



Department of State  
Local Government

# PLANNING AND ZONING: AN INTRODUCTION

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## Overview

- Local boards
- Comprehensive Plan
- Zoning and other regulations
- Zoning/Code Enforcement Officer
- Procedures, meetings and hearings



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## Local Governing Board

- Members are elected
  - City council
  - Town Board
  - Village Board of Trustees
- Adopts comprehensive plans, local laws, ordinances (except in villages), resolutions
- Appoints officials
- Delegates review authority

### Local Governments in NYS

|     |                              |
|-----|------------------------------|
| 62  | Counties                     |
| 62  | Cities                       |
| 933 | Towns                        |
| 532 | Villages                     |
| 14  | Native American Reservations |

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## Planning Board

**Advisory Board** to local governing board on:

- Comprehensive Plan Development
- Subdivision, site plan, other regulations
- Zoning changes
- Annual budgets or capital plans
- Other plans
  - Corridor
  - Recreation or open space
  - Waterfront
  - Agriculture



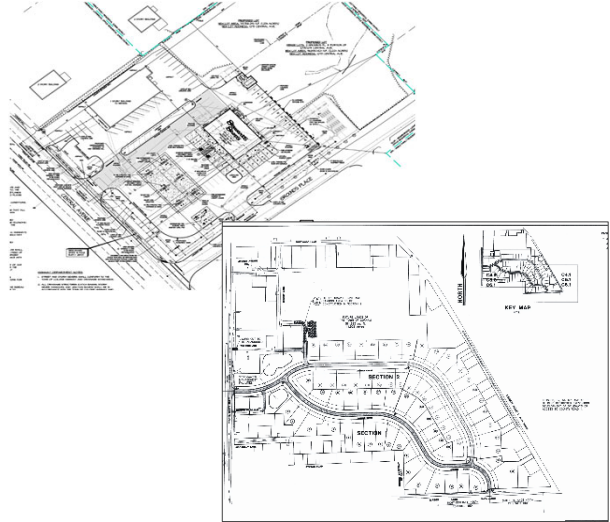
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## Planning Board

Most often **regulatory board** for review of:

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



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## Zoning Board of Appeals

**Zoning requires a safety valve**

- Municipalities with zoning must have a Board of Appeals
- Quasi-judicial: the ZBA is a “buffer” for aggrieved applicants between decisions of the zoning enforcement officer and the State Supreme Court
- ZBA has appellate jurisdiction:
  - Appeals of interpretations/determinations
  - Grant or deny use and area variances



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## State Training Requirements

### Members of local planning boards, zoning boards of appeals and county planning boards

- At least 4 hours annually
- Excess hours carried over
- Necessary for reappointment
- Governing board approves/tracks training
- Requirements may be waived or modified
  - Needs resolution of governing board
  - Must be in best interest of municipality
- Variety of sources and formats

**Failure to comply  
does not void  
decisions**

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**COMPREHENSIVE  
PLAN**

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## Comprehensive Plan – Purpose

- Statement of community vision and goals and recommended actions for Plan implementation
- Serves as a framework and defense for land use regulations which focuses on immediate and long-term community protection, enhancement and growth
- Provides guidance for decision making on growth and development and prioritization of community investments
- Increases potential funding opportunities for projects supported in the Plan
- Other government agencies shall consider a municipality's plan while proposing capital projects

**67% of NYS Local Governments have Comprehensive Plans**

94% of Cities  
70% of Villages  
60% of Towns

General City Law § 28-a  
Town Law § 272-a  
Village Law § 7-722

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## Comprehensive Plan – Considerations

- Current land uses and growth patterns
- Demographics and trends
- Community character/preservation
- Infrastructure adequacy
- Economic development
- Housing
- Natural resource protection
- Resilience



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## Comprehensive Plan – Updating

Possible indications that it is time:

- Age of plan
- Periodic review provision
- Rapid growth or decline
- New infrastructure needed
- Community character at risk
- Special places disappearing
- Significant environmental or economic changes



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## Comprehensive Plan – Preparation

- Governing board, planning board or “special board” oversees preparation
  - Special board must have one planning board member
- Community engagement is a key component
  - Surveys, workshops, open houses, focus groups
  - Public hearings required
- Governing board adopts plan



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## 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)

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## ZONING AND OTHER LAND DEVELOPMENT TOOLS

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## Zoning

- **Any** regulation of land use, location, lot area and bulk (local law or ordinance)
- Guides land use, site development and density to support **compatible** growth and infill development and protect community resources
- Targets development to areas supported by infrastructure and appropriate land conditions
- Establishes predictability and consistency for developers and property owners
- Establishes a clear process for project review for all

**78% of NYS  
Local  
Governments  
have Zoning**

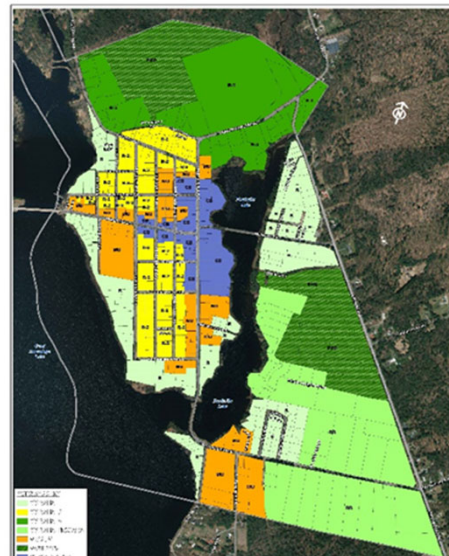
100% of Cities  
86% of Villages  
73% of Towns

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## Zoning

- General framework includes a map(s) and districts defining permitted uses, lot area, bulk and form standards
- Additional regulations of use/site functionality, adverse impact mitigation, community character and natural resource protection
- Permitting and administrative process

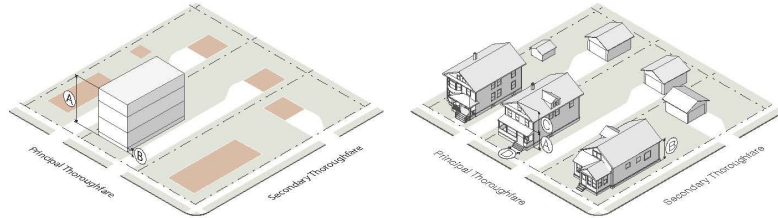


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# Zoning

Contemporary zoning uses illustrations or diagrams to present key concepts



## Building Height

|                         |                |
|-------------------------|----------------|
| Ⓐ Building height (max) | 3 stories, 40' |
|-------------------------|----------------|

## Story Height

|   |      |
|---|------|
| Ⓑ Finished ground floor level (min/max) | 0/4' |
|---|------|

## Supplemental Standards

1. See Section 3.2.1.G for height limit exceptions which apply along specified sections of Delaware Avenue, Gates Circle, and North Street in the N-2R zone, and along specified sections of Delaware Avenue, Main Street, and Niagara Street in the N-2E zone.

## Transparency

|   |     |
|---|-----|
| Ⓐ Ground floor transparency, front facade (min)                 | 20% |
| Ⓑ Ground floor transparency, corner side facade (min)           | 20% |
| Ⓒ Upper floor transparency, front and corner side facades (min) | 20% |

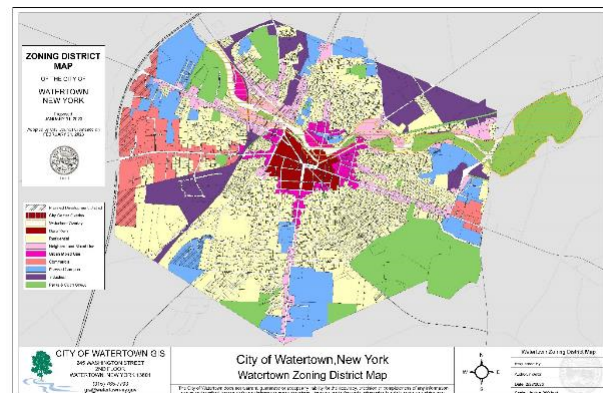
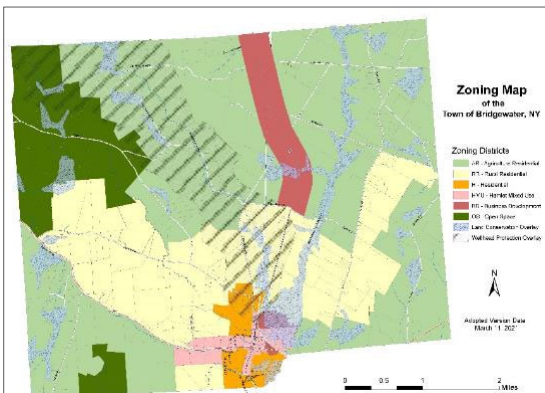
## Pedestrian Access

|                                     |   |
|-------------------------------------|---|
| Ⓓ Main entrance location (required) | Front, interior side, or corner side facade |
|-------------------------------------|---|

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# Zoning



No one size fits all!

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## 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

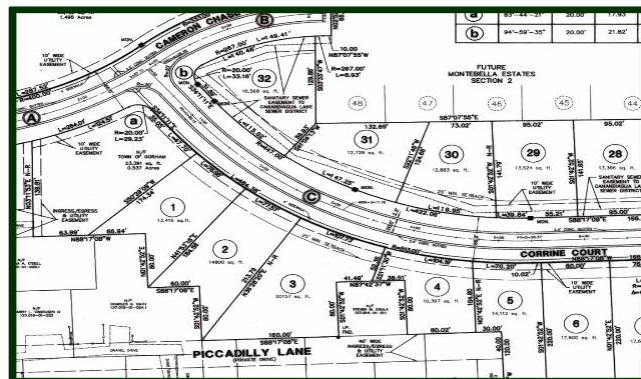
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## Subdivision Elements

Regulates design and improvements such as:

- Lot configuration
- Street pattern
- Streets and roads
- Sidewalks & curbs
- Utility installation
- Service access
- Drainage
- Landscaping



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## Cluster or “Conservation” Subdivisions

- Allows flexible design and development to preserve natural and scenic qualities of open lands
- Needs specific authorization from governing board where it can be allowed, or mandated
- Zoning identifies allowable location by districts, or type of development
- Density neutral: does not create more lots than otherwise allowed in conventional subdivision



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## Subdivision Review Procedures

### Preliminary and Final Plat Review

- Public hearing required within 62 days of receiving complete application (including neg dec for SEQR or, if pos dec, draft EIS)
  - Beware of default approval (if no decision made 62 days after close of public hearing)
- County referral under General Municipal Law § 239-n if county has authorized and proposal is within 500 feet of a state or county highway or other trigger
- Parkland or money in lieu of parkland

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## Boundary or Lot Line Adjustment

- Alteration of lot lines or dimensions of any lots in which no additional lots are proposed
- Often afforded expedited review

### Common Reasons for BLA:

- Correct physical encroachment
- Legal settlement of dispute requires transfer of property
- Enlarge or improve substandard lot to meet minimum standards for buildable lots

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## Site Plan Review

- Rendering, drawing, or sketch with project's proposed design and layout on a single parcel
- Zoning not necessary
- Uses subject to review determined in local laws (often applies to nonresidential and multi-family residential development)
- Project should be in accordance with comprehensive plan



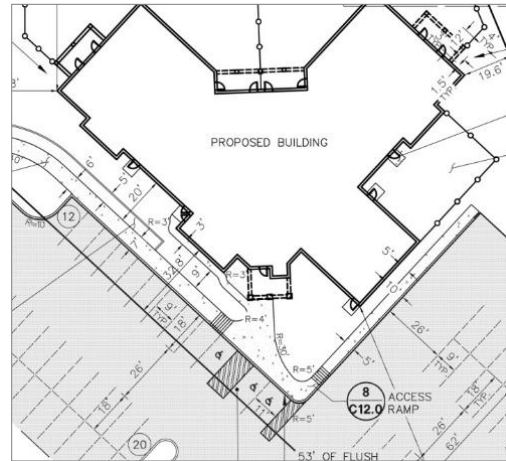
General City Law § 27-a  
Town Law § 274-a  
Village Law § 7-725-a

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## Site Plan 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 by local law**

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## Special Use Permits in Zoning

Use permitted by zoning but subject to additional review and possible conditions:

- Allows for greater variety of land uses while recognizing that some uses may present challenges to compatibility due to location or nature of use
- Criteria/conditions for SUPs must be included in zoning
- Allows mitigation of potential adverse impacts



*Gas stations often require an SUP to review for potential impacts*

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

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# ZBA INTERPRETATIONS & VARIANCES

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## Zoning Board of Appeals

### Interpretations

- Appellant believes Enforcement Officer wrongly applied the law
- May only be made upon appeal of a Zoning enforcement official's decision/interpretation
- 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

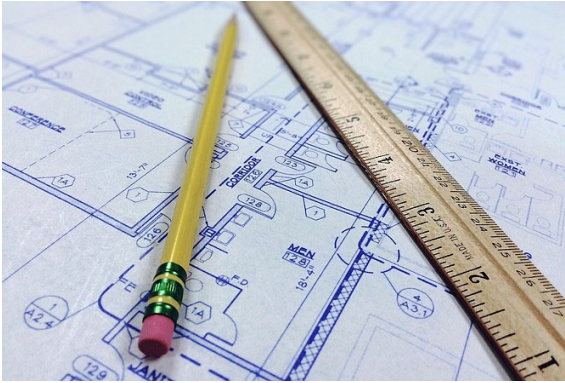
#### Definitions are important!

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

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## Variances



### Use variance:

- To use land for a purpose not allowed in the zoning regulations

### Area variance:

- Provides relief from dimensional requirements of zoning regulations

**All variances run with the land, not the landowner**

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## 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

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## 1. Reasonable rate of return

- No hard and fast numbers; depends on particular facts of application
- ZBA determines “reasonable” and doesn’t have to agree with expert’s opinion
- Developers entitled to reasonable (not necessarily most profitable) return
  - *Petruzzelli v. Zoning Board of Appeals of the Village of Dobbs Ferry*, 181 A.D.2d 825 (2d Dept. 1992)



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## 2. Unique circumstances

- Parcel is only, or one of very few, affected to the extent zoning would create a hardship
- “Uniqueness of land” causing plight, not “uniqueness of the plight of the owner”
  - Physical features
  - Historic or architectural features
  - Adjacent uses



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### 3. Self-created hardship



#### Examples:

- Request relief from restrictions which existed at time of sale
- Owner bound by zoning restrictions, even without knowledge of them
- Spending money on project not allowed by zoning

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### 4. Neighborhood character



- Is proposed use consistent with existing development?
- Is there significant adverse impact on neighborhood or community?

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## Use Variances vs. Special Use Permits

### Use Variance

- Required for a use prohibited by zoning
- Required for use not listed as permitted in district
- Statutory tests

### Special Use Permit

- Required for use permitted by zoning but subject to additional requirements
- Local standards

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

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## Area Variance

To use land in a way that varies from the dimensional requirements of zoning regulations

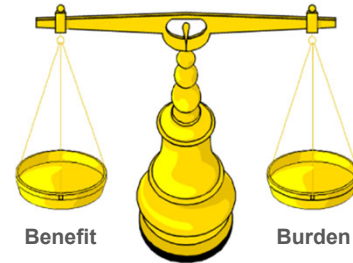


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## Area Variance Test

1. Undesirable 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



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## 1. Undesirable change to neighborhood

- Is project consistent with existing development patterns and character?
- Would undesirable changes be eliminated with conditions imposed?



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## 2. Alternatives not requiring variance



Consider placing addition in rear instead of side



Applicants should present reasons for choosing one alternative over another:

- ✓ Better view
- ✓ Better internal pattern
- ✓ Cheaper constructions
- ✓ Better overall aesthetics

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## 3. Substantiality of request

- Amount of variance requested
- Magnitude of variance requested



5' vs. 50' ?

5' of a 10' setback  
or  
50' of a 300' frontage?

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## 4. Physical or environmental impacts

### Examples:

- Blocked views
- Drainage problems
- Impacted wetlands
- Vegetation clearance
- Parking shortages



Bio-retention filter could be required to address exceeding lot coverage for parking



Residential lot needed a variance for a setback to avoid wetland on the property

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## 5. Is situation self-created?

If so, the owner is not necessarily precluded from being granted an area variance



### Examples:

- Shed needs setback relief because of substandard sized lot
- Addition begun in violation of height restrictions

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# PROCEDURES: PLANNING BOARDS & ZBAS

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## Quorum and Open Meetings Law

### **Quorum** (NYS General Construction Law §41)

- Number of members who must be present for business to be legally conducted
- Must be at least a majority of a fully constituted board (including absent members and vacant seats)

### **Open Meetings Law** (NYS Public Officers Law, Article 7)

- Public bodies (including planning boards and zoning boards of appeals) must discuss applications and other board business at meetings open to the public
- Allows public to listen and observe; includes agenda sessions and site visits if merits of application are discussed, excludes attorney-client privilege and Executive Session
- Provide meeting schedule to media, posted notices, schedule on municipal website

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## Meetings: Notice and Access

- Provide notice to media
- Post in conspicuous place AND on municipal website
- Notice based on when meeting is scheduled
  - If more than one week: notice at least 72 hours (3 days) in advance
  - If less than one week: notice to the extent practicable
- Make any materials to be discussed available at least 24 hours prior to meeting, and on website if regularly updated (2012 and 2021 amendments)



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## 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:



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## State Environmental Quality Review (SEQRA)

- To incorporate the consideration of environmental factors into an agency's decision-making process at the earliest possible time
- SEQRA 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



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## SEQRA – Classification of Actions

Actions classified to determine level of review needed to consider environmental impacts:

- **Type I:** list of actions presumed to have significant adverse environmental impact; likely to require an environmental impact statement (EIS) (SEQR continues)
- **Type II:** list of actions presumed to have no, or minor environmental impact (SEQR concludes)
- **Unlisted:** Neither a Type I or Type II. Full or Short Environmental Assessment Form is required (SEQR concludes if negative declaration); EIS if positive declaration of environmental impacts

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## SEQRA Process

- Agency proposes action or receives application
- Action classified\*
- Lead agency established
- Significance of action determined\*
- Environmental Impact Statement (EIS), if needed
- Findings and agency decision\*

**\*SEQRA process can conclude at any of these points**

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## Public Hearings

For the public to be heard 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



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## 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 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



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## Notice to Adjacent Municipality GML § 239-nn

**Purpose: to encourage communication between municipalities so that development supports goals and objectives of general area**

- If property is within 500' of adjacent municipality, send notice of hearing to municipal clerk (by mail or email) at least 10 days prior on proposed:
  - Subdivision application; Site plan application; Special use permit application; or Appeal for use variance
- No response needed, but it's a good idea to indicate in notes/checklist so you know if referral was applicable and completed.

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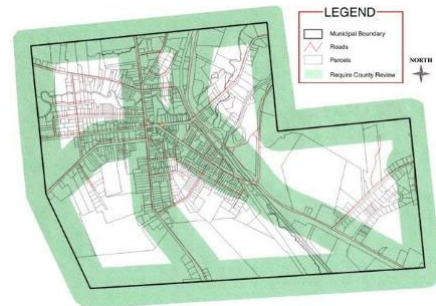
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## Referral to County Planning Agency GML § 239-m

Refer special use permits, site plan review, zoning, comp plans and subdivisions (if authorized by county legislative body) if within 500' of:

- Municipal boundaries
- State or county parks or highways
- State or county streams or institutions
- Land with state or county building
- Farm operations in state agricultural districts (area variances exempted)

Don't overlook this step.  
Failure to refer could  
invalidate action if  
challenged in court.



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## County Recommendations

- **Options include** approval, modification, disapproval, or “no significant county-wide or inter-community impact”
- County must include reasons for 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)
  - Board must explain reasons for acting contrary in record



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## 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
- After 30 days, if local board meets at least two days after receiving the county's referral, the local board is bound by it
- Local board and county may also agree to extend review period



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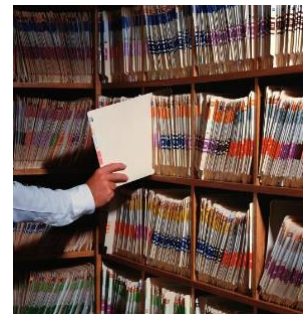
## Decisions

### 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 consist of an analysis that applies law to facts, leading to conclusions
- Findings describe reasons for application's denial or approval; may also support why conditions were imposed

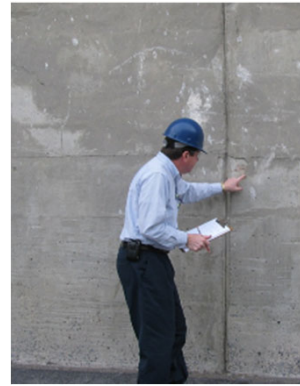


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## Enforcement

- Governing board authorizes CEO/ZEO to make zoning determinations, enforce approvals and conditions granted by planning and zoning boards
- Often the municipal staff designated to intake development applications
- Determines project zoning compliance
- Could be stated in zoning or other land use law, or statement of CEO/ZEO duties
- Requires approval conditions be met to the extent practicable before issuing certificate of occupancy or completion



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## Article 78

### **Boards' decisions are not appealed to the ZBA or local governing board**

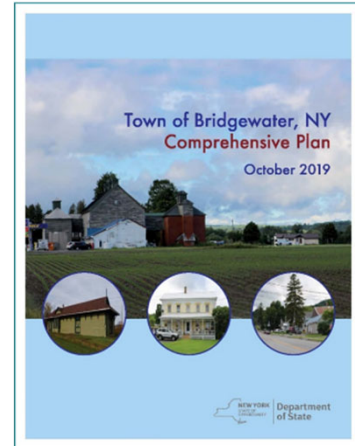
- After board renders decision, someone with “standing” can challenge that decision in State Supreme Court. **This action is known as an “Article 78”**
- Challenges must be made within 30 days from the date decision was filed in municipal clerk’s office
- Commencement shall stay all proceedings
- Court may reverse, affirm, wholly or partly, or may modify decision brought for review

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## Planning and Zoning Funding

- NYS DOS planning and zoning funding opportunities:
  - Smart Growth Grants, CFA
  - Local Waterfront Revitalization Program (LWRP), CFA
  - Local Government Efficiency (LGE) – Shared Services
- NYS DEC Climate Smart Communities Grants
- NYS AG MKTS Farmland Protection Planning Grants



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### Division of Local Government Services

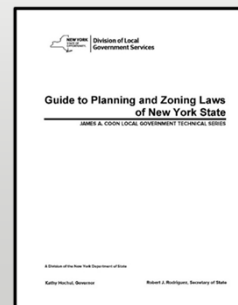
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