



**Division of Local
Government Services**

Special Use Permits

A Division of New York Department of State

What is the 2020 Census?

- Count of **every** resident living in the United States
- Mandated by Article 1, Section 2 of the U.S. Constitution
- Conducted every 10 years ending in zero since 1790
- **Goal: Count everyone once, in the right place**



2020 Census is Critical to New York's Future

Why is the Census important?

- Impacts \$53 Billion in federal funding for community services and economic development
- Impacts number of congressional seats and redistricting
- Data is used for planning by government and businesses for the next 10 years

Challenges to a full count

- Hard to Count Communities
 - Urban & Rural, Low Income, Children under 5, Seniors, Language/Limited English Proficiency (LEP)
- Non-Traditional Housing
 - Transient populations
- Access to Technology
 - Limited computer skills, internet access

2020 Census Timeline

On or between:	You'll receive:
March 12 - 20	An invitation to respond online to the 2020 Census
March 16 - 24	A reminder letter
	If you haven't responded yet:
March 26 - April 3	A reminder letter
April 8 - 16	A reminder letter and paper questionnaire
April 20 - 27	A final reminder poster

Other Dates:

- April 1, 2020: **National Census Day**
- May - July 2020: Non-response follow-up

2020 Census: General Information

- NYS Census 2020 Website:
<https://www.ny.gov/programs/2020-census>
- US Census Website: <https://2020census.gov/en.html>
- If you have **questions** about completing the Census, you can call the US Census Bureau at 1-800-923-8282 to speak with a local **Census Bureau** representative.
- To **report a scam**, call the NYS Division of Consumer Protection hotline at 1-800-697-1220.

Special Use Permit

Use permitted by zoning but subject to requirements or conditions:

- In harmony with zoning
- No adverse impacts to neighborhood

Sometimes referred to as:

- Special exceptions
- Conditional uses

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



Purpose

- Some uses require special attention
- Added layer of review
- Allows for mitigation of potential adverse impacts
- Allows for greater variety of land uses while maintaining zoning standards



Not a use variance

Use Variance

- Required for use **prohibited** by zoning
- Required for use **not listed as permitted**
- Statutory test
- Zoning board of appeals

Special Use Permit

- Required for use **permitted** by zoning **but** subject to additional requirements
- Local standards
- ZBA, planning board, or other review board

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

Special Uses

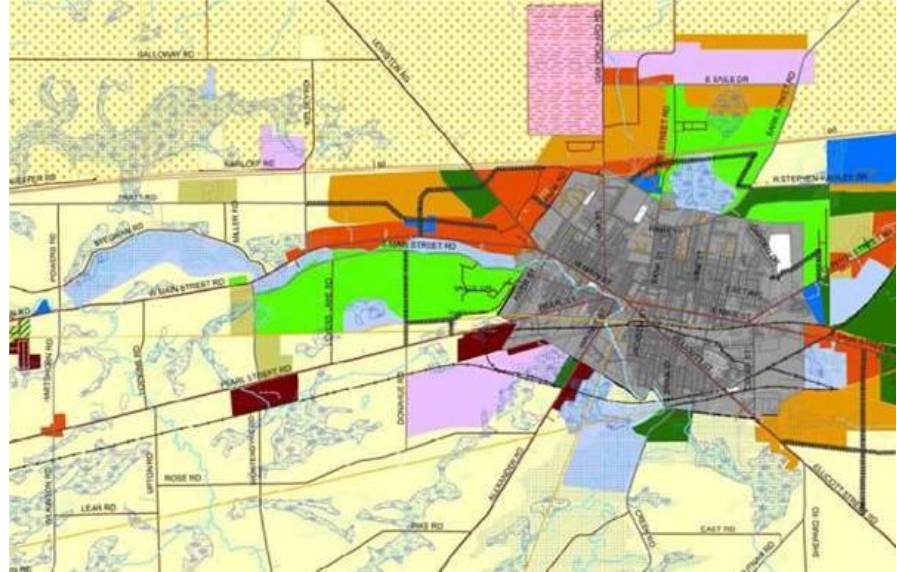
Uses allowed by special use permit

- List and define in text of zoning regulations:
- Avoid vague language
 - “or similar uses”
- Avoid broad categories
 - “restaurant”
 - Sit down, take-out, drive-thru, mobile



Special uses allowed by location

- By use regardless of zoning district
- By zoning district
- By overlay zone



Example of special use in district

Gas station
allowed by
SUP in
neighborhood
commercial
district



Example of special use in district

Accessory apartments in single-family residential district:

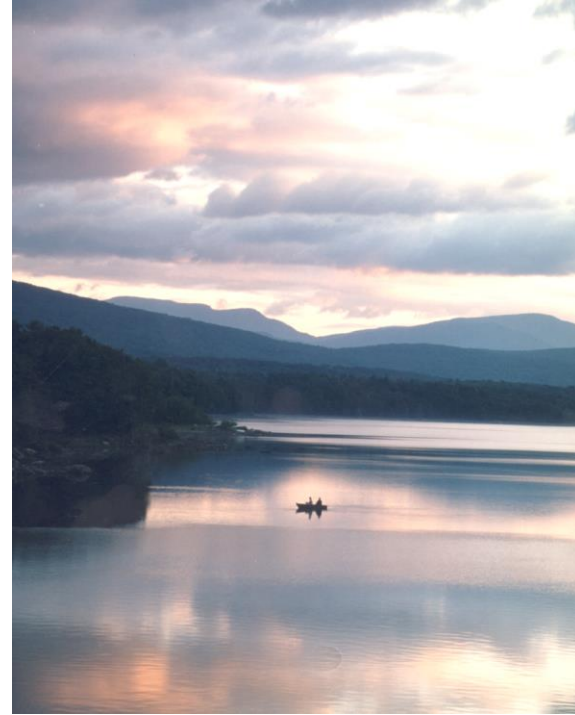
- Granny flats
- Elder cottages



Defining “family”: www.dos.ny.gov/cnsl/lu05.htm

Reservoir protection overlay

- Multi-family houses
- Cemeteries
- Plant nursery
- Recreational vehicle parks



Waterfront overlay

All commercial uses
over (pre-
determined) floor
area threshold

- Retail, office,
restaurants

All residential

- Multiple units



Ridgeline protection overlay

- All new construction or development above set elevation
- Possible exceptions
 - Accessory structures
 - Agricultural structures



Permit Types & Other Considerations

Temporary permit

- Allows review board to re-appraise application
 - New facts & circumstances
- Most appropriate for seasonal uses
- Requires authorization from governing board
(Scott v. ZBA of the Town of Salina;
S.V. Space Development Corp. v. Town of Babylon ZBA)



Renewable permits

If renewal application is subject to same review as a new application, SUP can't be denied

(provided all requirements and conditions are met)



Religious & Educational Uses

- Special treatment
 - Institutions serve public welfare
 - Religious Land Use & Institutionalized Persons Act (RLUIPA) 42 U.S.C. § 2000cc-1
- Requires reasonable accommodation in review
 - Cornell U. v. Bagnardi



Mining

- Municipality can only regulate non-mining aspects of mining operation
 - (Schadow v. Wilson)
- State permitting of mining activities
 - Mined Land Reclamation Law
 - (ECL Article 23, Title 27 limits local review)



Review Authority

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Review board

Governing board may retain authority to review SUP applications

OR

Delegate authority to another board

- Planning board
- Zoning board of appeals as “original jurisdiction”
- Other boards



Delegation of authority

Option to further delegate specific review to different boards, for example:

- Planning Board authorized to conduct all reviews except those in historic district
- Applications in historic district instead are reviewed by historic architecture preservation commission or board



Standards

Without standards to guide review, decisions may be invalidated

(Shepard v. ZBA of the City of Johnstown)



Standards

General

Will usually be upheld:

- “...in the consideration of public health, safety & general welfare”
- “..shall be in harmony with the general purposes & intent of the zoning ordinance & the comprehensive plan”

Specific

Best practice:

- “Design of new primary and accessory structures shall be consistent in scale, materials, and character with the existing vernacular architecture of the surrounding neighborhood or district”



Standards - example

General

“Trash dumpsters must be provided and screened from view”



Specific

“Trash dumpsters must be provided with screening using materials, colors and a design appropriate in character to the primary building on the lot”



Waiver of requirements

Review board may waive submission/permit requirements

- Review board determines if requirement:
 - Is not needed in the interest of public health, safety or general welfare
 - Is not appropriate for that particular property
- Must be authorized by governing board

www.dos.ny.gov/cnsl/comments/realholding.htm

Waiver of requirements - example

When existing or natural buffer is present, consider waiving required buffer or screening



Review Procedures

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SEQRA compliance

- Must complete SEQR before making final local decision
- Require Environmental Assessment Form (EAF) with application submission
- Establish lead agency if coordinated review
- Make determination of significance (positive or negative declaration)
- “Complete application”
 - Negative declaration issued
 - Positive declaration issued and Draft Environmental Impact Statement (DEIS) accepted for public review
 - NYCRR Part 617.3



Public hearing

- Hold within 62 days of “complete application”
- If DEIS hearing, hold in conjunction with SUP hearing
- Open Meetings Law
- Publish legal notice in newspaper of general circulation at least 5 days prior
 - Extend to at least 14 days when DEIS hearing
- Mail notice 10 days prior:
 - Applicant
 - County planning (GML 239-m) if applicable
 - Adjacent municipality (GML 239-nn) if applicable



County referrals GML § 239-m

Application must be referred to county planning board if it applies to real property within 500 feet of:

- Municipal boundary
- Boundary of state or county
- Park or recreation area
- R-O-W of state or county road
- R-O-W of county-owned stream or drainage channel
- Boundary of state or county land on which public building is located
- Boundary of farm operation in state agricultural district (except for area variances)



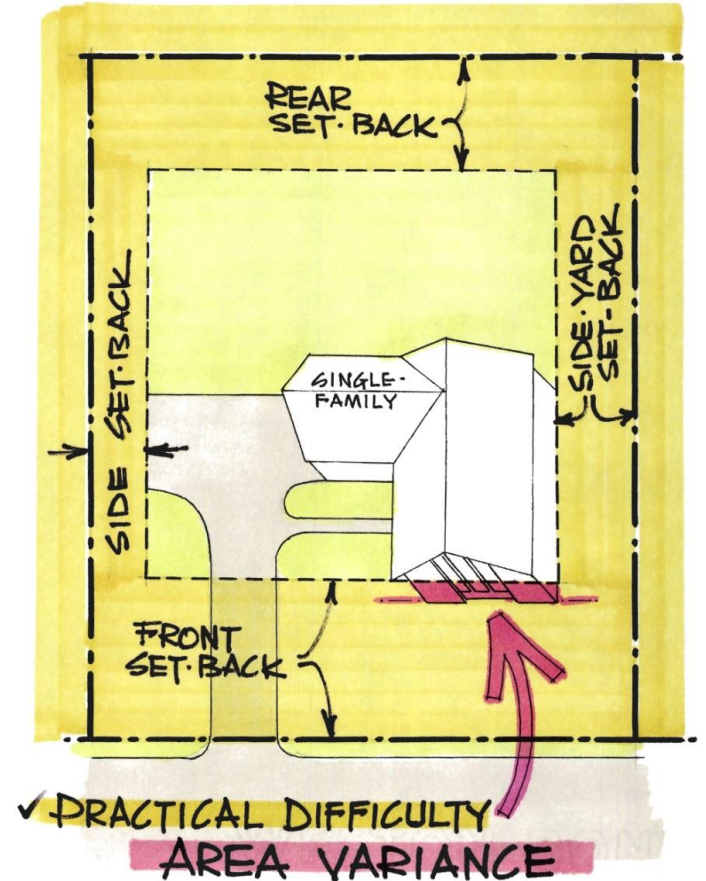
Adjacent municipalities GML § 239-nn

- SUP applications require notice when 500 feet from municipal boundary
- Notice by mail or email to clerk of adjacent municipality at least 10 days prior public hearing



Area variance also required

Direct appeal for
SUP that would
require an area
variance



Basis for Decision Making

Granting permits

- Must be approved if local requirements are met
 - Pleasant Valley Home Construction v. Van Wagner
- Mitigate environmental impacts before approval
 - Must make SEQRA findings prior to making decision



Granting permits

- Zoning deals with land use; not applicant, land owner, or occupant
- SUP approval is granted to and stays with the property
 - Dexter v. Town Board of the Town of Gates
 - Weinrib v. Weisler



Denying the permit

- Base denial on reasonable grounds:
 - Site not appropriate for use
 - Property depreciation
 - Traffic impact beyond permitted use (YMCA v. Burns)
- Support with evidence
 - For example, traffic study



Wrong reasons for denial

Community opposition:

Cannot base denial solely on “...generalized objections concerns of neighboring community members”

- Chernick v. McGowan
- Pleasant Valley Home v. Van Wagner



Wrong reasons for denial

General objections to use as undesirable

For example, tavern permit denied citing reasons of late hours, noise, traffic, etc.

- Holbrook Assoc. Development Co. v. McGowan



Wrong reasons for denial

- Unrelated violation
 - i.e., applicant has violation on different property
- Previous violation
 - “...the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use”



Conditions

- Review board has express statutory authority to impose conditions
- Must be reasonable
 - Tandem Holding Corp. v. Board of Appeals of the Town of Hempstead
- Must directly relate to impact of development on land itself
 - Should not relate to internal operations of business or activity

Regulate hours of operation only if

- Authorized by governing board;
and
- Substantial evidence of impacts that relate to physical use of the land
 - Old Country Burgers v. Town of Oyster Bay



Regulating Hours of Operation: www.dos.ny.gov/cnsi/lu15.htm

Findings

- Demonstrate reason for approval or denial
 - Applicant did or didn't meet required standards
- Disclose all evidence relied on in reaching decision
- Include analysis of evidence
- Relate facts to legal standards
- File with decision document

After the Decision

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Decision and appeals

- Must render within 62 days after close of hearing
- File with municipal clerk within 5 business days
 - 30 day statute of limitations for appeal
- Decisions are not appealed to governing board
- Aggrieved parties may file appeals under Article 78 Civil Practice Law and Rules
 - NYS Supreme Court
 - Appellate Division
 - Court of Appeals



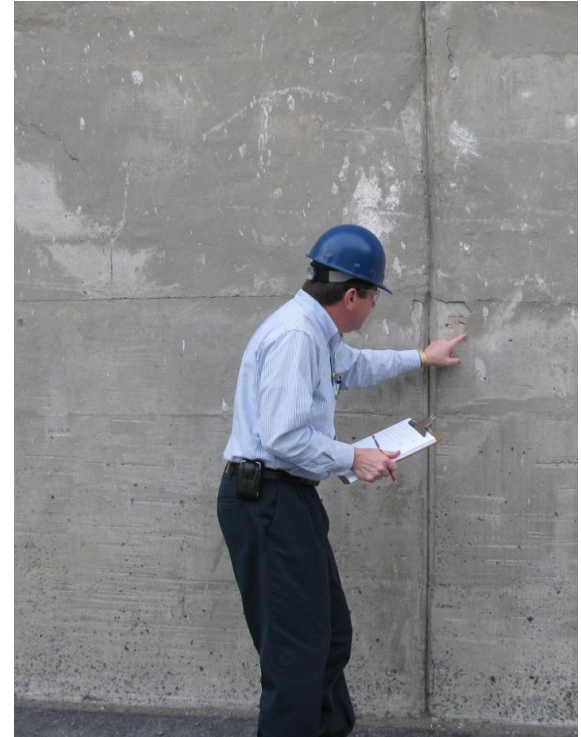
Revoking special use permit

- Non-compliance
- Substantial evidence
- Failed to comply with imposed conditions
 - Persico v. Incorporated Village of Mineola
- Permit holder entitled to hearing before revocation



Enforcement

- Authorize zoning or code enforcement officer to enforce SUP conditions
- Could be stated in
 - Zoning law
 - CEO/ZEO duties
- Require conditions be met before issuing building permit or certificate of occupancy



New York Department of State

Division of Local Government
(518) 473-3355

www.dos.ny.gov/lg/index.html



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