

**New Jersey
N2K Hour:**

**NJ Zoning
Laws and
Zoning
Endorsements**

Webex Presentation,
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NJ Zoning and Land Use Law

- In New Jersey, the Municipal Land Use Law (MLUL) N.J.S.A. 40:55D-1 permits every municipality in the state to adopt its own building and land use regulations, in which all property owners must abide by these regulations at a local level.
- The municipal regulations are designed with the purpose of protecting the health, safety and welfare of citizens.
- The local zoning administrator, as well as the volunteer planning and zoning board members, have the responsibility to interpret and enforce the municipality's master plan and zoning ordinance.

Zoning Ordinances and Variances

- Municipalities possess no inherent zoning power, and all authority regarding zoning and land use is exclusively derived from the authority vested in municipal government per the MLUL.
- Under the MLUL, each municipality must adopt a zoning ordinance.
- A property owner can request a variance from the municipality, and if granted, the owner can use his land in a way that is ordinarily not permitted by the local zoning ordinance.

How to Obtain a Variance?

- A property or business owner can apply for a variance with the local zoning board or building inspector.
- The exact application process may vary according to the city or county.
- Variances usually fall into two categories, a “C” variance (or hardship variance) and a “D” variance (or use variance).

Types of Zoning Variances

- A “C” variance (or hardship variance) is appropriate when the relief sought is designed to make use of a piece of property that exceeds the maximum bulk permitted by zoning and code ordinances.
- This area variance will allow the holder to own property that conflicts with physical requirements in a zoning ordinance, such as a building that exceeds the square footage limitations for a given zone.

Types of Zoning Variances (cont.)

- A “D” variance will allow the holder to use their land or property in a way normally prohibited by the zoning laws, such as operating a commercial business in a residential zone.
- “D” variances are very complex and more difficult to obtain than a “C” variance.
- When requesting a “D” variance, the Zoning Board will inquire about special reasons for granting the variance.
- Special reasons mean “the property is particularly suitable for the proposed use” which serves the general welfare of the public.

Examples of “D” Variances

- Some examples of a “D” variance include constructing or creating a use or principal structure in a Zoning district that has restrictions against such use or principal structure.
- Expanding a non-conforming use, or deviating from a conditional use requirement.
- Increasing a permitted floor area ratio (FAR) in a specified Zoning District, or the height of a proposed building being greater than 10% of the permitted height in that zone.
- The applicant must usually demonstrate that special reasons exist for the granting of the variance and that the same would not result in significant detriment.

Major Subdivisions v. Minor Subdivisions

- A subdivision is a division of a land tract into two or more lots for purposes of sale or development, and requires approval from the municipality.
- If the subdivision involves a planned development, new street, or extension of an off-tract improvement, the MLUL specifically classifies it as a “major” subdivision.
- A minor subdivision is one defined by local ordinance as the maximum number of lots permitted.
- Any other subdivision is considered “major” if it is not defined as “minor” by the local ordinance.

Approval Process for Minor Subdivisions

- A minor subdivision approval shall be granted or denied within 45 days of the date of submission of a complete application to the administrative officer, or within such further time as may be consented to by the applicant. N.J.S.A. 40:55D-47(b).
- Preliminary approval requires the submission of a plat and any other information, so the Planning Board can make an informed decision on the application.

Approval Process for Minor Subdivisions (cont.)

- If the Planning Board fails to act within the 45 day period, then the minor subdivision will be deemed approved, and a certificate of the administrative officer as to the failure of the planning board to act shall be issued on request of the applicant. N.J.S.A. 40:55D-47(b).
- A planning board can only refuse to grant subdivision approval if the application fails to comport with the requirements defined in the municipality's zoning ordinances.

Approval Process for Minor Subdivisions (cont.)

- Approval of a minor subdivision shall expire one hundred ninety (190) days from the date of municipal approval unless a deed or plat is recorded describing the approved minor subdivision. N.J.S.A. 40:55D-47(d).
- Any such deed or plat accepted for such filing shall have been signed by the Chairman and Secretary of the municipal agency.
- Failure to record such plat or deed within the prescribed time shall render the approval null and void.

Approval Process for Major Subdivisions

- The approval process for major subdivisions requires both preliminary and final approval.
- Final approval of a major subdivision shall expire 95 days from the date of signing of the plat unless within such period the plat shall have been duly filed by the developer with the county recording officer. N.J.S.A. 40:55D-54.
- The time limits on the approval process can be extended if the developer agrees to the extension.
- Also, the planning board has the discretion to require the developer to make substantial changes to the original plat and plan if necessary, which may delay the approval process.

Lot Merger (Consolidation)

- The doctrine of merger applies when the same individual or entity owns two adjoining lots of which at least one is undersized or deficient per the zoning standards.
- Merger does not apply to adjoining lots, owned by the same person or entity, all of which conform to the bulk zoning requirements.
- However, if a municipality takes the position that a lot merger has occurred, then subdivision approval is required to subdivide the lots.
- In order to perfect the subdivision, a subdivision map or plat must be recorded with the County Clerk within 95 days of its signing by the Chairman and Secretary of the Planning Board.

Tax Maps and Subdivision Certificates

- It is improper to use or reference a tax map to comply with the requirements for a deed description by reference to a filed plat.
- If a subdivision needs to be perfected by a filed map, then the map must conform with the requirements of the Map Filing Law. N.J.S.A. 46:23-9.9.
- A prospective purchaser or lender may apply in writing to the municipality to obtain a subdivision certificate certifying whether or not such subdivision has been approved by the Planning Board.
- The contents of the certificate must conform with local ordinance.

ALTA 3 Series - Zoning

- There are four types of zoning endorsements that can be issued for both an Owner's and Loan policy.
- Applies to both residential and commercial properties.
- ALTA 3 – Zoning Vacant Land
- ALTA 3.1 – Zoning Completed Structures
- ALTA 3.2 – Zoning Land Under Development
- ALTA 3.3 – Zoning Legal Nonconforming
- Charge: ALTA 3 – 15% of standard rate premium, or minimum of \$150; ALTA 3.1, 3.2 & 3.3. – 20% of standard rate premium, or minimum of \$150.

Reviewing a Zoning Report or Zoning Letter

- A zoning report (PZR) or a zoning letter from the municipality must be obtained for closing.
- The zoning report or zoning letter must confirm the following:
 1. The zoning classification and authorized use of the property;
 2. Compliance of the existing improvements with local zoning regulations and that there are no current violations;
 3. Compliance with local zoning ordinance as to number of parking spaces.

Reviewing a Zoning Report or Zoning Letter (cont.)

- We prefer that the letter from the zoning department or agency state that the existing improvements comply with (a) area, width or depth of the land as a building site, (b) floor area space of the structure, (c) setback of the structure, (d) height of the structure, and (e) number of parking spaces.
- Please secure a copy of the applicable zoning ordinance, and if possible, require that the surveyor include the applicable zoning classification on the survey.

Underwriting Practices when Issuing Zoning Endorsements

- The surveyor should further state on the survey whether the existing improvements comply with the (a) area, width or depth of the land as a building site, (b) floor area space of the structure, (c) setback of the structure, (d) height of the structure, and (e) number of parking spaces.
- If the authorized use is based upon an exception, variance, or prior authorized nonconforming use, please consult our underwriting personnel.
- When incorporating the permitted use language on a Zoning endorsement, please excerpt the specific language from the zoning ordinance and do not state the proposed use in general terms.

Underwriting Practices when Issuing Zoning Endorsements (cont.)

Lastly, if you are asked to add "number of loading docks" or "number of loading berths," on a Zoning Endorsement, you should confirm loading docks in the same manner as you confirm parking spaces.

The New ALTA 3.3 Endorsement (Completed Improvement Non-Conforming Use)

- The ALTA 3.3 endorsement was just implemented, and became effective as of September 1st, 2019.
- This endorsement should only be issued if the zoning report or zoning letter designates that the property's use or characteristics are legal nonconforming.
- Underwriter approval is required for the issuance of any zoning endorsement on either an Owner's or Loan policy.

Breakdown of ALTA 3 Endorsement Form (Vacant Land)

- Paragraph 1 of the Zoning endorsement includes the risk in which affirmative coverage is being issued.
- Subparagraph “1a” must list the Zone as it is displayed in the Zoning Report or Zoning Letter.
- We are insuring that the land is classified as the Zone that is permitted by the local zoning ordinance. (e.g. “One – Family Residential”, “Commercial District,” “Agricultural,” or “Local Retail District”).
- Subparagraph “1b” must list the use of the property allowed under the specific classification. These uses may include “supermarket,” “bowling alley”, “one-family dwelling,” or “warehouse.”

Breakdown of ALTA 3 Endorsement Form (cont.)

- Paragraph 2 of the endorsement lists the items in which the Company will incur no liability.
- Subparagraph “2a” includes lack of compliance with all conditions, restrictions, or requirements with local zoning regulations, which includes any necessary consents or prerequisites for the use of the property.
- Subparagraph “2b” includes the invalidity of the zoning ordinance or local zoning regulations until after a final decree from a court of competent jurisdiction adjudicates the invalidity of the zoning ordinance with the effect of prohibiting the current use of the property.

Breakdown of ALTA 3 Endorsement Form (cont.)

- Subparagraph “2c” includes the refusal of any person to purchase, lease or lend money on the title which is insured by the policy.

ALTA 3.1 Endorsement Form (Completed Structures)

- Similar to the ALTA 3 endorsement form.
- Subparagraph “1a” and “1b” are the same as the ALTA 3 endorsement form.
- However, subparagraph “1c” discloses that the Company shall not incur any liability for lack of compliance with local zoning regulations.
- Paragraph 2 states that the Company will insure against loss or damage by reason of a final decree of a court of competent jurisdiction prohibiting the use of the Land as specified in “1b” or that the existing use and structure on the Land is not in compliance with the following items disclosed in subparagraphs 2a, 2b, 2c, 2d, and 2e.

ALTA 3.1 Endorsement Form (cont.)

- Paragraph 3a states that the Company shall incur no liability for the invalidity of the zoning ordinance or local zoning regulations until after a final decree from a court of competent jurisdiction adjudicates the invalidity of the zoning ordinance with the effect of prohibiting the current use of the property.
- Paragraph 3b includes the refusal of any person to purchase, lease or lend money on the title which is insured by the policy.

ALTA 3.2 Endorsement Form (Land Under Development)

- Paragraph “1a” of this endorsement defines the word “improvement”.
- Paragraph “1b” of this endorsement defines the word “Plans.”
- Please note that paragraph “1b” must disclose the full information for the building site plans that were prepared by an architect or engineer for the property in question.
- The site plans are DIFFERENT from the survey for the property, as they set forth the design of the structure which is being contemplated for construction.

ALTA 3.2 Endorsement Form (cont.)

- Paragraph 2a must include the designated Zone of the property as previously discussed.
- Paragraph 2b must include the permitted use of the property as disclosed in the Zoning Report or Zoning Letter.
- Paragraph 2c discloses that the Company shall not incur any liability for lack of compliance with local zoning regulations.

ALTA 3.2 Endorsement Form (cont.)

- Paragraph 3 states that the Company will insure against loss or damage by reason of a final decree of a court of competent jurisdiction prohibiting the use of the Land as specified in “2b” or that the existing use and structure on the Land is not in compliance with the following items disclosed in subparagraphs 3a, 3b, 3c, 3d, and 3e.
- Paragraph 4a states that the Company shall incur no liability for the invalidity of the zoning ordinance or local zoning regulations until after a final decree from a court of competent jurisdiction adjudicates the invalidity of the zoning ordinance with the effect of prohibiting the current use of the property.

ALTA 3.2 Endorsement Form (cont.)

- Paragraph 4b includes the refusal of any person to purchase, lease or lend money on the title which is insured by the policy.

ALTA 3.3 Endorsement Form (Completed Improvement - Non-Conforming Use)

- Paragraph 1 of the endorsement defines the words “Improvement,” “Non-Conforming Use,” and “Zoning Ordinance” for the purpose of the endorsement.
- Paragraph “2a” must describe the existing non-conforming use that is disclosed in the Zoning Report or Zoning Letter.
- Paragraph “2b” further states that the Company will insure against loss or damage by reason of a final decree of a court of competent jurisdiction prohibiting the non-conforming use of the Land as specified in “2a” with respect to the following items disclosed in subparagraphs 2b(i), 2b(ii), 2b(iii), 2b(iv), and 2b(v).

ALTA 3.3 Endorsement Form (cont.)

- Paragraph 3 lists the items in which the Company will incur no liability resulting from the following matters disclosed in subparagraphs 3a, 3b, 3c, 3d, 3e, 3f, 3g, and 3h.

Wrap Up and Review

- Municipalities possess no inherent zoning power, but their authority to pass and enforce local zoning ordinances is derived from the NJ Municipal Land Use Law (MLUL).
- A property owner can always request a variance from the municipality to use his/her land in a way that is not ordinarily permitted by the local zoning ordinance.
- All subdivisions require approval from the local Planning Board, and must be evidenced by the recording of a plat or deed.
- A zoning letter or zoning report (PZR) is required to issue a Zoning endorsement, and also requires underwriter approval.

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Virtual Underwriter

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Please mark your calendars for our:

April N2K HOUR

Tuesday

April 14th

11:00AM