

[PROHIBITION OF EX PARTE COMMUNICATIONS](#) <—click here

SUMMARY

It is unlawful for any municipal zoning board member, office clerk, or municipal representative to offer any opinion, advise, or response regarding the potential of a zoning variance, whether in person or over the phone. Zoning boards act in a quasi-judicial capacity. Their decisions can only be made formally at legally noticed public hearings, based strictly on evidence. Any "advisory" approval or denial over the phone, or in person, is a violation of Open Meetings Law and denies affected applicants, and/or neighbors, their legal right to testify.

If an investor or developer is interested in the potential of securing a zoning variance for a particular property, and calls the municipal planning or zoning board for their opinion, the board member must simply advise them they are not at liberty to offer such opinion, advise, or response, and that the investor or developer needs to apply for the variance in writing. This is the only proper and lawful response.

WHY “IN PERSON” OR “PHONE ADVICE” IS UNLAWFUL

- **Violation of Public Meetings Law:** State and local transparency laws require board business to happen in public, not through private phone calls.
- **Prejudgment and Bias:** A board cannot "approve" or "deny" a project without giving the applicant, objectors, and/or the public a chance to be heard.
- **Lack of Jurisdiction:** A Zoning Officer or administrative staff can tell you if your property requires a variance, but only the full Zoning Board can actually grant or deny one at a hearing.

THE LEGALLY CORRECT PROCESS

1. **Administrative Review:** You can call or visit your local zoning official to discuss what ordinances apply to your property and to see if you need to file a formal variance application.
2. **Formal Application:** You must submit a formal application, pay associated fees, and wait for a public hearing to be scheduled.
3. **Public Notice:** State and local laws require you to notify neighboring property owners (often by mail or newspaper publication) of your hearing date so they can attend and voice support or opposition.
4. **The Hearing:** You must present evidence and demonstrate a legal hardship to the board. The board votes officially at the end of this public process.

[QUASI-JUDICIAL CAPACITY](#) ←click here

In New Jersey, zoning board members acting in a Quasi-Judicial Capacity are strictly prohibited from offering opinions on the approval or denial of an application outside of a public hearing. Such actions are generally considered a violation of the Municipal Land Use Law (MLUL), specifically their statute identified as **N.J.S.A. 40:55D-10**

[MUNICIPAL LAND USE LAW, STATUTE N.J.S.A. 40:55D-10](#) ←click here

In New Jersey, zoning boards are legally prohibited from offering unofficial, binding opinions on applications outside of a public hearing. The framework governing this is established in the Municipal Land Use Law (MLUL) under statute **N.J.S.A. 40:55D-10**, which mandates that all board business, testimony, and voting occur at public hearings with proper public notice.

WHY UNOFFICIAL OPINIONS ARE UNLAWFUL

Here is how the statute and related legal doctrines impact informal board opinions

- **The Public Hearing Requirement:** Under **N.J.S.A. 40:55D-10**, all applications must be heard during an open, publicly noticed meeting. A conversation over the phone or a casual in-person discussion circumvents the statutory process and violates the Open Public Meetings Act.
- **Prejudgment & Due Process:** Land use boards act as "quasi-judicial" bodies. If a board member offers an opinion on an application before hearing official testimony, evidence, and public input, they are legally considered to be "prejudging" the case, which violates an applicant's right to due process.
- **Requirement of Findings:** An approval or denial cannot be made verbally. By law, a board must memorialize its decision in a formal written Resolution that details "findings of fact and conclusions" based entirely on the official record.

If a municipal zoning board member or representative unlawfully offers an opinion on a variance outside of an official proceeding, you should notify the **municipal clerk**, the **board attorney**, and the **New Jersey Department of Community Affairs (DCA)** [Local Government Ethics Law, N.J.S.A. 40A:9-22.1 et seq.].

New Jersey Department of Community Affairs
Office of Regulatory Affairs
101 South Broad Street
PO Box 800
Trenton, NJ 08625-0800

HERE ARE THE SPECIFIC STEPS YOU SHOULD TAKE TO REPORT THE VIOLATION:

- **Document Everything:** Keep a detailed, written record of the incident. Note the **date, time, location**, and exactly what was said. Include the names of any witnesses.
- **Notify the Municipal Clerk:** Submit a formal complaint to your local municipal clerk. They serve as the administrative record-keeper and can direct the complaint to the proper municipal authorities.
- **Contact the Board Attorney:** Zoning boards have an independent attorney. Notifying them ensures that potential legal conflicts and ethics violations are addressed internally.
- **File an Ethics Complaint:** If the municipality fails to act, or if you believe there is a severe conflict of interest, file an ethics complaint online via the New Jersey Local Finance Board, which enforces local ethics laws.
- **Speak at a Public Meeting:** Attend a public meeting of the zoning board and use the public comment period to place your concerns on the official record.

TO HELP YOU PROCEED, YOU SHOULD CLARIFY:

- What is the **municipality or county** where this took place?
- Was the opinion given **privately** or in a **public setting**?
- Is there an active application or **upcoming hearing** for this variance?