

The Zoning Referral Process

Introduction

The Dutchess County Department of Planning and Development reviews, on average, more than 50 development applications per month under General Municipal Law, Sections 239-l and m. These are applications to city, town, and village municipal boards that must, according to State Law, be sent to the county planning agency. This report explains why the County must receive certain applications and what types of reviews and recommendations can be expected from the County in response.

What Triggers a Referral to the County?

New York State General Municipal Law Article 12, Sections 239-l and 239-m, requires that local municipalities forward certain actions to a county planning agency for review, comment, and recommendations:

- Area/Use Variance
- Site Plan
- Special Use Permit
- Zoning Amendment (Code/Map)
- Comprehensive Plan
- Other authorizations which the board may issue under zoning provisions

Any of these actions that involve property within 500 feet of any one of the following must be sent to the county for review:

- A municipal boundary
- A county or state existing or proposed road
- A county or state existing or proposed park or recreation area
- A county or state owned property, existing or proposed, on which a public building or institution is located
- A farm operation located in a designated agricultural district (does not apply to area variances).

What Issues is the County Concerned About?

The County reviews these actions to bring inter-community and countywide considerations to the attention of municipal boards. Comments by county planners help shape the future of our county and guide the actions of an individual village, town, or city. The zoning referral process is used to ensure consistency with the concerns of the county and its master plan, ***Directions: The Plan for Dutchess County*** and ***Greenway Connections***.

While conducting its review, the County looks across geographical and political boundaries to protect the environment and economy of Dutchess County. Questions such as "What effect will this new commercial development have on the traffic flow in the nearby intersection?" and "Will the character of the community be adversely affected by the granting of this variance?" are typically asked. The County turns to the municipality's master plan to see if the applications are addressing the long-term needs and desires of the community.

In addition, the County's master plan, ***Directions: The Plan for Dutchess County*** and ***Greenway Connections***, provides an overall guide for development actions, as well as providing standards and policies by which to judge applications. It is a working document, endorsed by nearly every municipality in Dutchess County, that should be consulted continually by decision makers in land use management.

Each type of application creates different concerns for the County to address. A **zoning board of appeals** rules on area and use variances, and in some communities special permits. A **planning board** reviews commercial and residential site plans, and in some communities special permits. **Town boards, village boards and city councils** decide on zoning amendments. Each municipality's zoning law forms the basis for when the Department has to distinguish between a recommendation and placing a condition upon approval. For example, the County generally does not favor directory signs; however, if the municipality allows them in their zoning law, the County can only recommend disallowing it, not make its removal a condition of site plan approval.

Due to the large number of referrals received, the County normally comments only on projects that are of county or intermunicipal concern. In order to facilitate the review of projects which are primarily of local concern, we simply check the box labeled "Matter of Local Concern" on the cover sheet that should accompany every referral sent to the County, and fax or mail a copy back to the referring board.

What Types of Recommendations are Issued by the County?

After reviewing an application, the County can make a recommendation to the local board that has approval authority over an application. Since the Dutchess County Department of Planning and Development is not a regulatory body, it does not make the final decisions. There are six possible responses the County can give:

1. **No Jurisdiction/No Authority** - The County cannot officially review requests which do not fall under Section 239-l and 239-m. A "No Jurisdiction" response means that an application does not fall within any of the designated geographic areas previously listed (see "What Triggers a Referral" above). A "No Authority" response means that the County has no legal authority to review the application. This response most often applies to applications for subdivision approval. Although County review of subdivisions is available as an option of County Legislatures, Dutchess County has not enacted this option. However, subdivisions that also require site plan approval or a variance must still be referred to the County.
2. **Incomplete** – The County cannot conduct an informed review of the project because the necessary information was not included with the referral. The municipality must send us copies of all materials available to the board for review, as specified in each municipality's zoning code. Any project receiving this response must be re-referred to the County when the necessary materials are available. Sometime the County will include preliminary comments with an "Incomplete" response, but these comments cannot be substituted for the official review.
3. **Local Concern** - The County finds that a matter is primarily of local concern when no regional or intermunicipal issues or concerns are apparent, and believes that the local board should come to a ruling based upon their own full examination of the facts. An example of a referral that might be considered a matter of local concern is allowing an accessory apartment in a home.
4. **Local Concern with Comments** - The County finds the matter to be of some intermunicipal or regional concern, but its effects will be minimal on a county level. The board is asked to take these comments into consideration when making its decision.
5. **Conditional** - The County finds that the matter is of significant concern, namely that some aspect of a proposal will have a substantial adverse effect. The County advocates conditions that must be met before the request can be granted.
6. **Denial** - The County feels the proposal is in direct conflict with Dutchess County policies, the local master plan, and/or sound planning principles, and will have an adverse affect on the county. It recommends that the board not grant approval.

SUPERMAJORITY VOTE REQUIRED

If the County issues a denial or conditional recommendation, the municipality must then abide by the recommendation unless the referring agency (zoning board of appeals, planning board, town board, village board, or city council) overrides the conditions or denial with a majority plus one vote of the full board; i.e., a five to two vote on a seven-person board. Many boards use the County's recommendations to help achieve project improvements.

How Does This Fit In to the Local Process?

The objective of the zoning referral process is improved planning. Many communities find the referral process useful, especially when dealing with uncooperative developers. Suggestions made by the County are often similar to those which will be brought up by the boards, but there are incidents when the County, due to the information available and having a countywide perspective, brings up new issues.

TIMEFRAME

The County has 30 days from the time a complete application is received from the local board to make a recommendation. If it is determined that the nature or scale of the proposal requires a more time-consuming review, the 30 day period may be extended upon written mutual consent of the referring body to the County.

The board is not legally permitted to make a final decision regarding an application until either it has received a response from the County or 30 days (or the agreed upon extended timeframe) have passed since the County received the application. If the County fails to respond within 30 days, the local board may proceed with its action. However, if the County issues a Conditional or Denial recommendation at any time up to 2 days prior to the vote by the referring body, regardless of the original timeframe, the board is bound by law to take the County's recommendation into consideration.

REFERRAL COVERSHEET

In order to expedite the zoning referral process, the County has developed a standard referral cover sheet. This cover sheet should be completed by a representative of the board to speed up processing. Non-submittal and inadequate or incomplete information are the most common mistakes observed.

RECORD OF DECISION

The local board is required to send to the County a record of its decision within 30 days of the final action. This can often be done by sending a copy of the meeting minutes. If the board chooses to rule against the recommendations of the County, the reasons for this ruling must also be sent to the County. Failure to inform the County of the board's decision not only puts the board in legal jeopardy, but also hinders the County's ability to provide the best advice.

Summary

Municipalities must realize how important it is to send referrals to the County. This procedure is a legal requirement to obtain County input. By not sending applications that meet the standards of General Municipal Law 239-l and 239-m, the municipal board's action can be effectively challenged with a lawsuit.

More importantly, the referral process allows for a regional perspective to be brought into the decision-making process. It provides a check and balance for zoning concerns, allowing the County to be aware of the changes that are taking place in each community. The goal is to encourage coordinated and quality development throughout the county. For these reasons, the points raised by the County should be seriously considered, or the referral process is ineffective.

FAQ:

The following questions and answers may assist in explaining the County's role in the referral process:

Why doesn't the County endorse worthy applications?

The 239 review is not meant to be a county stamp of approval, though certain good features of an application may be noted. The County does not want to put itself in a position of advocating a proposal that may prove to be contrary to local goals or plans. There may be concerns that a local board has that are not apparent to the county and are not regional in nature.

Why does the County sometimes request landscaping, less parking, or amenities other than what is required by the zoning law?

The County has found that several communities do not have standards as high as other communities in the county and those standards found in *Directions: The Plan for Dutchess County* and *Greenway Connections*. If the County is recommending additional amenities, the local board should consider revising its standards.

If a board is presented with additional information at the public hearing, will the County re-examine the application?

Yes, if the project is of significant concern to the community.

Will the County meet or speak with applicants?

Yes, we encourage such meetings. We find that the most productive meetings are very early in the planning process with developers who sincerely want to explore the options and seek optimum site plan solutions.

When in the process should a referral be sent to the County?

A referral must be sent to the County at least 30 days prior to a final action by the referring body. However, the earlier in the process the County is informed about the proposal, the more time the County will have to carefully consider the potential impacts and offer recommendations. It is generally easier and more efficient for an applicant to address serious concerns earlier in the process, rather than later when the plans are nearly finalized.

How often should a community review its zoning law? Master plan?

Planning should be continuous, with local boards meeting to reflect on the current land use and how it is managed through the master plan and zoning process. Master plan and zoning amendments may be necessary to accomplish community goals. Communities should consider revising/updating plans and regulations every 10 years, depending on development pressures and planning issues in the community.

Why does the County sometimes refer applications to other agencies, such as the Department of Transportation and the Department of Environmental Conservation?

These agencies are often part of a permit process with concerns in specific areas. These County referrals do not take the place of referrals that municipalities may be required to send to these agencies.

What are the most common problems the County finds in applications?

Generally, the most common mistake is incomplete information. A "complete application" contains all of the information required by the municipality's zoning law, as well as all additional materials that may be submitted to the referring body by the applicant.

Site plans should be designed so that the development will enhance the community where it is located. The most common faults the County finds in site plans include:

- An overcrowded site that doesn't leave room for amenities
- Inconsistency with the surrounding local character
- No pedestrian or automobile linkages to abutting land uses
- Lack of preservation of open space

- Lack of preservation of historical buildings and sites
- Landscaping of insufficient width to be useful as a buffer
- Not enough landscaping to break up the asphalt or to establish a visually significant green space on the site
- Excessive signage
- Insufficient drainage techniques and structures too small to handle the site's run-off
- Excessive number and/or width of site entrances and exits (curb cuts)
- Parking requirements of the community have not been met
- Parking placed at the front of the site rather than to the side or rear
- Parking arranged so that it is difficult for cars to maneuver

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