

NJPA REAL ESTATE JOURNAL

Friday, June 24, 2005

COVERING THE STATES OF NEW JERSEY AND PENNSYLVANIA

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Fast-tracking owner consent to land use applications

Whether required by statute or local law or ordinance, an applicant for development approvals to a municipal planning or zoning board must secure the property owner's consent. In situations where the applicant is also the owner of the property, a single signature by the authorized individual of the owner, or in some cases by the owner's attorney, is sufficient to proceed with an application. But where the applicant is a tenant, contract purchaser or contract lessee, securing owner consent can delay the approval process.

Some municipalities are rigid and inflexible in requiring that the fee owner sign the application form itself or a specific form of proxy, and that the signature presented be original (and sometimes, it must be notarized). Where stringent requirements such as these apply, there is little the applicant can do other than find out what will be required and plan ahead.

Incorporate Consent In Lease or Purchase Contract

But many municipalities are much more flexible, allowing, for example, a separate signed statement by the fee owner consenting to the filing of the application. In those instances, the appli-



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cant should secure, as part of its lease, contract or other transactional document, the owner's consent to the filing of applications for the necessary permits and approvals. For example, the contract or lease could be drafted to specifically authorize the purchaser or lessee to make development applications. When the application is filed, the applicant can submit the first page, signature page, acknowledgment pages as well as the page containing the authorization. Although this does not work in every instance, many land use boards will accept such a provision and not require that the owner sign the application form or even the plans

themselves.

Consent as Exhibit to Lease or Purchase Contract

Another option is to prepare a consent form and have it attached as an exhibit to the lease or contract. The consent form, which should at a minimum identify the property by street address and tax lot designation, indicate the name of the fee owner, and contain the fee owner's signature, can then be detached from the lease or contract and be submitted as part of the application materials. Having the fee owner's signature notarized, while not always essential, is of assistance in those municipalities where notarization is required.

The land use board to which the application is submitted may have rules and regulations that govern what form of consent is required, or a local ordinance or law may control. If not, the land use board will have a fair amount of discretion, often exercised through its administrator or attorney, to determine whether the form of consent submitted is satisfactory.

Authorization for "Tenant's Work" May Include Development Applications

Even if the language in a lease or contract is not as express as one might like, sometimes it will neverthe-

less be sufficient to satisfy local officials. For example, where the "Tenant's Work" section of a lease specifically authorizes certain tenant improvements, that authorization could be read implicitly to encompass the right to make application for the necessary development permits and approvals to undertake the specified work. In some jurisdictions, court decisions exist which accept such provisions as constituting the requisite owner consent to file an application with a land use board.

Securing owner consent need not delay the development approval process. With a little forethought and attention to appropriate language or a suitable contract exhibit, owner consent for development approvals can be secured at the time the deal is signed. That way, the approval process will be expedited and there will be no need to seek the owner's execution of additional documents later.

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