

PLANNING & ZONING: A BRIEF INTRODUCTION

New York State Department of State

Overview

- Local governing board
- Zoning board of appeals
- Planning board
- Procedures, Meetings & 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

NY local governments:

- 62 Counties
- 62 Cities
- 932 Towns
- 556 Villages
- 14 Native American Reservations

State training requirements

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

- At least four 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 & formats

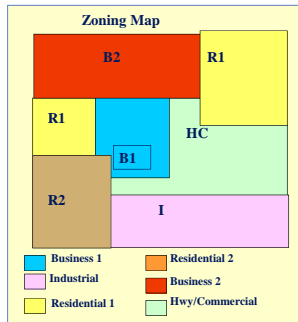
Failure to comply does not void decisions

Zoning Board of Appeals

Zoning

Regulates use, density, and placement of structures on a parcel

Original intent: Prevent fire hazards and other threats to health and safety



Zoning requires a safety valve

Municipalities with zoning must have a **zoning board of appeals**

ZBA is a “buffer” for aggrieved applicants between decisions of the zoning enforcement officer and the State supreme court



ZBA interpretations

- May only be made upon appeal of Enforcement Officers 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



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

Two types of variances

- **Use variance:** to use land for a purpose not allowed in the zoning regulations
- **Area variance:** for applications not in compliance with 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

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

Planning Board

Planning board advisory role

Advise local governing board:

- Zoning changes
- Capital budgets
- Variance requests
- Comprehensive plan development
- Open space, farm land and water studies
- Other plans (corridor, recreation, open space etc.)



Planning board regulatory role

Most often review applications

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



Subdivision

- 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

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



Subdivision review procedures

- Public hearing required
- County planning agency referral may be necessary
- State Environmental Quality Review Act (SEQRA) must be considered
- Parkland or money in lieu of parkland
- Beware of default approvals:
62 days after close of public hearing

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

Survey required by NYS licensed surveyor

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



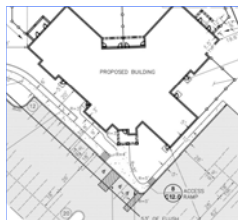
Site plan review

- 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
- Proposed grades and contours
- Screening and landscaping
- Utilities: sewage & storm drainage
- Parking, access
- Lighting, signage



Remember:
Municipality can add elements of review

Special Use Permit

- Use IS allowed by zoning
- Use listed as “permissible use” subject to additional requirements
- Use will not adversely effect neighborhood if conditions are met
- Designed to assure that use is in harmony with zoning

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

Different from use variance

Use Variance

- Required for use **prohibited** by zoning regulations
- Required for use **not listed as permitted** in district

Special Use Permit

- Required for use **permitted** by zoning regulations **but** subject to additional requirements

Comprehensive Plan

Comprehensive Plan

- Expression of a municipality's goals and recommendations to achieve those goals
- Outline for orderly growth, providing continued guidance for decision-making
- Document focusing on immediate and long-range protection, enhancement, growth and development
- Serves as a framework and defense for land use regulations
- Defined in statutes

Comprehensive plan considerations

- Current land uses and regulations
- Growth patterns
- Adequacy of infrastructure
- 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 amendments to zoning



Moratorium

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

- To gather information for and/or adopt a plan or new regulations
- Because proposed development 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, Meetings & Hearings

Planning Boards & ZBAs have separate duties & functions but share some procedures

Board procedures

To be binding, board procedures must be adopted by governing board by local law or ordinance



State Environmental Quality Review

To consider environmental factors into decision making at the earliest possible time

SEQR 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

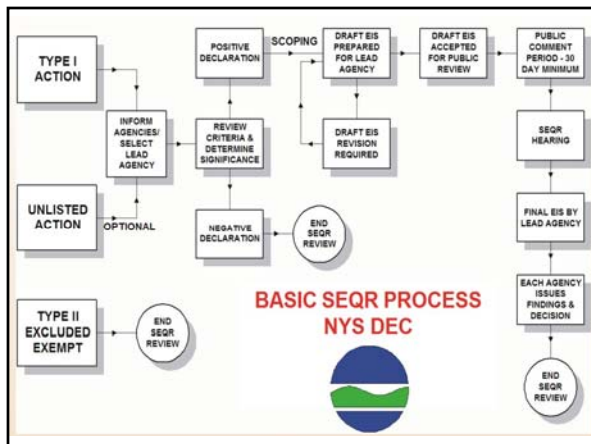
Environmental Assessment Form (EAF)

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 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

- Boards may not meet behind closed doors to discuss applications or board business
- Boards must provide notice to media and public

Executive Sessions may only be held for reasons defined in Open Meetings Law

A "work session" or "site visit" is a meeting subject to OML if quorum gathers to discuss public business



Public meetings vs. hearings

Meeting purpose: for public to listen & observe
Hearing purpose: for public to comment

- Subject to Open Meetings Law – Planning Boards must discuss applications and other board business at meetings open to the public
 - ▣ Post notice, meeting schedule to media
 - ▣ Quorum of full membership to conduct business

Meetings – Notice and Access

- Post notice in a conspicuous place
- Provide notice to the press
- If scheduled more than 1 week in advance – provide at least 72 hours (3 days) notice
- If scheduled less than 1 week in advance – provide notice to the extent practicable
- When feasible, post notice on municipal website if regularly updated with high speed internet connection
- Provide access to the public

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 the 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 feet of adjacent municipality, application must be referred to 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

County Referral

Applications within 500 feet of:

- Municipal boundaries
- State or county parks, highways, 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, for example.

General Municipal Law §239-m

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



- Two-day rule
- Local board and county may agree to extend review period

Overriding 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)

Tip: state reasoning for acting contrary to county recommendation

Decisions

□ Based on a record

- 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



□ Support decisions with findings

- Findings are an analysis which 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
- Require approval conditions be met to the extent practicable before issuing certificate of occupancy or completion



Article 78

Boards decisions are not appealed to 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 with 30 days from 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

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