

I

THE DIFFERENCE BETWEEN PLANNING BOARDS & ZONING BOARDS

New appointees, even many experienced members, struggle with understanding the roles and powers exercised by the planning board and zoning board of adjustment. As we will see, the very natures of planning and zoning boards are different.

Several revisions of The Municipal Land Use Law, [N.J.S.A. 40:55D-1](#) et seq. (hereinafter referred to as the MLUL) since 1975, have helped clarify the powers exercised by each board, separately and on an overlapping basis.

A planning board can be summarized as the board of “permitted activities.” That is, the planning board’s essential duties are to deal with policy (the master plan) and the implementation of that policy through the zoning, site plan and subdivision ordinances.

These ordinances establish a series of ground rules to be met by an applicant. If the applicant meets the requirements of the particular ordinance, the board *must* approve the subject application. Let me restate that. There is no basis whatsoever for denying a site plan or subdivision application unless a specific requirement of that ordinance is not satisfactorily fulfilled by the applicant.

The zoning board, on the other hand, is the board of “non-permitted uses.” That is, zoning boards deal with the issuance of variances. Variances are based upon the individual municipality’s zoning ordinance. The zoning ordinance establishes specific requirements for a/the land area within a municipality and regulates not only the uses permitted, but the size of the parcels, setbacks required, parking, signs, conditional uses and numerous other such regulations.

An applicant is *never* entitled to a variance.

Rather, an applicant must meet specific criteria contained in the MLUL by satisfying certain legal standards of proof, and the burden is upon the applicant to show that he or she is entitled to the specific relief requested. Merely making an application to a board and paying the required fees is not sufficient. Depending upon the type of variance requested, the applicant will need to prove special reasons, a balancing of the benefits, hardship, the negative criteria, etc.

Thus, as a member of a planning board you may consider yourself a policy maker; as a member of the zoning board, a judge, albeit a quasi-judicial one.

Certain exceptions to this distinction do exist when the boards exercise ancillary powers. However, the basic rule to remember is that planning boards essentially deal with “permitted uses” zoning boards with “non-permitted uses.”

II

THE BOARDS AND THEIR PERSONNEL

Composition of the planning board and zoning board of adjustment is governed by the MLUL. It should be noted from the onset that due to the different roles these boards fulfill, membership requirements for each differ somewhat.

Planning Board

The composition of the municipal planning board is controlled in the MLUL at N.J.S.A. 40:55D-23:

- a. The governing body may, by ordinance, create a planning board of seven or nine members. The membership shall consist of, for convenience in designating the manner of appointment, the four following classes:

Class I

-the mayor or the mayor's designee in the absence of the mayor or, in the case of the council-manager form of government pursuant to the "Optional Municipal Charter Law," P.L. 1950, C.210 (C40:69A-1 et seq.), of the "Municipal Manager Form of Government Law" (Subtitle 5 of Title 40 of the Revised Statutes), the manager, if so provided by the aforesaid ordinance.

Class II

-one of the officials of the municipality other than a member of the governing body, to be appointed by the mayor; provided that if there be an environmental commission, the member of the environmental commission who is also a member of the planning board is required by Section I of P.L. 1968, c. 245 (C. 40:56A-1), shall be deemed to be the Class II planning board member for purposes of this act in the event that there be among the Class IV or alternate members of the planning board both a member of the zoning board of adjustment and a member of the board of education.

Class III

-a member of the governing body to be appointed by it, except that no member for Class III shall be appointed to the planning board if the governing body consists of only three members.

Class IV

-other citizens of the municipality, to be appointed by the mayor or, in the case of the council-manager form of government pursuant to the "Optional Municipal Charter Law," P.L. 1950, c. 210 (V.40:69A-1 et seq.) or the "Municipal Manager Form of Government Law" (Subtitle 5 of Title 40 of the Revised Statutes), by the council, if so provided by the aforesaid ordinance.

The members of Class IV shall hold no other municipal office, except that in the case of nine-member boards, one such member may be a member of the zoning board of adjustment. No member of the board of education may be a Class IV member of the planning board, except that in the case of a nine-member board, one Class IV member may be a member of the board of education. If there be a municipal environmental commission, who is also a member of the planning board, as required by section I of P.L. 1968, c. 245 (C40:56A-1), shall be a Class IV planning board member, unless there be among the Class IV or alternate members of the planning both a member of the zoning board of adjustment or historic preservation commission shall be deemed a Class II member of the planning board.

- b. The term of the member composing Class I shall correspond to his official tenure. The terms of the members composing Class II and Class III shall be for 1 year or terminate at the completion of their respective term of office, whichever occurs first except for a Class II member of the environmental commission. The term of a Class III or Class IV member who is also a member of

the environmental Commission shall be for 3 years or terminate at the completion of his term of office as a member of the environmental commission, whichever occurs first. The term of all Class IV members first appointed under this act shall be so determined that to the greatest practicable extent the expiration of such terms shall be distributed evenly over the first 4 years after their appointment—provided that the initial class IV term of no member shall exceed 4 years. Thereafter the Class IV term of each such member shall be 4 years. If a vacancy in any class shall occur otherwise than by expiration of the planning board term, it shall be filled by appointment, as above provided, for the unexpired term. No member of the planning board shall be permitted to act on any matter in which he/she has, either directly or indirectly, any personal or financial interest. Any member other than a Class I member, after a public hearing if he requests one, may be removed by the governing body for cause.

The composition of the planning board is interesting in that four different classes of individuals serve on the board.

The Class I and Class III members are both elected officials. But the mayor may choose not to serve and appoint a designee to serve as the Class I member. The designee may be any resident of the municipality, whether or not elected, appointed or serving in another municipal capacity. While the mayor's tenure as a Class I member is defined, the designee simply serves "at the pleasure of the mayor," anytime during the mayor's tenure.

The Class II member, though a municipal official, is not elected. A municipality having a nine member board is comprised of three individuals directly related to the government of that community. The reason for this is that if planning boards are carrying out their true planning function, much of their time will be spent in policymaking initiatives, that is, the board will be working on its primary function of creating a comprehensive master plan and continually performing duties necessary to ensure comprehensive and farsighted planning for the municipality. This policy making is at the heart of government and, therefore, it has always been felt that some political input is helpful in structuring the activities of the planning board.

The appointed Class IV members, on the other hand, are selected entirely from among residents of the municipality.