



**Division of Local
Government Services**

Planning and Zoning: An Introduction

A Division of the New York Department of State

Overview

- Local governing board
- Zoning board of appeals
- Planning board
- Procedures, meetings and hearings



Local governing board

Members are elected:

- City Council
- Town Board
- Village Board of Trustees

- Adopt local laws, ordinances, resolutions

- Adopt/amend zoning, other land use regulations & comprehensive plans

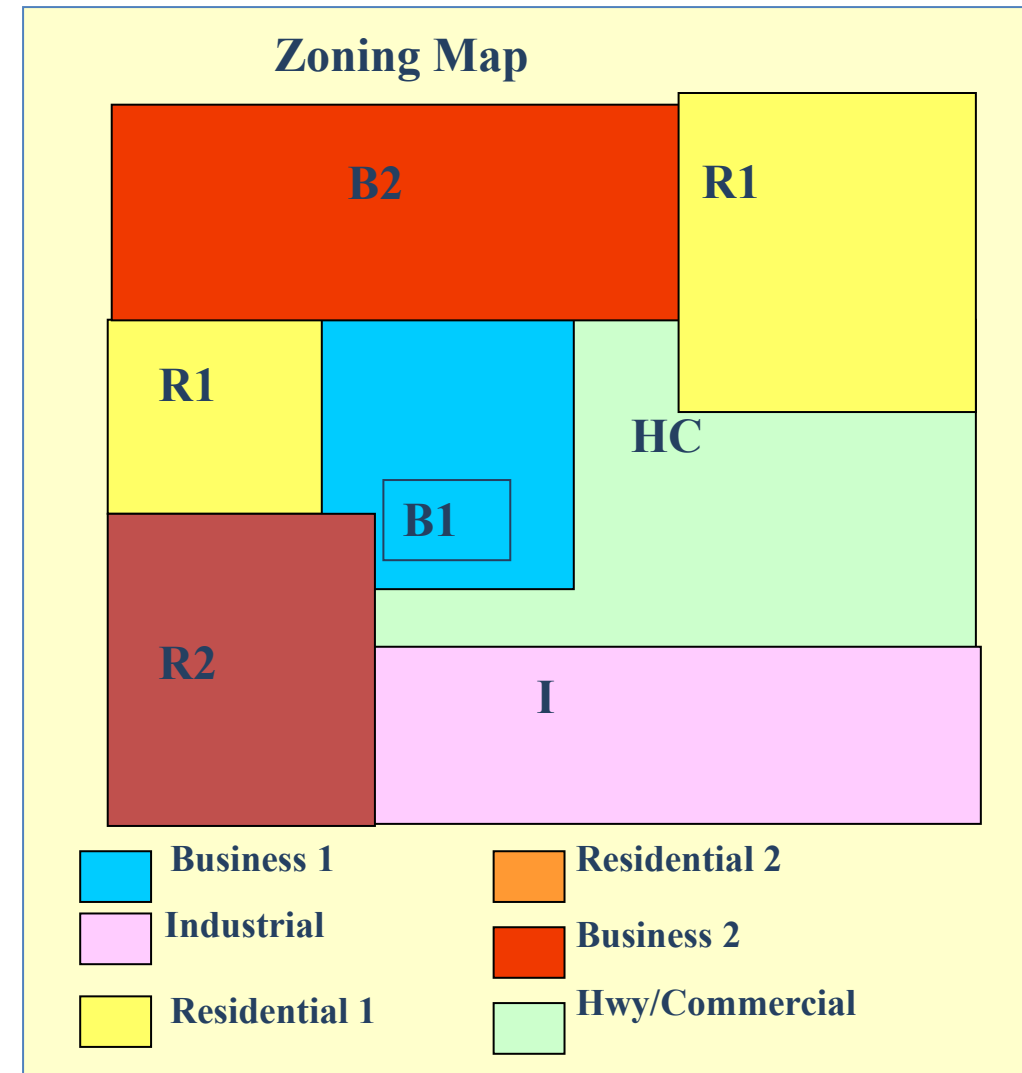
Local Governments in NYS

62	Counties
62	Cities
933	Towns
533	Villages
14	Native American Reservations

Zoning Board of Appeals

Zoning map and districts

- Regulates use, density, and placement of structures on a parcel
- Each district generally has a list of bulk and area regulations, as of right, and special uses
- Original intent: Prevent fire hazards and other threats to health and safety



Zoning requires a safety valve

- Municipalities with zoning must have a board of appeals
- ZBA is a “buffer” for aggrieved applicants between decisions of the zoning enforcement officer and the State Supreme Court



Interpretations

Definitions are important

Without them, board must come to consensus on what they think term or regulation means

- May only be made upon appeal of Enforcement Officer's decision
- Appellant believes Enforcement Officer wrongly applied the law
- Common areas of interpretation:
 - Definitions
 - Method of taking measurements
 - Ordinary meaning of terms, if term is undefined
 - Past decisions on same regulations or similar facts



Two types of variances

- **Use variance:**
To use land for a purpose not allowed in the zoning regulations
- **Area variance:**
Provides relief from dimensional requirements of zoning regulations

Use variance test

To use land for a purpose not allowed in the zoning regulations. Applicant must prove all four factors:

1. No reasonable return
2. Unique circumstances
3. No self-created hardship
4. No alteration to the essential character of neighborhood

1. Reasonable rate of return

- No hard & fast numbers
 - Depends on particular facts of application
- ZBA determines
 - They do not have to agree with expert's opinion
 - *Petruzzelli v. Zoning Bd of Appeals of the Village of Dobbs Ferry*, 181 A.D.2d 825 (2d Dept. 1992)



2. Unique circumstances

- Parcel is only, or one of very few, affected to the extent zoning would create a hardship
- “Uniqueness of land” causing plight, not “uniqueness of the plight of the owner”



Other circumstances:

- Physical features
- Historic or architectural features
- Adjacent uses

3. Self-created hardship

Examples:

- Request relief from restrictions which existed at time of sale;
- Owner bound by zoning restrictions, even without knowledge of them;
- Spending money on project not allowed by zoning



4. Neighborhood character

- Is proposed use consistent with existing development?
- Is there significant adverse impact on neighborhood or community?



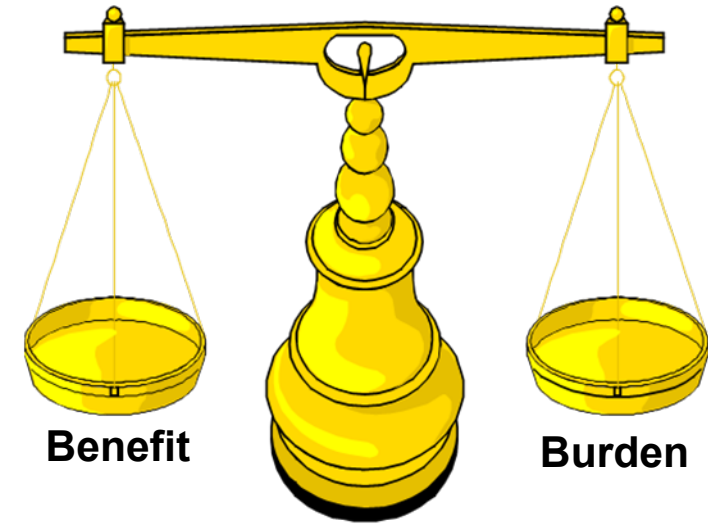
Area Variance

To use land in a way that varies from the dimensional requirements of zoning regulations



Area variance test

1. Change to neighborhood character
2. Alternatives not requiring a variance
3. Substantiality of the request
4. Effect on physical or environmental conditions
5. Self-created situation



1. Change to neighborhood character

Would undesirable changes be eliminated with conditions imposed?



2. Alternatives not requiring variance



Consider placing addition in rear instead of side



Applicants should present reasons for choosing one alternative over another:

- ✓ Better view
- ✓ Better internal pattern
- ✓ Cheaper constructions
- ✓ Better overall aesthetics

3. Substantiality of request

- Amount of variance requested
- Magnitude of variance requested



5' vs. 50' ?

5' of a 10' setback
or
50' of a 300' frontage?

4. Physical or environmental impacts

Examples:

- Blocked views
- Drainage problems
- Impacted wetlands
- Parking shortages



5. Is situation self-created?

If so, the owner is not necessarily precluded from being granted an area variance



Examples:

Shed needs setback relief because of substandard sized lot
Addition begun in violation of height restrictions

Planning Board

Planning board

Advise local governing board on:

- Subdivision, site plan, other regulations
- Zoning changes
- Annual budgets or capital plans
- Other plans
 - Corridor
 - Recreation or open space
 - Waterfront
 - Agriculture



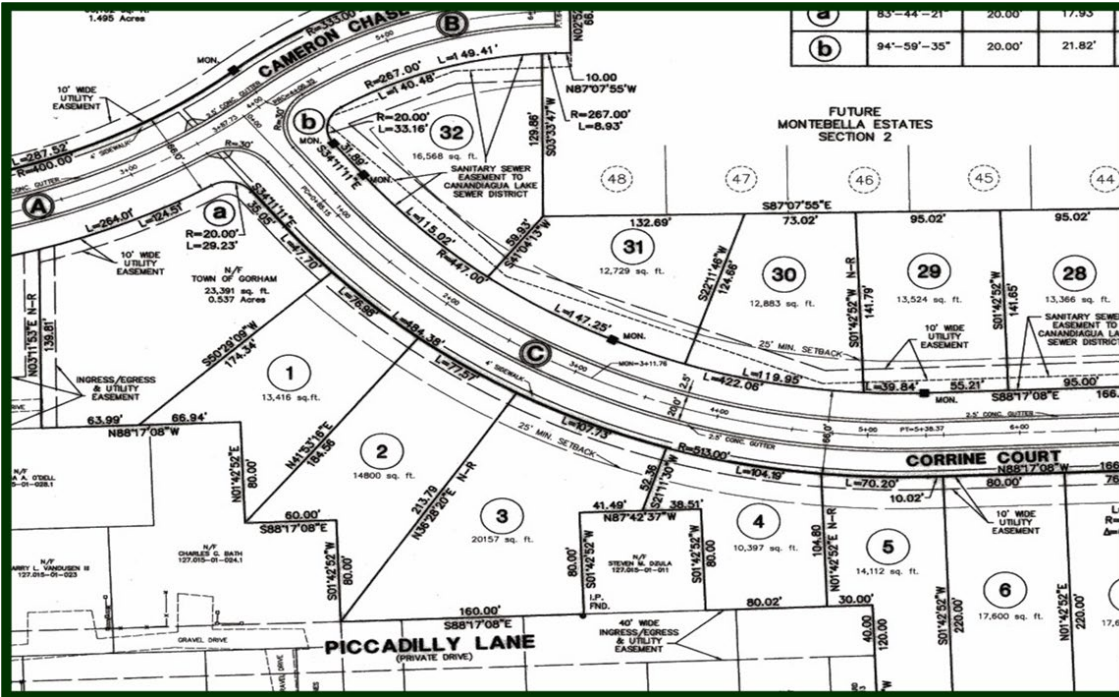
Planning board

Most often review applications:

- Subdivisions
- Site Plans
- Special Use Permits
- Other possible authorities
 - Historic Preservation
 - Architectural Review



Subdivision



General City Law § 32 & § 33
 Town Law § 276 & § 277
 Village Law § 7-728 & § 7-730

The division of a parcel of land:

- Into lots, blocks or sites (with or without streets)
- For the purpose of sale, transfer of ownership, or development

Subdivision review procedures

- Public hearing required within 62 days of receiving complete application (including neg dec for SEQR or, if pos dec, draft EIS)
 - 5-day notice prior to hearing date
 - Public hearing may not be kept open for more than 120 days
 - Beware of default approval (if no decision made 62 days after close of public hearing)
- County referral under General Municipal Law § 239-n if county has authorized and proposal is within 500 feet of a state or county highway or other trigger
- Parkland or money in lieu of parkland

Plat review: preliminary vs. final

Preliminary Plat Contents

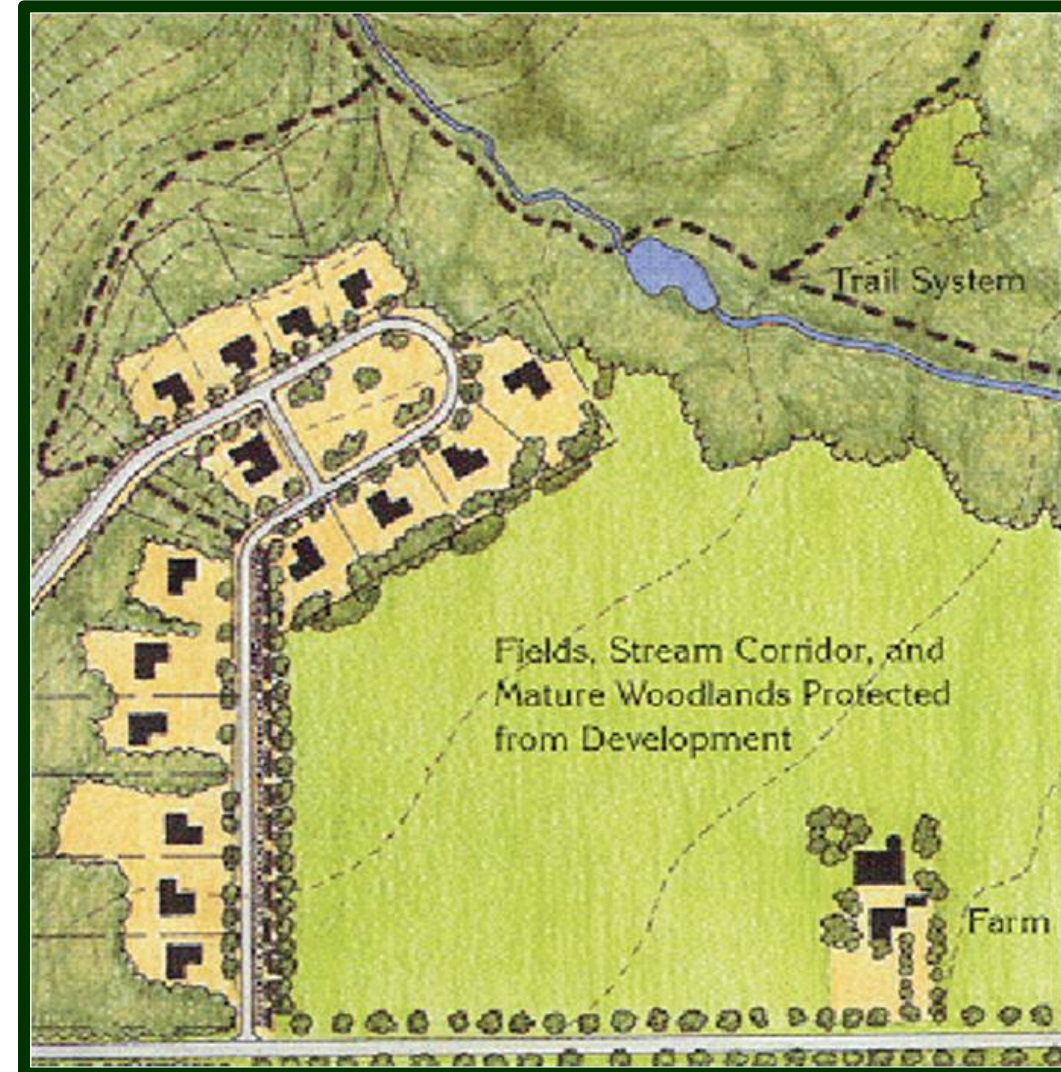
- Proposed street layout
- Proposed lot layout
- Lot size
- Lot dimensions
- Proposed easements
- Existing streets
- Location map
- General contours
- Significant vegetation

Final Plat Contents

- Final street layout
- Final lot layout
- Final lot dimensions
- Lot number
- Permanent easements
- Final grading plans
- Final utilities plans
- Street names
- Lands to be dedicated
- Vegetation to be preserved

Cluster or “conservation” subdivisions

- Allows flexible design and development to preserve natural and scenic qualities of open lands
- Need specific authorization from governing board:
 - Can be allowed
 - Can be mandated
- Zoning identifies allowable:
 - Location by districts
 - Type of development



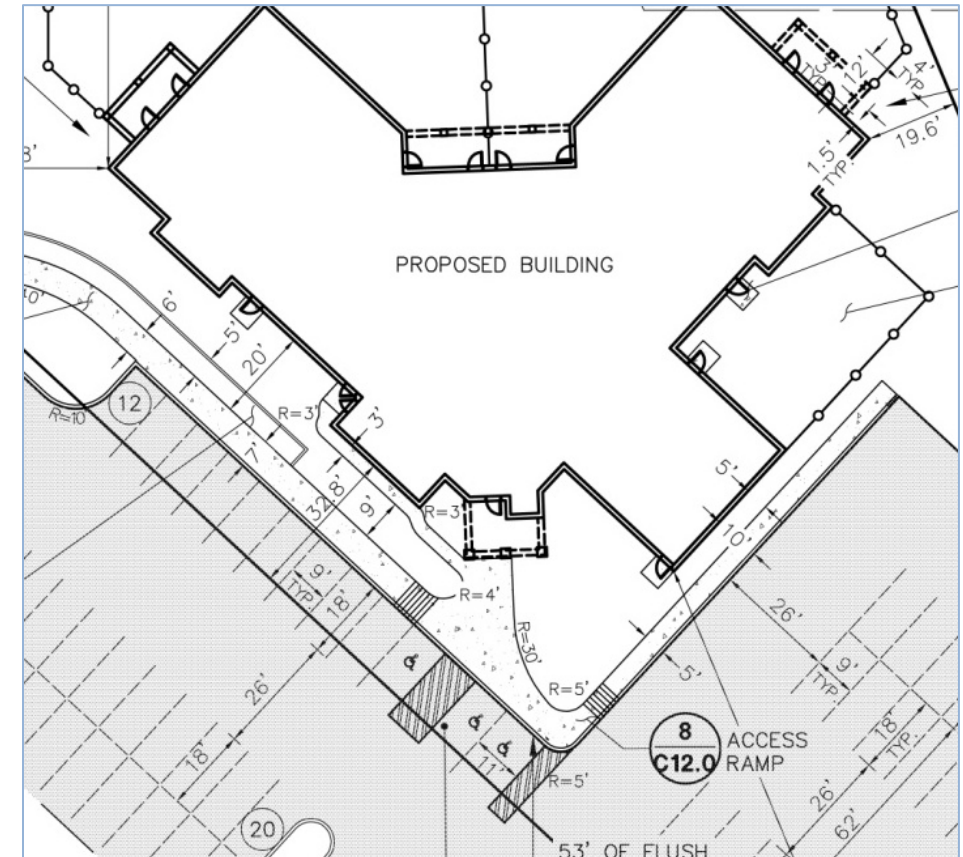
Site plan review

- Rendering, drawing, or sketch with project's proposed design and layout on a single parcel
- May apply to many uses, from single family home to shopping mall
- Must be in accordance with comprehensive plan
- Zoning not necessary to enact site plan review



Review elements

- Relationship to adjacent uses
- Location/dimensions of buildings
- Utilities: sewage & storm drainage
- Proposed grades and contours
- Screening and landscaping
- Parking, access
- Lighting, signage



Remember: Municipality can add elements of review

Special Use Permit

- Use IS allowed by zoning IF it meets conditions associated with that use in the zoning
- Use will not adversely effect neighborhood if conditions are met
- Designed to assure that use is in harmony with surroundings

General City Law § 27-b
Town Law § 274-b
Village Law § 7-725-b



Not a use variance

Use Variance

- Required for a use prohibited by zoning
- Required for use not listed as permitted in district
- Statutory tests

Special Use Permit

- Required for use permitted by zoning but subject to additional requirements
- Local standards

North Shore Steak House Inc, v. Board of Appeals of the Village of Thomaston

Comprehensive Plan

Comprehensive plan purpose

- Statement of community vision: An expression of a municipality's goals and recommended action to achieve those goals
- Provides strategies for achieving expressed goals, often in the form of new or revised land use regulations
- Serves as a framework and defense for land use regulations which focuses on immediate and long-term protection, enhancement, growth and development of the municipality
- An outline for orderly growth, providing continued guidance for decision-making

Comprehensive plan considerations

- Current land uses and regulations
- Growth patterns
- Infrastructure adequacy
- Economic development
- Housing
- Priorities for preservation



Preparation

- Governing board, planning board or special board, oversees preparation
- Public hearings must be held by both board preparing plan and governing board
- Governing board adopts plan and zoning amendments



Moratorium

Temporary suspension of development approvals, pending completion of more permanent regulations:

- May be enacted to gather information for and/or adopt a plan or new regulations
- Development that might occur without a moratorium could undermine the ultimate value of a plan in progress

Time periods:

- Fixed period of time, with a specified termination date
- No longer than reasonably necessary to adequately address the issues (generally not longer than 6 months)

Procedures: Planning Boards & Zoning Boards of Appeals

State training requirements

Members of local planning boards, zoning boards of appeals and county planning boards

- At least 4 hours annually
- Excess hours carried over
- Necessary for reappointment
- Governing board approves training
- Requirements may be waived or modified
 - Resolution of governing board
 - Best interest of municipality
- Variety of sources and formats

Failure to comply does not void decisions



Board procedures

To be binding, board procedures must be adopted by governing board by local law or ordinance. They cover a variety of issues, including:

Officer and
committee duties

Calling meetings,
agendas, public
input

Referrals

Minutes

Official
document
signatures

State Environmental Quality Review (SEQRA)

- To incorporate the consideration of environmental factors into an agency's decision-making process at the earliest possible time
- SEQRA defines environment broadly as resources or characteristics that could be affected by an action, including:
 - Land, air, water, minerals
 - Flora, fauna
 - Noise
 - Features of historic or aesthetic significance
 - Population patterns
 - Community character

How SEQRA works

- Agency proposes action or receives application
- Action classified*
- Lead agency established
- Significance of action determined*
- Environmental Impact Statement (EIS), if needed
- Findings and agency decision*

***SEQRA process can conclude at any of these points**

Environmental Assessment Form (EAF)

- **Part 1:** Applicant completes
- **Part 2 & 3:** Reviewing board completes
- Actions are classified to determine level of review needed to consider environmental impacts:
 - **Type I:** Presumes significant adverse environmental impact; likely to require an environmental impact statement (EIS) (SEQR continues)
 - **Type II:** No, or minor environmental impact (SEQR concludes)
 - **Unlisted:** Full or short environmental assessment form required. SEQR ends if negative declaration; EIS if positive declaration of environmental impacts

Open Meetings Law

- Public bodies (including planning boards and zoning boards of appeals) must discuss applications and other board business at meetings open to the public
- Allows the public to listen and observe, including agenda sessions and site visits if merits of application are discussed, except for attorney-client privilege and reasons to go into Executive Session
- Provide meeting schedule to media, posted notices, schedule on municipal website
- Quorum of full membership needed to conduct business

Meetings: Notice and access

- Provide meeting schedule to press
- Post in conspicuous place
- Post on municipal website (5/12/2009)
- Notice timeframe based on meeting scheduling
 - More than one week prior: at least 72 hours (3 days)
 - Less than one week prior: to the extent practicable
- 2/12/2012: Make agenda and/or documents available prior to or at meeting (online if practicable)



Public hearings

For the public to be heard on:

- Special use permit applications
- Subdivision applications
- Preparation of preliminary comprehensive plan
- Site plan application (if required by municipality)
- Any appeal before a zoning board of appeals

Hearing notice requirements

State notice requirements:

- Public meeting requirements
- Legal notice in official newspaper
- At least 5 days before hearing
- Mail notice to:
 - Parties to appeal or applicant
 - Regional state park commission, if 500' from state park or parkway (ZBA only)
 - Other agencies, if applicable
 - GML § 239-m, GML § 239-nn

Examples of local notice requirements:

- Signs on application property (best practice)
- Mailings to neighbors
- Municipal ListServ



Notice to adjacent municipality

General Municipal Law § 239-nn

If property is within 500' of adjacent municipality, application must be referred to the clerk of that adjacent municipality

Send notice by mail or email at least 10 days prior to any hearing on proposed:

- Subdivision application
- Site plan application
- Special use permit application
- Appeal for use variance

Referral to county planning agency

General Municipal Law § 239-m:

- Special Use Permits
- Site plans
- Use and area variances
- Adoption or amendments to zoning
- Subdivisions, where authorized by county legislative body (General Municipal Law § 239-n)

Referral to county planning agency

Applications within 500 feet of:

- Municipal boundaries
- State or county parks or highways
- State or county streams or institutions
- Land on which state or county building is located
- Farm operations in state agricultural districts



Agreements to exempt certain actions from county review:
minor area variances; site plan review for single- and two-family homes, etc.

Waiting to act

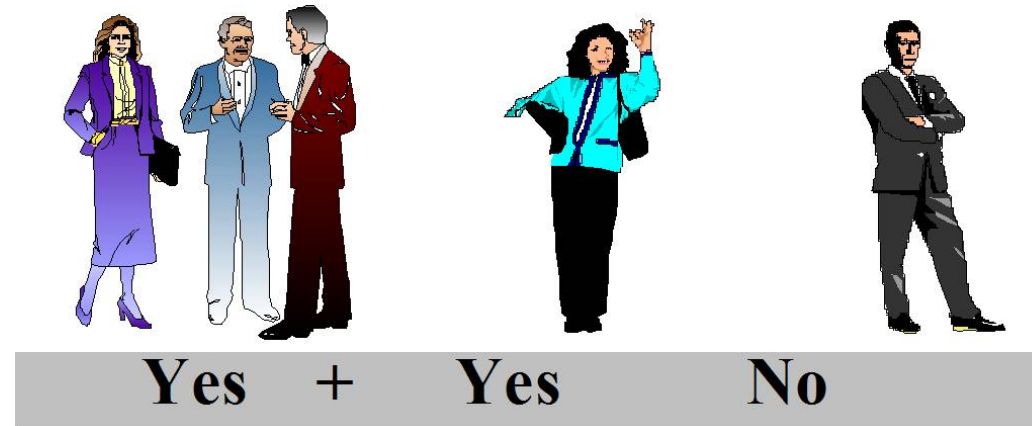
Planning boards and ZBAs cannot act until:

- Local board receives county planning agency's report
- **OR**
- 30 days after county receives full statement
- After 30 days, if local board meets at least two days after receiving the county's referral, the local board is bound by it
- Local board and county may also agree to extend review period



Effect of county recommendation

If county recommends disapproval or approval with conditions, and local board wants to proceed without recommendations...



...it must have supermajority (majority plus one vote)

And explain in record reasons for acting contrary

Decisions

Must be based on a record

- Must be made within 62 days after hearings closed
- Minutes must contain record of each vote
- Include language of motion and any conditions passed
- Send copy of decision with findings to applicant and county, if applicable

Boards should support their decisions with findings

- Findings consist of an analysis that applies law to facts, leading to conclusions
- Findings describe reasons for application's denial or approval; may also support why conditions were imposed



Enforcement

- Governing board authorizes CEO/ZEO to enforce approvals and conditions granted by planning and zoning boards
- Could be stated in zoning or other land use law, or statement of CEO/ZEO duties
- Requires approval conditions be met to the extent practicable before issuing certificate of occupancy or completion



Article 78

Boards' decisions are not appealed to the ZBA or local governing board

- After board renders decision, one with “standing” can challenge that decision in State Supreme Court. **This action is known as an “Article 78”**
- Challenges must be made within 30 days from the date decision was filed in municipal clerk’s office
- Commencement shall stay all proceedings
- Court may reverse, affirm, wholly or partly, or may modify decision brought for review

New York Department of State

Division of Local Government Services

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