

PLANNING BOARD FREQUENTLY ASKED QUESTIONS

PROCEEDINGS BEFORE THE LIVINGSTON PLANNING BOARD

1. What is the Planning Board?

The Planning Board is a nine-member body appointed by the Livingston Township Council. Six members are Livingston residents appointed to four-year terms. (One of those individuals will always also be a member of the Livingston Environmental Commission.) The Township Manager, the Township Engineer and one Council Member other than the Mayor each serve a one-year term. There are also two Alternate Members who each serve a two-year term and participate in Board hearings, but can only vote in place of an absent member. Re-appointments of members and alternates are permitted. Each year the Board elects one of its members as chairperson and another as vice chairperson. The Board hires its own attorney. The Planning Administrator serves as Secretary of the Board.

2. What authority does the Board have over what developers want to do?

The authority of the Board is strictly limited by the New Jersey Municipal Land Use Law and court decisions which interpret it. How land in our town can be developed is governed by Livingston's Land Use Ordinance, but that ordinance is also strictly limited by State law and court decisions. The Planning Board's responsibility is to determine whether a prospective developer's application is consistent with the state law, the ordinance, and the town's Master Plan, or whether an exception, generally called a variance, is justified under the applicable legal standards. Within the limits of its authority, the Board may make its approval conditioned upon the Applicant accepting certain modifications or changes. Model Conditions may be found on the Township's website:

<http://livingstontownship.org/planningdept/wp-content/uploads/2013/05/MODEL-CONDITIONS-02.12.13.pdf>

3. How can I know what kind of development is permitted in our town?

Under the Master Plan and the Land Use Ordinance, Livingston is zoned into a number of districts and each such district has specific permitted land uses. There is a map which shows the boundaries of all of the districts. The Land Use Ordinance sets out the permitted uses. The map and the ordinance are available for examination in Town Hall and at the library. The ordinance is also published in the ordinances section on the Township's website: www.livingstonnj.org.

4. What standards apply to development in a particular zoning district?

The Land Use Ordinance establishes residential, business, professional office, research, shopping center, limited industrial and commercial industrial districts. For each district the ordinance specifies types of buildings and uses permitted, maximum building heights, set-backs

(distances) from street and adjacent properties, parking, signage and lighting requirements, and other standards that must be met by a developer.

5. What does the Board take into consideration in reaching a decision?

The Board functions more like a legislature than a court, but it must base its decisions on the evidence presented to it. The Applicant, and any Party formally opposing the application, may present witnesses who testify under oath before the Board. Some of those witnesses will be experts in fields such as planning, engineering, architecture, landscaping or traffic. The Board may hire additional experts to act as neutral advisers to it. Members of the public also have opportunity to participate in the questioning of all witnesses, and to make their own sworn statements for or against the proposed development. If a member of the public, whether an individual or as a member of a group, is represented by a lawyer, only the lawyer may ask questions.

6. What is the sequence of events in the hearing?

The Board has Rules of Procedure which are posted on the Township web site: <http://livingstontownship.org/planningdept/wp-content/uploads/2013/05/PB-Rules-of-Procedure-09.03.12.pdf>

The Applicant presents its case first. If the Applicant is a business entity, rather than an individual, it must be represented by a lawyer.

- Each witness called by the Applicant will be questioned by the Applicant's lawyer and by the Board.
- If a group or any legal entity participates as an Opposing Party, that party must be represented by a lawyer and only the lawyer may question the witness.
- When all formal parties have completed questioning of the witness, individual members of the public who are not represented by one of the lawyers may question the witness.
- After this process has been completed for all of the Applicant's witnesses, any Opposing Party will have opportunity to present witnesses, and those witnesses will be questioned in the same manner.
- When all Parties have presented all of their witnesses, individual members of the public will be given opportunity to make sworn statements for or against the application. Anyone making such a statement will be subject to questioning by the Board and by the lawyers for the formal parties.

7. What role can I play in the hearing?

You may participate as an individual or as a member of a group or legal entity. A group or legal entity must be represented by a lawyer.

- If you are not a member of a group or legal entity, you may ask questions of witnesses about their testimony at appropriate points in the hearing. You may also make a sworn statement for or against the application at a later stage of the hearing.
- If you are a member of a group or legal entity, only its lawyer can ask questions. However, you can still make a sworn statement if the lawyer calls you as a witness.

- You may also hire a lawyer to represent you as an individual. In that situation, the lawyer will ask the questions of witnesses, but may call you to make a sworn statement as a witness. The lawyer may call other witnesses.
- If you make a sworn statement, you will be subject to questioning by the Board and by the lawyers.
- The testimony of a witness may be presented at more than one hearing session because of time constraints. Questions from the public to the witness will not be permitted until that witness' testimony is complete; and hearing sessions may be more than a month apart. Therefore, if you anticipate asking questions you may want to take notes about what you want to pursue. (Sworn statements from the public come at a later and final stage of the hearing.)

8. Does the Board consider petitions or letters from the public?

No! Courts have expressly ruled that Planning Boards cannot consider any writing from the public that is not subject to challenge and direct questions under oath at the hearing.

9. What role does traffic play in the Board's review of a proposed development?

Traffic volume and safety are considered by the Board. However, State law does not permit traffic volume, congestion, or delay to be the basis of denying approval of an application for development. If those factors are serious enough to warrant street design changes or installation of traffic lights, and the County (or the State if a state highway is involved) agrees that such improvements should be made, the developer can be required to bear a fair share of the cost. Only serious proven safety concerns about traffic entry and exit at the site entrance itself can be a basis for denying approval of an application because of traffic.

10. What is a variance?

The New Jersey Municipal Land Use Law and the Livingston Land Use Ordinance contain identical provisions which permit an Applicant for development to request relief from some ordinance limitations on, or requirements regarding, development. Such a deviation from the limitations or requirements is called a "variance". An Applicant who seeks a variance must include that fact in the notice which the Applicant is required to publish prior to the hearing.

11. What are the grounds for granting a variance?

Variations permitting deviation from zoning ordinance limitations or requirements may be granted by the Board only when evidence shows that the following specific statutory standards are met:

"(a) by reason of exceptional narrowness, shallowness or shape of a specific piece of property, or (b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or (c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon, the strict application of any regulation pursuant to this chapter [the Land Use Ordinance] would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the developer of such property."

Variations may also be granted when the purposes of the State Municipal Land Use Law and the Land Use Ordinance *"would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment"*.

However, no variance may be granted under either approach unless it can be granted *"without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance"*.

The Planning Board does not have authority to grant a variance which would allow a property use when that use is not permitted in the zoning district. Only the Zoning Board of Adjustment has authority to grant a "Use Variance".

12. What is a Conditional Use?

For some districts, the Land Use Ordinance provides that in addition to the types of uses ordinarily permitted in the district a developer may have a different use if certain enumerated conditions are met. That is a "Conditional Use". It is not a variance. Different districts have different Conditional Uses permitted. If a developer seeks approval of a Conditional Use, the specific conditions of the ordinance must be met and the Planning Board cannot permit an exception or variance from those conditions. Examples of Conditional Uses are:

Assisted Living Facilities
Hospitals
Houses of worship
Independent Senior Living Facilities
Nursing Homes
Schools

13. Can the Board grant a variance from compliance with specific conditions for a Conditional Use? No! The conditions must be strictly met.

14. How does the Board reach a decision on an application?

When all sides have been heard and there has been full opportunity for public participation, the evidentiary record is closed. In a very simple case, the Board members will immediately discuss the merits of the application, vote to approve or disapprove the application, and will, at a later date, formalize their ruling in a written "Memorializing Resolution".

In a more complicated case, following the closing of the record the Board members will discuss the merits and indicate their inclinations as to the result, but will not vote at that time. Instead, their comments serve as guidance to the Board Attorney in preparation of a proposed resolution. The hearing is then adjourned to another date, the proposed resolution is circulated to the Board members before that date, and on that date the hearing reconvenes for the Board to consider and act upon the proposed resolution.

15. Do all Board Members participate in the hearing and decision?

There must be a quorum of five members present for a hearing to be held. The decision must be reached in the presence of at least five members who attended all hearing sessions or read the transcripts of sessions which they missed. The outcome is determined by majority vote of those five or more who participate in the voting.

16. Are there circumstances under which a Board member cannot participate in the hearing or decision? Yes!

The Board must be fair and impartial in considering applications for development. The law is clear that a member who "has, either directly or indirectly, any personal or financial interest" may not participate.

For example: A member who is an applicant, or is related to or employed by the Applicant or a neighboring property owner is disqualified.

Another example: If a Board member belongs to a club, fraternal organization or church which is the Applicant or an Opposing Party or a neighbor that would be affected by the development, then the Board member is disqualified.

If a Board member lives within 200 feet of the site to which the application applies, the member is disqualified.

Courts have found additional grounds for disqualification. Sometimes a Board member will announce voluntary withdrawal from a proceeding even when there is no legal basis for disqualification but there might be a mere appearance of a conflict of interest.

In order to ensure that there is no appearance of any possible indirect influence upon the Board, once a member is disqualified, he or she will remain physically absent from the proceedings and that member will not discuss the application being heard with any other Board member.

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