hangouts, Cisco Webex, or other).
2. Set-up an account.
 - a. For example, Google Hangouts can be utilized by any Gmail or G-Suite account. If the Planning and Zoning Board of Adjustment hearings does not already have one, it should set up a google account. For ease of registration and use, it is recommended that the Planning and Zoning Board of Adjustment hearings associate an office phone number with the account, but Google does not require a phone number to utilize Google Hangouts.

3. Decide who will host the account (telephone number/email address/G-suite account, etc.). The clerk or administrator may be the most appropriately designated.
4. Invite participants or have them “Dial-in” through a published telephone number or via a web-link, enter the access code (if applicable), and ‘Join’ the web-based call.
5. Begin meeting.

Potential Downsides of Web-based Conference Calls

- Some Planning and Zoning Board of Adjustment hearings may have to incur additional costs in order to meet their meeting capacity needs.
- Larger Planning and Zoning Board of Adjustment hearings may exceed the maximum connection capacity of many programs.
- Many of these services require all participants to download an application to their chosen device before they can participate in a meeting on the application’s platform.

III. Live-Streaming through Social Media Platforms

Planning and Zoning Board of Adjustment hearings that already utilize social media platforms (Ex.: Facebook, Twitter, Instagram, etc.) may also decide to hold small in-person meetings that are within the limitations required by social distancing guidelines and Executive Order 107, or remote meetings, that are simultaneously recorded and broadcast (commonly known as Live-Streaming) on social media platforms. For example, Gov. Murphy has live streamed many of his COVID-19 related press conferences on his public Facebook page.

Unlike the conference calling option listed above, none of these platforms have limits on the number of participants allowed to view the live stream. To permit public comment in this format, the comments section of the social media site must be publicly accessible, and the comments should be read into the record.

Live Stream: Governor Murphy's Friday Press Briefing on COVID-19

By Insider NJ | March 13, 2020, 2:03 pm | in [The Diner Booth](#)



Screenshot from a March 13th, 2020 NJ Insider Article

(<https://www.insidernj.com/live-stream-governor-murphys-friday-press-briefing-covid-19/>)

Steps to Live-Streaming a Public Meeting on Social Media

1. Decide on a Streaming Platform.
2. Create a social media account/page (if one does not already exist).
3. Log-on to the account utilizing a mobile device or laptop.
4. Determine how to record the meeting:
 - a. Smart Devices – cellphones or tablets are readily accessible to officers and employees in many Planning and Zoning Board of Adjustment hearings, and there are generally few barriers to use.
 - b. Camera connected to or imbedded within a laptop – this method allows for more professional recording of the meeting, however it likely requires a greater degree of technical skills and a larger expense if the Planning and Zoning Board of Adjustment hearings does not already possess a camera.
5. Begin live-stream.
6. Begin the meeting.

Instructions and Resources

- Facebook Live – (<https://www.facebook.com/help/587160588142067>)
- Twitter Live Videos – (<https://help.twitter.com/en/using-twitter/twitter-live>)
- Instagram Live Videos – (<https://help.instagram.com/292478487812558>)

Potential Downsides of Streaming

- Social media may be alienating for those members of the public who do not typically engage via these communication tools.
- The quality of the live-stream is dependent upon the skills and resources available to the person recording the meeting. For example, when using a smart phone or other mobile device, some viewers of the livestream may become distracted from the substance of the meeting by the shaky movement of a hand-held camera.
- The official meeting participants likely need to gather in one-room.

IV. Multiple options for accepting public comments

When employing any method for conducting remote public meetings, ensuring public participation and comment is the most significant concern. It is recommended that Planning and Zoning Board of Adjustment hearings consider multiple means of accepting public comment. Examples are provided below:

Example 1: Your Planning and Zoning Board of Adjustment hearings chooses to live stream its public meeting on Facebook

- Public Comments accepted by:
 - Submitting text comments to be read out loud during the live-stream through:
 - The text “Comment” feature on the live stream.
 - Emails submitted to a township email address publicized in the meeting notice and mentioned at the beginning of the live-stream.

- Tweeting a comment to the Planning and Zoning Board of Adjustment hearings Twitter account with a meeting-specific tag.
- Calling a specific telephone number that is answered on the live-stream, allowing the caller to be put on speaker and enter his or her comment on the record.

Example 2: Your Planning and Zoning Board of Adjustment hearings chooses to conduct a conference call open to the public through Google Hangouts.

- Public Comments are accepted by:
 - Making audible comments through the phone.
 - Submitting text comments to be read out loud during the conference call by:
 - Sending an email to a published and verbally identified township email address.
 - Tweeting comments to the Planning and Zoning Board of Adjustment hearings Twitter account
 - “Commenting” on a Planning and Zoning Board of Adjustment hearings Facebook post about the conference call.

Planning and Zoning Board of Adjustment hearings have many options available to them to ensure they can continue the operation of government safely, efficiently, and publicly. The options listed above are intended to help get Planning and Zoning Board of Adjustment hearings started. Should you have any further questions or seek additional information, please contact the Division by email at DLGS@dca.nj.gov or by phone at 609-292-6613.