

INTRODUCTION TO PLANNING & ZONING

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
- Village Board of Trustees
- Town Board

- Adopt local laws, ordinances, resolutions
- Adopt/amend zoning, other land use regulations & comprehensive plans

Forms of NY local government:

57 Counties

932 Towns

62 Cities

556 Villages

14 Native American
Reservations



Zoning Board of Appeals

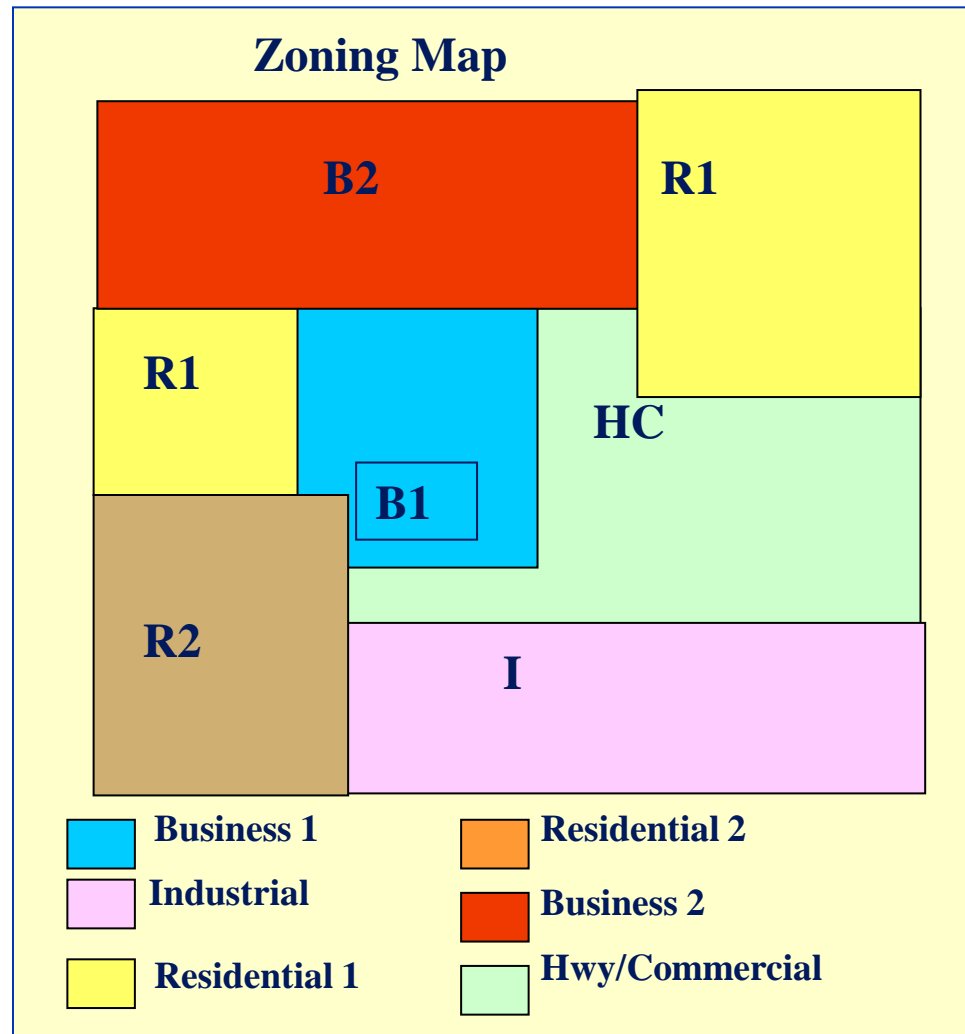
Zoning

- Regulates use, density, and placement of structures on a parcel
- Original intent: Prevent fire hazards and other threats to health and safety



Zoning map and districts

Each district most often has a list of allowable uses, special uses, and bulk and area regulations



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



Zoning board of appeals

- Interpret zoning regulations
 - Aggrieved party disagrees with ZEO's official interpretation

- Issue or deny appeals for variances
 - Aggrieved party appeals decision of ZEO

Interpretations

- May only be made upon appeal of Enforcement Officers decision
- Appealing party 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

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



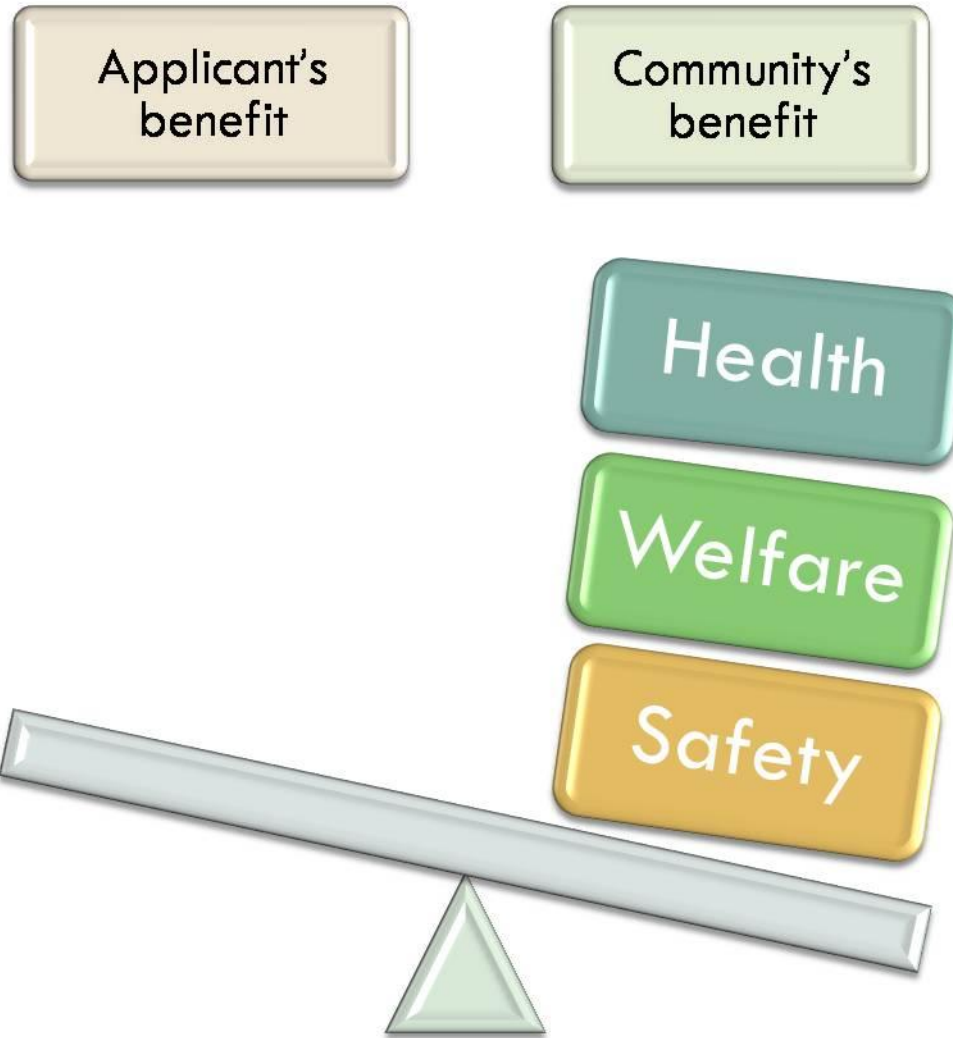
Area variance



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

Balance:

Applicant benefit vs. Community benefit





Planning Board

Planning board

Advise the 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

Most often review applications

- Subdivisions (always)
- Site Plans (almost always)
- Special Use Permits (usually)
- 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

- Enables and encourages flexibility of 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
- ❑ Could be applied to many uses, ranging from single family homes to large shopping centers
- ❑ 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 than use variance

Use Variance

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

Special Use Permit

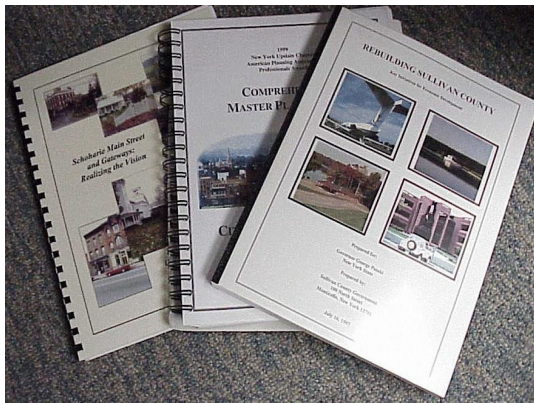
- Required for a use **permitted** by zoning regulations **but** subject to additional requirements



Comprehensive Plan

Comprehensive Plan

- An expression of a municipality's goals and recommended actions to achieve those goals
- An outline for orderly growth, providing continued guidance for decision-making
- A document focusing on immediate and long-range protection, enhancement, growth and development
- Defined in statutes



- Master Plan
- Land Use Plan
- Comprehensive Master Plan

Comprehensive plan purpose



- Statement of community vision
- 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

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



Moratorium

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

- May be enacted for the purpose of gathering information for and/or adopting 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, Meetings & Hearings

Planning Boards & Zoning Boards of Appeals have separate duties & functions; however, they share some general procedures

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 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

State Environmental Quality Review

To incorporate the consideration of environmental factors into an agency's decision making process 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

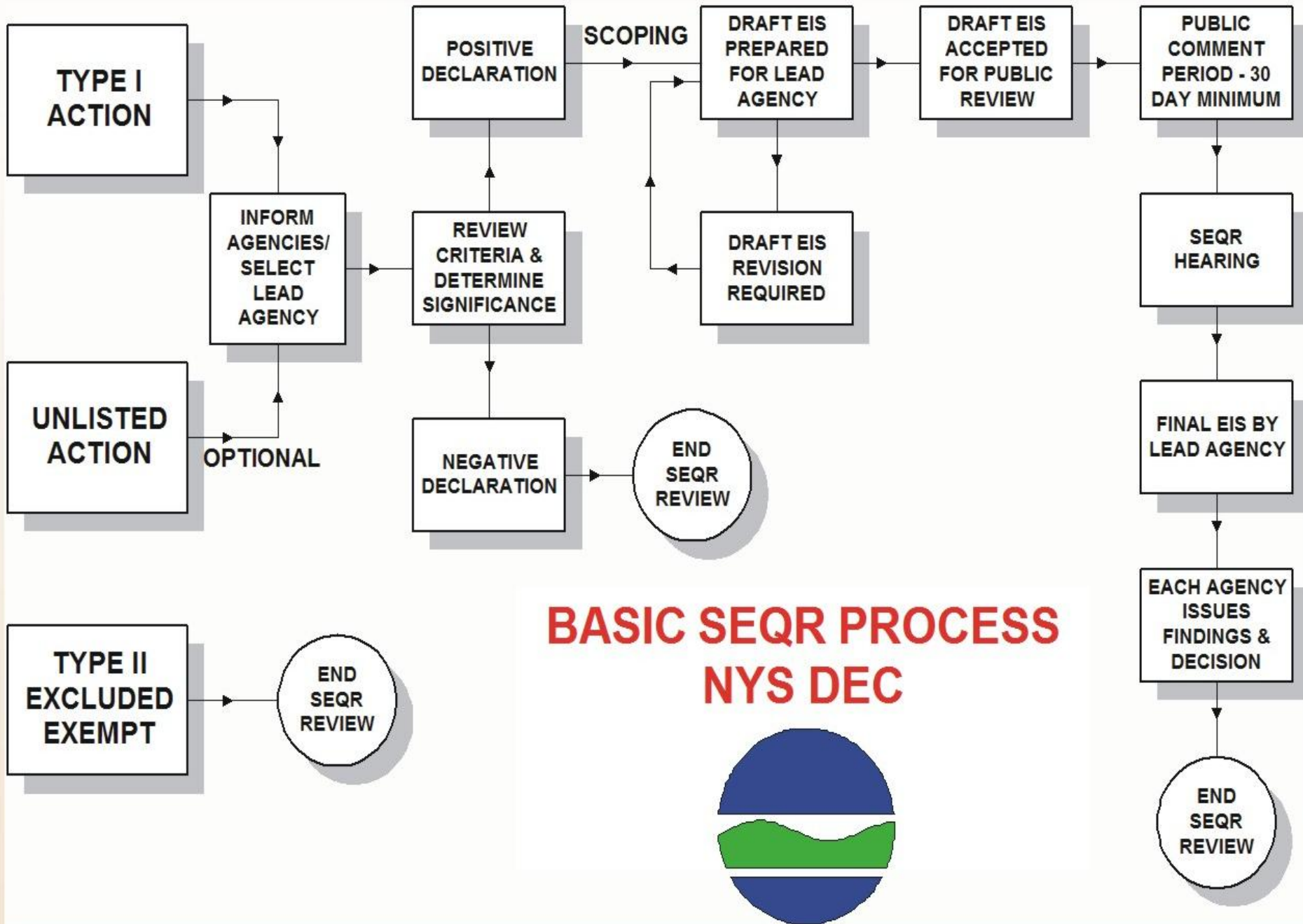
Environmental Assessment Form (EAF)

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



BASIC SEQR PROCESS NYS DEC



Open meetings

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

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

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



Public meetings

- Allow the public to listen & observe

- 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
- Provide access to the public

Public hearings

- Purpose: to receive public comment on
 - Special use permit applications
 - Subdivision applications
 - Preparation of preliminary comprehensive plan
 - Site plan application (if required by municipality)
 - Any application before a zoning board of appeals

Hearings – noticing requirements

- State noticing requirements:
 - Public meeting requirements
 - Legal notice in official newspaper
 - Neighboring property owners must be notified by mail only in the case of “certain public agencies”
- Examples of local requirements:
 - Signs on applicant property
 - Certified mailings to neighbors within 500 feet of applicant property
 - Municipal website



Notice to adjacent municipality

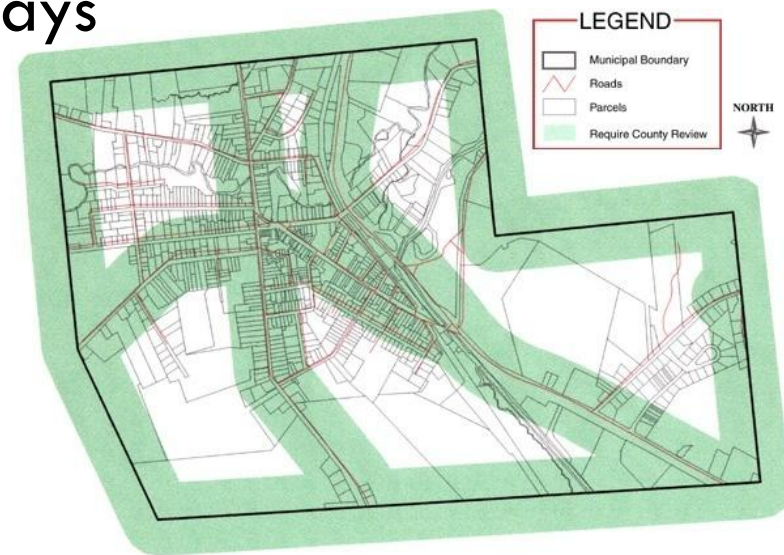
General Municipal Law §239-nn

- 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

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



General Municipal Law §239-m

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

Waiting to act

Local 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

Effect of county recommendation

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



Yes + Yes No

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

***State reasoning 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
- ▣ Should 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 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



- Local 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 the ZBA or local governing board**
- After board renders decision, people 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

Contacting the Department of State

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