Planning and Zoning: An Introduction

Overview

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

Local Governments in New York

- 57 Counties
- 62 Cities
- 932 Towns
- 556 Villages
- 14 Native American Reservations
Zoning Board of Appeals

Zoning map and districts

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

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
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
Advises local governing board on:

- Subdivision, site plan, other regulations
- Zoning changes
- Annual budgets or capital plans
- Comprehensive plan development
- 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
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

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

- Public hearing required
  - 5 day notice prior to hearing date*
- County planning agency referral may be necessary
- State Environmental Quality Review Act (SEQRA) must be considered
  - *If public hearing is held for SEQRA notice requirements are adjusted
- Parkland or money in lieu of parkland
- Beware of default approvals: 62 days after close of public hearing

Plat review: preliminary vs. final

<table>
<thead>
<tr>
<th>Preliminary Plat Contents</th>
<th>Final Plat Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed street layout</td>
<td>Final street layout</td>
</tr>
<tr>
<td>Proposed lot layout</td>
<td>Final lot layout</td>
</tr>
<tr>
<td>Lot size</td>
<td>Final lot dimensions</td>
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<tr>
<td>Lot dimensions</td>
<td>Lot number</td>
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<tr>
<td>Proposed easements</td>
<td>Permanent easements</td>
</tr>
<tr>
<td>Existing streets</td>
<td>Final grading plans</td>
</tr>
<tr>
<td>Location map</td>
<td>Final utilities plans</td>
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<tr>
<td>General contours</td>
<td>Street names</td>
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<tr>
<td>Significant vegetation</td>
<td>Lands to be dedicated</td>
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<tr>
<td></td>
<td>Vegetation to be preserved</td>
</tr>
</tbody>
</table>

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
- 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

<table>
<thead>
<tr>
<th>Use Variance</th>
<th>Special Use Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Required for use prohibited by zoning</td>
<td>• Required for use permitted by zoning but subject to additional requirements</td>
</tr>
<tr>
<td>• Required for use not listed as permitted in district</td>
<td>• Local standards</td>
</tr>
<tr>
<td>• Statutory tests</td>
<td></td>
</tr>
</tbody>
</table>

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### 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 and Zoning Board of Appeals

State training requirements
Members of local planning boards, zoning boards of appeals and 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

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

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
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

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

Meeting – access & notice

• Access to public
• Notice to public:
  • Provide to press
  • Post in conspicuous place
  • Post on municipal website (5/12/09)
• Notice timeframe based on meeting scheduling:
  • More than one week prior, at least 72 hours (3 days)
  • Less than one week prior, to extent practicable
• 2/12/12: Make agenda and/or documents available prior to or at meeting (online if practicable)
• www.dos.ny.gov/coog/RecordsDiscussedatMeetings.html
Public hearings
To receive public comment 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 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
- 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 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

Projects requiring referral:
- Special use permits
- Site plan
- Other zoning authorizations
- Subdivisions where authorized by county legislative body
- General Municipal Law §239-m

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, for example.

Waiting to act

Planning boards and ZBAs cannot act until:
- Local board receives county planning agency’s report
- 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…

…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 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 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 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

New York Department of State

(518) 473-3355 Training Unit
(518) 474-6740 Counsel’s Office
(800) 367-8488 Toll Free

Email: localgov@dos.ny.gov
Website: www.dos.ny.gov
www.dos.ny.gov/lg/lut/index.html
Variance Procedures for the ZBA

The CEO makes a decision

Applicant submits a complete application, stating the relief they are seeking and why.

Within 60 Days.

Appeal is taken. Stay of Proceedings.

Filed with ZCEO & ZBA

Review of State Enabling Legislation Criteria, application, public comment and county referral (if any).

Public Hearing Held

GML 239m,3(a): Referral to County Planning Department, at least 5 days prior to hearing.

Within a reasonable time, the ZBA sets a date and time for a Public Hearing, and post notice of this public hearing at least 5 days prior.

Unless extended by mutual consent of both applicant and ZBA, within 62 days of the public hearing a decision is rendered (complete with findings).

Within 5 business days, the decision is filed with the municipal clerk and a copy is sent to the applicant.

In accordance with; Town Law, Section 267-a. City Law, Section 81-a AND Village Law, Section 7-712-a.
Special Use Permit Procedures:
Town Law 274(b), City Law 27-b, Village Law 7-725-(b)

A Complete Application Is Filed.

If NO...

Is an Area Variance needed?

IF YES, the application gets referred to the ZBA for determination.

The ZBA sets date and time for a Public Hearing and post notice of such at least 5 days prior.

TEN DAYS PRIOR TO THE PUBLIC HEARING, THE APPLICATION GETS REFERRED TO THE COUNTY PLANNING DEPARTMENT. GML 239m,3 (a).

Within 62 days from application date, a Public Hearing is held.

The ZBA has 62 days* after the Public Hearing to review all evidence, special use criteria and related information, and then make a decision based on all findings, recommendations, public comment, testimony and referrals.

Within 5 business days the decision must be filed with the Municipal Clerk and mailed to the applicant.

*62 days can be extended by mutual consent of both the applicant and ZBA.