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**Real Estate**  
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## New Land Use Rules In the Meadowlands

Regulations continue to reflect  
longstanding practices  
of the Meadowlands Commission

By Andrew R. Davis

**P**rocessing land-use applications before the New Jersey Meadowlands Commission involves rules that are unique to the commission. While new zoning regulations that became effective on Feb. 17, 2004, are the result of a major recodification effort, the basic structure of the approval process has remained the same, with some areas being clarified and formalized.

It is important to keep in mind that the Municipal Land Use Law does not apply to lands lying within the Meadowlands district, as defined by N.J.S.A. 13:17-4. The commission's initial land-use plan and zoning regulations actually predated the 1975 adoption of the MLUL by about five years. In many respects, the rules governing land-use applications in the Meadowlands are more efficient than the MLUL process.

To determine whether or not a par-

ticular piece of property falls within the district, one should review the official zoning map of the commission. Every block and lot that is under the jurisdiction of the commission, along with its former and current zoning designation, is listed in the Oct. 6, 2003, *New Jersey Register* at 35 N.J.R. 4462 through 4523. Parcels that have had their designations changed since the Oct. 6, 2003, publication are listed in the Feb. 17, 2004, *New Jersey Register* at 36 N.J.R. 1046. See new regulations, Feb. 17, 2004, *New Jersey Register* (36 N.J.R.1033).

The district consists of approximately 30 square miles, and it includes portions of 14 municipalities: 10 in Bergen County (Carlstadt, East Rutherford, Little Ferry, Lyndhurst, Moonachie, North Arlington, Ridgefield, Rutherford, South Hackensack and Teterboro); and four in Hudson (Jersey City, Kearny, North Bergen and Secaucus).

For those portions of the municipalities that fall within the district's boundaries, the commission's regulations govern land-use applications and, as noted above, the MLUL does not apply.

The commission is run on a day-to-day basis by a full-time professional

staff and is governed by an appointed board of commissioners. For the most part, the commissioners do not become involved in routine land-use decisions. The act that established the commission also requires consultation with a committee that consists of the mayors of each of the constituent municipalities.

For a more detailed history of the commission, the district and the environmental aspects of the new rules, see "Meadowlands Commission Revises Master Plan, Rewrites Zoning Regulations — Finally," 175 N.J.L.J. 406 (Feb. 2, 2004).

Some key procedural advantages the commission process has over the MLUL include:

- applications for various approvals are available on the commission's Web site, [www.njmeadowlands.gov](http://www.njmeadowlands.gov);
- a "zoning officer of the day" is assigned to take calls and answer land-use processing questions via phone or in person at the commission's offices;
- pre-application conferences are available at no charge;
- for applications that comply with existing regulations, approvals will issue promptly and without public hearings;
- reviews and hearings (where required) are conducted by full-time professional staff members during normal business hours, and are transcribed by a court reporter retained by the commission (at the applicant's expense);
- public notices of hearings and notices to adjacent property owners are published by the commission staff (at the applicant's expense); and
- it is rare that a hearing will be continued for more than one session.

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### The Review Process

The review process begins with the submission of an application for a zoning certificate. The application requires provision of technical criteria that are set forth at N.J.A.C. 19:4-4.4. The attorney preparing the application would be wise to consult with the commission's staff prior to submission, because in many cases, an abbreviated application will suffice.

Permitted uses and bulk standards in the applicable zone should be examined. If at all feasible, the project should be designed to these standards, because if that occurs, the applicant is entitled to an approval as of right — *without a public hearing*. This type of approval will issue within 10 business days of receipt of a completed zoning application — significantly more quickly than a typical MLUL approval.

If the project cannot be designed to the permitted criteria, relief may be sought by preparing a special exception or variance application. In such cases, the applicant must retain the services of a New Jersey-licensed professional engineer, professional planner, registered architect or other professionals to provide testimony and reports pursuant to N.J.A.C. 19:4-4.17.

### Special Exceptions

The criteria for special exception uses are easier to satisfy than those for variances. See N.J.A.C. 19:4-4.13. Accordingly, this type of relief should be considered before resorting to a variance. Special exception uses are called out in each zone, and require public hearings. The proposed special exception use must:

- comply with other applicable commission zoning criteria;
- contribute to and promote the welfare or convenience of the public;
- not cause substantial injury to property values;
- not dominate the neighborhood;
- provide for adequate infrastructure such as drainage and road access; and
- not have a substantial adverse environmental impact.

### Variances

If a special exception approval is not possible, or bulk standards cannot be complied with, then a variance application should be filed. As is the case with special exceptions, public hearings are required for use variances. For bulk variances only, the commission's chief engineer may waive a public hearing (but not notice requirements).

The distinctions that exist under the MLUL between hardship and special reasons variances ("c" and "d") do not exist under the commission's regulations. In fact, relief is granted only for hardship, in combination with a host of other criteria set forth at N.J.A.C. 19:4-4.14.

The commission has a "two track" set of criteria it considers in connection with variance applications. One list sets forth findings the commission staff must make, and a second list details the conclusions the executive director must reach when determining whether or not to approve, modify or reject the staff's recommendation. Compare N.J.A.C. 19:4-4.14 (e) and (f). Some of the criteria are redundant, and some are unique to each list.

Although some wording improvements to the criteria are evident in the new regulations, this cumbersome dual-list format has inexplicably been continued. Perhaps this was caused by the staff's familiarity and comfort with this structure. Clearly, a single set of criteria would be simpler.

In practical terms, the attorney preparing for the hearing should have the experts' testimony cover *both* sets of criteria. This will ensure that the commission staff is armed with appropriate proofs upon which to prepare a persuasive approval recommendation to the executive director.

For use variances, the criteria are:

- strict application of the regulations must result in hardship — not just mere inconvenience — to the property owner;
- the application cannot be based solely on the property owner's desire to make more money from the property;
- the variance will not result in substantial detriment to the public good, or health, safety and welfare;

- adequate provision of infrastructure will be provided;
- property values will not be substantially affected;
- there will be no substantial adverse environmental impact; and
- the variance at the particular location sought will promote the intent of the commission master plan.

For bulk variances, the criteria are:

- the condition at issue is unique to the property and not ordinarily found in the same zone;
- the condition at issue has not been created by the property owner or applicant;
- granting the variance will not cause substantial damage to the public good, or health, safety and welfare;
- the application cannot be based solely on the property owner's desire to make more money from the property;
- strict application of the regulations must result in hardship — not just mere inconvenience — to the property owner, with special consideration given to the physical surroundings and topological condition of the property;
- granting the variance will not adversely affect the rights of, or be materially injurious to, neighboring property owners or residents;
- there will be no substantial adverse environmental impact;
- the variance represents the minimum deviation from the existing regulations that will afford relief; and
- granting the variance will not substantially impair the intent and purpose of the regulations.

### Written Decisions

In contrast with the MLUL process, upon completion of a variance or special exception hearing, no vote is taken and no decision is immediately rendered. Rather, the staff retires to prepare a written recommendation to the executive director, which must be completed within eight weeks of the close of the hearing.

All decisions are in writing, and typically include findings of fact and conclusions as to whether or not the regulatory standards have been met. Conditions or restrictions may be imposed in the decision. All decisions

are forwarded to the board of commissioners for concurrence or reversal but, as noted above, the commission members rarely take part in day-to-day land-use decisions.

In fact, a four-week default period exists within which the commissioners must act on a variance or special exception decision. After that period of time, with no action, the decision of the executive director is deemed to be affirmed. N.J.A.C. 19:4-4.15.

Once zoning approval is obtained, either as of right or pursuant to a special exception or variance hearing, construction or occupancy must be commenced within one year, or an extension must be granted, to prevent the approval from lapsing.

#### **Appeals**

Appeals from decisions of the com-

mission are to be taken in accordance with N.J.A.C. 19:4-4.19, which sends aggrieved parties to the Office of Administrative Law. After a hearing at the OAL, an administrative law judge renders an initial decision and sends it back to the commission for final action.

The commission must then accept, reject or modify the ALJ's initial decision, which then takes the form of a final decision. Appeals from final decisions are pursuant to New Jersey Court Rules.

No specific court rule citations are set out in the commission's new regulations, but it is clear that an appeal from a final zoning decision is to the Appellate Division, pursuant to R. 2:2-3(a)2.

#### **Other Approvals**

Building code reviews are conduct-

ed by the commission, and are coordinated with municipal construction officials. Procedures and criteria for these and other types of approvals or decisions rendered by the commission — subdivisions, rezonings, redevelopment petitions, interpretations — are also set forth in the new regulations and on the commission's Web site.

Although the commission's land-use processing regulations are newly promulgated, for the most part, they continue to reflect longstanding practices of the commission, which have distinct advantages over the MLUL. The new rules are generally better organized and clearer than the former rules.

The resources of the New Jersey Meadowlands Commission — both in-person and online — can also provide valuable assistance in successfully navigating through the approval process. ■