


REVISING ZONING

New York State Department of State

Introduction

- Zoning purpose
- When to amend
- Contents of regulations
- Amendment procedures



Neighborhood Centers have a wide mix of uses, building types, and frontage types. They rely on a consistent streetscape and quality civic spaces to enhance the pedestrian character of the center.

City of Saratoga Springs
Zoning Ordinance

Zoning regulates

- Use
- Density
- Placement of structures on lot



Health, safety and welfare

Good zoning

- Encourages orderly growth
- Encourages appropriate economic development
- Encourages construction of quality affordable housing
- Protects historic sites and structures
- Preserves scenic resources and open spaces
- Protects farmland and sensitive environments
- Improves aesthetics of buildings, signs, etc.

Planning before zoning

- Regulations must be based on comprehensive planning
 - Provides legal support
 - Periodic review provision
- Prioritize areas for municipal investments in infrastructure
- Identify areas for potential private development



Municipalities having Comprehensive Plans

Cities	92%
Towns	71%
Villages	89%
All	69%

Source: Legislative Commission on Rural Resources (2008)

Objectives

- Acknowledge comprehensive plan goals
 - State in section of intent
- Clarify and provide detail
 - Less subjectivity left to review board
 - Potentially more efficient and defensible decisions
- Correct errors, omissions & inequities
- Include newly identified uses
- Streamline procedures

Zoning in rural communities

- Only a few districts may be needed
- Cluster/conservation subdivision
- Agricultural district(s)
 - Farm-worker housing
 - Self serving wind energy facilities
- Scenic view shed, prime soil protection overlays
- Hamlet zoning
 - Mixed uses at higher densities
 - Provisions for walkability



When to amend zoning

When to amend

- Local officials can't find updated official zoning map
- Things seem to be getting worse, not better
- People need variances for everything they want to do
- Definitions are reminiscent of the 1950s
- Most people can't figure out what zoning does and does not allow on their land

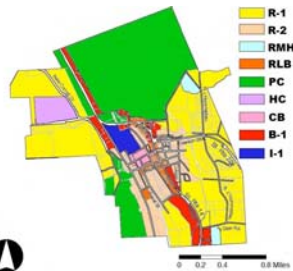
Source: "Symptoms of a Sick Ordinance" NY Association of Towns

Amend definitions

- Too vague
- Frequent requests for ZBA interpretations
- Terms in zoning vary from their common use
- Scattered throughout regulations
- Conflicts between definitions
- Illustrative definitions

Amend zoning map

- Multiple revisions needed to conform with comprehensive plan
- Clarify zoning district boundaries



Make zoning map widely available

Amend districts

- Inadequate number: too many or too few
- Minor distinctions between them
- Overlays need adjustment
- Overly complex
- Broad classifications or vaguely defined uses
- 1960s boilerplate suburban setbacks
- Minimum lot size not preserving rural character

Methodology of uses permitted

Cumulative

- Most restrictive to least restrictive
- Each subsequent district "adds on" permitted uses
- Most restrictive usually single-family
- Least restrictive allows all uses municipality-wide

Exclusive

- Uses distinctly chosen for each district
- Protects desirable specialized concentrations of uses from undesirable unnecessary intrusions
 - For example, excludes residential uses from area suited for industrial uses

Tip: check phone book to see if you have considered all uses

Cities: owner initiated amendment



General City Law §83

City council must vote on petition to amend/repeal regulations of district or part of district when:

- Owners of 50% or more of the frontage in any district or part thereof present petition requesting change
- Council must vote on petition within 90 days after filing with council's secretary

No spot zoning

"the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners ..."

[Rogers v. Tarrytown, 302 NY 115, 96 NE2d 731 (1951)]

Zoning changes must be reasonably related to legitimate public purposes

City of Cohoes

- Cumulative to exclusive
- Previously listed uses permitted and prohibited
 - ▣ Left ambiguity for those not listed
- Downtown commercial district
 - ▣ Setback requirements were contrary to desired streetscape
 - ▣ Conversion of first floor retail space previously allowed
- Historic Preservation & Architectural Review Board
 - ▣ Previously only made recommendation to planning board
- Planning commission to planning board
 - ▣ New oaths and terms
 - ▣ Added alternates

Town of Ticonderoga

- New zoning: More restrictive zoning proposed in highway commercial and on waterfront
 - Reduces number of districts
- Old zoning: too many districts from 1990s village dissolution
- Bulk and area table difficult to use
 - ▣ Density and dimensional standards table in each use section.


Town of Ticonderoga

- Graphics
 - ▣ In sign and design sections
- Build-to-sidewalk and two-story minimum height
 - ▣ Required in downtown
- More prescriptive language throughout
 - ▣ "Outdoor light fixtures shall not direct light upward or onto adjacent properties, public roads, or public waters. Outdoor light fixtures shall be cast downward and be designed to minimize glare. Such fixtures may include recessed, shielded or cut-off fixtures, or low luminance lamps."

Contents of regulations

Common contents

- Text
- Zoning map
- Schedule of uses
- Bulk & area standards
- Illustrations or diagrams



Text provisions

- Statutory source of power and intent
- Definitions
- Summary of uses permitted in each district
- Reference to official zoning map and establishment of district boundaries
- Relationship to other regulations
 - NYS Uniform Fire Prevention & Building Code
 - Site plan or subdivision review
- Administration and enforcement
- Application and permit fees
- Saving clause

Supplemental regulations

- Signs
- Stormwater management
- Excavation and grading
- Public utilities
- Manufactured housing
- Parking and loading
- Mining
- Wind energy facilities
- Shoreline

- Overlay Districts
- Architectural
 - Historic Preservation
 - Floodplain
 - Wetland
 - Steep slope
 - Viewshed

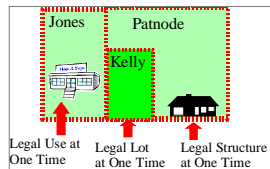
Enforcement & fines

- Authorize enforcement officer to issue citations and appearance tickets
- Enforcement Procedures
- Adequate fines and penalties
- Existing authority but no enforcement
 - Legislative body may compel
 - Article 78 Proceeding



Nonconformance provisions

- Legal nonconforming uses or structures
 - Expansion
 - Abandonment
 - Damage
- Development of nonconforming vacant lots
- Amortization of nonconforming uses

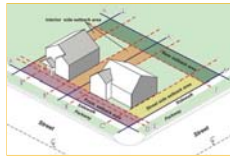


Schedule of district uses

Ag	R-1	R-2	C-1	I-1	I-2
1 - Family Farm Mobile Home SUP: Home Occupation	1 - Family SUP: Religious Institutions; Home Occupation	1 - Family 2 - Family SUP: Same as R-1; Bed and Breakfast	Residential (2 nd floor and above) General Retail, barber shop, drug store, florist... Professional Office SUP: Gas Station; car wash; outdoor sales	Every use permitted by right in C-1 plus: Light manufacturing; bottling plant; printers; machine shop SUP: Adult Use	Every use permitted by right in I-1 plus heavy manufacturing; distribution plants; trucking terminal; SUP: Same as I-1; scrap processing

Dimensional requirements

- Lot sizes & dimensions
 - Flag lots
 - Cul-de-sacs
- Setbacks
 - Build-to-line
- Lot coverage as percentage
 - Pavement
 - Green space
- Height of structures
 - Distinct number or range
 - Number of stories
 - Based on adjacent buildings
- Floor-Area-Ration (FAR)
 - Total covered area (all floors of all buildings) ÷ Lot area
- Accessory structures
 - Garages
 - Porches and decks



Text or table: consistency of measurement

Amendment procedures

Draft revisions

- Governing Board
- Planning Board
- Appointed Advisory Board
 - Number of members is local option
 - At least one member of planning board
- Possible resources
 - Municipal attorney
 - County planners
 - Consultant



Presentation to public

- Proposed regulations online increases accessibility
- Summary of changes
- Regulatory intent
- Graphics with captions

Once adopted, many municipalities link codes to publisher's website: General Code, Municipal Code, American Legal Publishing, etc.

Citizen protest of zoning amendments

Owners of 20% of land area:

- Included in proposed change
- Adjacent to land included in change (extending 100 feet out)
- Opposite land included in change (extending 100 feet out from street frontage of opposite land)

Three-fourths majority vote of local governing board needed to overcome citizen protest of zoning amendments
(Two-thirds majority in villages with only three trustees)

Moratoria

Temporary restriction on development

- Prevent unplanned growth or development inconsistent with current plans
- Address new or unforeseen uses
- Enact by local law or ordinance
 - ▣ Specify termination date
 - ▣ Only long enough to plan and amend regulations
 - ▣ May be extended by subsequent enactments

State Environmental Quality Review

- Type I Action
 - ▣ Adoption of zoning regulations
 - ▣ Zoning amendment affecting 25 or more acres in district
- Local governing board as lead agency makes determination of significance
 - ▣ More likely to require an EIS (positive declaration)

Generic Environmental Impact Statement §617.10 6 NYCRR

- ▣ More general review than project specific EIS
- ▣ Focus on potential effects of several actions or policies, such as adoption or amendment to zoning

Referral to county planning agency

General Municipal Law §239-m: Zoning regulations may not be adopted until county planning agency issues recommendation/report



Any amendment that would change the district classification of, or the regulations applying to, real property lying within 500 feet of certain areas, must be referred to the county planning agency

Governing board notice of hearing

- Publish prior notice of public hearing in paper of general circulation at least:
 - 5 days in towns & cities
 - 10 days in villages
 - OML requirements
 - SEQRA hearing should not occur until either
 - DEIS is filed for positive declaration
 - Notice of negative declaration has been filed

At least 10 days prior to hearing, written notice must be served to following if within 500 feet:

- Housing authority
- Clerk of neighboring town, city, village, county
- State park commission

Town Law §264 Village Law §7-706

Public hearing

- Accessibility
- General review of proposed revisions
- Method of public comment
- Detailed record of proceeding

Information later used by ZBA for interpretations

- Stenographic is best
- If taping, take notes to go with tape
- Written record does not have to be verbatim

Procedural compliance

First time adoption and amendments:

- Majority vote of full governing board required
- Record in minutes of legislative board
- File zoning map
- If FEIS, board must make written findings prior to adopting zoning regulations

Supermajority vote needed to act contrary to county's recommendation



Effective date

- If adopted by ordinance, changes generally effective ten days after publication
- Local laws effective upon filing with Secretary of State (NYS DOS)
- Personal service of law or amendment may make immediately effective as applied to individual involved

New York Department of State

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