

# The Planning and Zoning Clerk



*Yonkers City Hall*

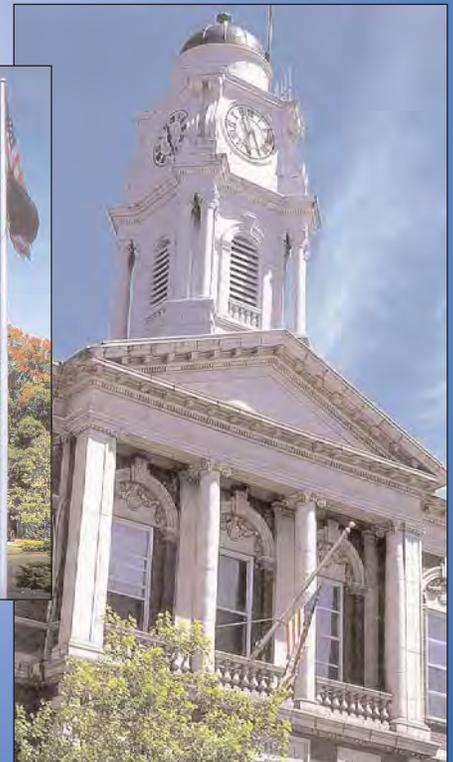


*Greenburgh Town Hall*

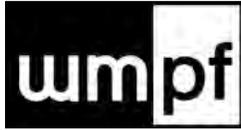
*New Rochelle City Hall*



*Somers Town House*



*Irvington Village Hall*



WESTCHESTER MUNICIPAL PLANNING FEDERATION  
432 MICHAELIAN OFFICE BUILDING, WHITE PLAINS, NEW YORK 10601

## ***ABOUT THE MUNICIPAL PLANNING PRIMER: THE PLANNING AND ZONING CLERK***

This primer is part of a series of municipal planning primers provided as a service of the Westchester Municipal Planning Federation in conjunction with the Westchester County Department of Planning, as part of its educational program for local officials. The Municipal Planning Primer: The Planning and Zoning Clerk was created through a collaborative effort of the Pace Law School Land Use Law Center, the Westchester Municipal Planning Federation and the Westchester County Department of Planning and describes the role that the clerk plays in the land use system, as well as the legal framework that guides that system. Much of the information and all of the forms that comprise this primer were collected from clerks through a series of interviews conducted across the county in 2005. This is the first primer that focuses specifically on the role of support staff in local land use procedures.

The Westchester Municipal Planning Federation is a voluntary association of officials from the county's forty-five local governments and the County. Created in 1962, the Federation evolved from the efforts of the late Hugh R. Pomeroy, Westchester's first Director of Planning, and was conducted under the Westchester County Local Planning Program in the 1940s and 1950s. The theme underlying this earlier program was formalized in the statement describing the purpose of the Federation: "To create an effective and permanent countywide organization for the exchange of information in matters of planning interest."

Established in 1993, the Land Use Law Center is dedicated to fostering the development of sustainable communities and regions through the promotion of innovative land use strategies. Its programs provide opportunities for students of Pace University School of Law to gain in-depth, practical experience that allows them to become informed practitioners serving private, public and nongovernmental clients. The Center provides a forum for policy and program development and its programs promote the adoption of innovative practices that balance conservation and development, create livable and economically efficient communities and provide affordable housing. Recent endeavors include studying why communities encourage building and rebuilding in disaster prone areas in the Nation on Edge project and exploring the reinvention of redevelopment law and the revitalization of urban neighborhoods.

This primer was prepared by Victoria Polidoro, a second year law student at Pace University School of Law, and edited by Edward Buroughs, Deputy Commissioner, Westchester County Department of Planning.

This primer is distributed with the understanding that the authors and publisher are not providing legal or professional advice. The content of this book is general in nature. Legal counsel and other appropriate professionals should be consulted in connection with specific situations or conditions.

# PREFACE

## HOW TO USE THIS BOOK

The information contained in the primer is intended to be general in nature. Each municipality may address the state grant of authority to establish land use rules and regulations in its own manner. Therefore, it would be a daunting task to research and include each local nuance in this publication.

Symbols are used to highlight areas that may require a more in-depth review or special attention. Bold font alerts the reader to important words, terms and timeframes. A glossary and additional resources are included in the back of the primer.

### Symbols

Three symbols are used throughout this publication to draw attention to important features within the chapter, such as a subject matter where local laws may vary or an example of a noteworthy local application or process.



**PITFALLS** - This little bomb symbolizes particular areas where local law may differ from state and county laws. It also symbolizes pitfalls that should be considered as potential problems or areas that should be approached with caution.



**PROCEDURE** - This icon highlights points on procedure that clerks, local boards, the legislature, landowners and residents need to follow in each situation presented.



**STATUTES** - This symbol points out the statutes that grant or limit the power of local officials. Understanding these specific statutes is important in making land use decisions. The attorney assigned to advise local government can answer specific questions based on these laws.

# MUNICIPAL PLANNING PRIMER: THE PLANNING AND ZONING CLERK

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# **I. INTRODUCTION**

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This publication provides information to new and experienced planning and zoning board clerks on the legal duties and responsibilities that guide their work. New clerks will find this primer to be helpful in understanding the legal framework of the land use system and in gaining a basic comprehension of the steps required in processing an application before the planning board or zoning board of appeals. Seasoned clerks will turn to this primer as a quick reference guide or to brush up on their knowledge of a particular subject area. The primer also contains other valuable resources such as a glossary and a reference guide to useful publications. Applicants and other residents interested in the procedures of the planning and zoning boards will also benefit from the information in this primer.

This is the first edition in the Westchester Municipal Primers Series to focus on the important role that support staff members play in the land use arena. Other primers focus on the role of *The Zoning Board of Appeals*, *The Planning Board*, *Design Review Boards and Historic Preservation Commissions* and *Conservation Advisory Councils and Boards*. There is also a primer on environmental impact statements. Each primer defines the responsibilities and functions of the particular board and describes techniques used in the course of the board's work.

## **A. The Important Role Of The Clerk**

While the boards make land use decisions, planning and zoning clerks play an integral part in the process. The clerk manages the day to day operations of a board, the appointed members of which are typically part-time volunteers. The clerk is responsible for maintaining the integrity of decisions made by the local boards by ensuring that deadlines are met and that all statutory procedures are followed. Interfacing with applicants and the public, filing decisions and coordinating with other boards are all important aspects of a planning and zoning clerk's job. In some situations, the clerk will be an elected officer working as a public servant whose duties to the town go beyond the zoning and planning board. In all cases, good office management techniques and access to resources, such as this primer, are invaluable in performing the clerk's role. Further, the work of the clerk plays an important role in defending the municipality in lawsuits or legal challenges

Clerks may have to work closely with administrative assistants from other local and county boards for the coordinated consideration of certain actions pursuant to procedures of the New York State Environmental Quality Review Act (SEQR). Laws that clerks may be required to comply with include:

- New York State General Municipal Law
- Town, Village and General City Law
- Westchester County Administrative Code
- Local laws and ordinances
- NYS Open Meetings Law
- NYS Freedom of Information Act
- NYS Public Officer Law
- Rules governing record retention

## **B. The Regulation Of Land Use**

Since colonial days, land use in America has been regulated to some extent in order to control nuisances and protect the public health and safety. Early town plats laid out streets and the locations of certain prominent uses such as churches, schools, cemeteries, parks and the like. As settlements developed into cities and land uses impinged more closely upon each other, the need for more specific regulation of land use became more evident.

The early 20<sup>th</sup> century marked the beginning of the modern era of land use planning and regulation. In 1913, the New York State General Municipal Law provided for municipal planning bodies. The first planning board in Westchester County was established by the City of Mount Vernon in 1915, quickly followed by the City of White Plains in 1916 and the Village of Scarsdale in 1917. The first zoning ordinances in Westchester were adopted in 1921 by the Village of Larchmont and the City of New Rochelle. In 1926, the Supreme Court of the United States upheld comprehensive zoning plans as a valid exercise of the police power of a municipality in the seminal case Village of Euclid v. Ambler Realty Co., 272 U.S. 365. Since then, the system of land use regulation has become more complex. The state legislature has adopted additional statutes serving the land use process and villages, cities and towns have enacted their own rules and regulations. Clerks are a vital component of this system by helping applicants through the land use system, guiding the board's processes and filing the decisions of their boards.

Every municipality in Westchester with land use authority has a planning board and a zoning board of appeals. Some have wetlands boards, conservation councils and architectural review boards. When the number of applications submitted to local boards is high, the importance of having a full-time clerk available for land use service is critical. Cooperation and coordination among local boards, let alone with boards of other municipalities, would be even more difficult without the assistance of planning and zoning board clerks.

## **II. GOVERNMENT FRAMEWORK FOR PLANNING**

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### **A. Distinction Among Counties, Cities, Towns And Villages**

Counties, cities, towns and villages are the four forms of local government in New York State. Each is a corporate entity known as a municipal corporation. These units of local government provide most local government services. Special services may be provided directly by special-purpose governmental units such as sewer and water districts and single-purpose governmental units such as school and fire districts.



#### **COUNTIES**

Counties are creations of the state and have authority as delegated by the state legislature. The organization of legislative and executive authority differs widely across the state. However in New York, counties do not have land use regulatory authority; these functions are specifically reserved to the cities, towns and villages through General Municipal Law. There is a County Planning Board which performs countywide planning functions and plays a significant advisory role in local planning and zoning decision-making.

#### **CITIES**

Cities are specially incorporated by the state legislature to provide governmental services within their boundaries. All cities have elected legislative bodies, known as councils, but the form of executive administration varies. There are six cities in Westchester County.

#### **TOWNS**

Towns are legal subdivisions within counties and include villages within their boundaries. They are governed by town boards, each consisting of a town supervisor (the chief elected official) and four other elected members. Some towns have professional managers with administrative authority. Towns control land use except within the borders of their incorporated villages. In Westchester, there are 16 towns. The Towns of Rye and Pelham do not include any unincorporated land outside of villages and therefore have no land use authority.

#### **VILLAGES**

Villages are incorporated by local action taken in accordance with State law. Each village is governed by an elected board of trustees, headed by a mayor. Some villages have professional managers with administrative authority. There are 20 villages and three coterminous town/villages in Westchester County.

### **B. Local Government Agencies**

Three principal agencies at the municipal level formulate, document and implement planning and land use policies: the local legislative body, the planning board (sometimes called a commission) and the zoning board of appeals. Although each body has separate functions, sound planning practice requires interaction among these boards and with numerous local officials, each with specific responsibilities. These officials include the planning staff or consultant, the zoning enforcement officer, the building inspector, the municipal engineer and the highway superintendent. In addition, the local legislative body, the planning board and the zoning board of appeals will need to interact with local advisory boards and local boards that may have been created to regulate specific activities such as historic preservation and wetland disturbance.

## **LOCAL LEGISLATIVE BODY**

The local legislative body creates and appoints members to the planning board and the zoning board of appeals and authorizes these boards to undertake planning activities. In addition, the legislative body is responsible for:

- Adoption or amendment of the zoning ordinance, including the rezoning of land from one district to another
- Review and approval of special use permits, unless delegated to the planning board or zoning board of appeals
- Adoption of subdivision and site plan regulations and of standards governing the issuance of special use permits
- Adoption of a municipal comprehensive plan.

## **ZONING BOARD OF APPEALS**

The zoning board of appeals is both an administrative and quasi-judicial body that does not have legislative powers. The primary responsibilities of the zoning board of appeals include:

- Considering appeals from zoning decisions and interpretations of the zoning enforcement officer in applying the zoning ordinance
- Granting variances from the strict interpretation of the zoning law in accordance with General City, Town or Village Law, whichever is applicable
- Review and approval of special use permits, when granted such authority by the local legislative body
- Review and approval of site development plans, when granted such authority by the local legislative body.

*For more information on the role and powers of the Zoning Board of Appeals, refer to the publication, Municipal Planning Primer: The Zoning Board of Appeals, available through the Westchester County Department of Planning.*

## **PLANNING BOARD**

A planning board is an administrative body consisting of appointed members that does not have legislative authority. The primary responsibilities of the planning board include:

- Review and approval of subdivision plats
- Review and approval of site development plans and special use permits when granted such authority by the local legislative body
- Acting in an advisory capacity to the local legislative body regarding planning matters including zoning, zoning amendments, comprehensive plan adoption and the adoption of subdivision and site plan regulations
- Preparation of a municipal comprehensive plan for adoption by the local legislative body.

*For a more thorough look at the responsibilities and duties of the Planning Board, please refer to the Municipal Planning Primer: The Planning Board, available through the Westchester County Department of Planning.*

### **C. Levels Of Law**

Residents of municipalities within Westchester County are subject to four different levels of law - federal, state, county and local law. Laws passed at each level affect residents within that jurisdiction, with local laws having the most direct impact on procedures that are followed in the area of land use and zoning. There is some overlap and differences in standards between the laws. If two laws seem contradictory, take a closer look. Often, local law will be similar to the state law in intent but more restrictive in its requirements or procedures.



#### **FEDERAL LAW**

Although zoning and planning boards may be impacted by laws passed at the federal level, very rarely will clerks need to refer to federal law for regulations or procedures. Generally, states have retained the power to control land use.

#### **STATE LAW**

States have broad authority over land use policies and laws. General City Law, Town Law, Village Law and General Municipal Law are all New York State statutes that include provisions that set forth regulations on planning and zoning. The State Environmental Quality Review Act, the Freedom of Information Law and the Open Meetings Law are other examples of state laws that establish provisions that must be complied with by local boards. Because New York has many distinct regions with different needs, the state has enabled local governments to pass laws and regulations controlling land use within their jurisdiction through the Municipal Home Rule Law. In many cases, local governments have added local regulations to state laws concerning site plan review, subdivisions, variances and special use permits that are stricter or more specific than state standards. This primer will point out common areas where municipalities often modify state law to better fit their needs with the following symbols:



#### **COUNTY LAW**

Westchester County receives very limited power to affect land use in the county through state enabling acts. The county has authority to create a planning board and a comprehensive plan for the county. The County Planning Board is assigned specific responsibilities by the Westchester County Charter and the County Administrative Code. These responsibilities are:

- To formulate and recommend major development policies
- To aid in maintaining a high level of municipal competence in planning and land use regulation
- To undertake capital program planning and make recommendations on the capital budget and
- To coordinate actions among municipalities by bringing pertinent inter-community and county-wide considerations to the attention of municipal agencies.

Clerks will need to look to county law for referral requirements to the County Planning Board when applications meet certain locational standards. For details, see Chapter VII.

#### **LOCAL LAWS AND ORDINANCES**

Like the county, municipalities have no inherent authority to govern land use issues, but receive the power to do so through state enabling acts. As noted, General City Law, Town Law and Village Law are the primary sources of ground rules for the planning and zoning process.

Municipalities may change the ground rules set by the state through the adoption of local laws adopted under Municipal Home Rule Law provisions, although few municipalities choose to do so. Basic ground rules are the same or very similar throughout the state. Excepting basic ground rules, local laws may vary greatly among municipalities, reflecting the differing needs of each community. Procedural differences abound and local law should be the first place that a clerk looks when a question arises. This primer will try to alert readers to areas where local law may be important with the following symbols:



### **BOARD RULES OF ORDER AND POLICIES**

Local boards are authorized to regulate the procedures of the board through the drafting and adoption of rules of order and policies. Often, these will be called “by-laws.” Topics such as setting the agenda, pre-established meeting dates and whether the minutes are required to be taken verbatim may be addressed in the board’s rules and policies.

### III. ADMINISTRATIVE SUPPORT FOR PLANNING AND ZONING BOARDS

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A planning and zoning clerk, also referred to as a planning and zoning secretary or an administrative assistant, plays an invaluable role in the local land use system. For the purpose of this primer the word clerk will be used throughout, although some municipalities recognize a difference in the use of the titles. The clerk's office is responsible for the administrative processing of applications for land use projects in the municipality and for filing the decisions of the local boards in regards to those applications. Generally, a municipality will have both a planning clerk and a zoning clerk, with specific functions for each to serve each board. Often, the clerk for the zoning board of appeals is part of the staff of the Building Department and may perform other duties within that department. The clerk is often the one person in the planning process who has the most direct and frequent contact with residents and applicants. Familiarity with the statutory requirements and good office practices will help a clerk run the office efficiently.

#### **A. General Position Description**

Clerks wear many hats during the course of their day. Applicants will look to the clerk to guide them through the application process. Board members will look to the clerk to assist with information, the logistics of setting up meetings, minutes, resolutions, compliance with deadlines and clerical and office work. Planners may look to the clerk to assemble the appropriate submission materials, to collect application fees and to post legal notices. In addition, the clerk may be responsible for interfacing with other local boards, municipalities and agencies.



The exact responsibilities of a zoning and planning board clerk will be different in each municipality and in each board. Planning and zoning boards in the same municipality may each have different procedures. Some clerks work very closely with the board chair. Others work very closely with the zoning enforcement officer or building inspector. Still others work independently with minimal supervision or guidance. In most municipalities, the positions of planning and zoning board clerks are full time jobs.

This chapter sets forth general guidelines for office procedure which can be tailored to meet a municipality's specific needs. Clerks should look to the board's Rules of Order and Policies for more specific procedures that need to be followed. If the board has not adopted rules of order, it should be urged to do so to ensure continuity between incoming and outgoing clerks and to ensure consistency in the board operations.

The future of record keeping is on electronic databases and the internet. Residents are relying more and more on the internet to instantaneously find the information they seek. When people can order clothes directly from China online they will expect to be able to access their local zoning code and meeting agendas online without physically making the trip to the municipal office. Municipal websites are a useful tool for quickly and easily disseminating information to the public. Many communities have board meeting schedules, a list of "Frequently Asked Questions," zoning codes, approved minutes and agendas for upcoming meetings posted on the website. Applicants can conveniently obtain downloadable forms from many municipal websites so that they can complete them without a trip to the office. Use of the internet is helpful because clerks



do not have to spend as much time answering phone calls about meeting dates or deadlines. Land use records are also being scanned into computers, causing future record searches to become much easier. Further, as of February 26, 2006, New York State Law requires that Environmental Impact Statements be available on the internet.

When possible, clerks should post pertinent information on the municipal website and encourage the development of a board website in order for the office to keep pace with the needs of its residents.

## **B. Range Of Responsibilities**

The planning and zoning clerk has many responsibilities. Much of the work is centered on meetings of the planning board or zoning board of appeals, in both preparation and follow-up. As planning and zoning boards generally meet on a monthly or semi-monthly basis, it often seems as though one meeting has just occurred when it is time to begin preparations for the next. In addition, clerks have important on-going responsibilities. The full range of tasks usually includes:

- interfacing with applicants and accepting applications
- handling application fees
- managing or tracking escrow accounts
- preparing meeting agendas
- filing board decisions
- preparing and then filing the minutes of a meeting once they have been approved
- maintaining application files
- mailing information/application packages to board members
- coordinating with other local boards
- responding to Freedom of Information Law (FOIL) requests
- searching the tax roll for addresses for notification purposes
- submitting legal notices of public hearings to the official newspaper.

The following topics outline the general responsibilities of a clerk and offer helpful advice where applicable. It may be useful to annotate the pages with specific procedures followed in a municipality. (Please send suggestions to WMPF of new items to include in future editions of this primer.) In addition, local board operations are bound by the Freedom of Information Law and the Open Meetings Law, both of which are discussed at the end of this chapter.

### **1. PUBLIC INTERFACE**

In some respects, the planning and zoning clerk is the public face of the board. Board members are volunteers and many can only be reached through mailings and phone messages. On the other hand, the clerk may be a full time employee who is available to the public seven or eight hours every day. The public often turns to the clerk for answers about development projects in their area. When members of the public question certain projects, it is important for the clerk to remain objective and to not inadvertently disclose confidential information.

Applicants visit the clerk to receive and to submit applications. A number of municipalities have applicant packages to give to the applicant at the beginning of the application process. These packets explain the procedural requirements of each type of land use application. Some municipalities even allocate the responsibility for complying with public notice requirements to the applicant and, in such situations, the application package includes an affidavit and notice template.

**NEED  
TO  
KNOW**

It is very helpful to have an applicant packet prepared in advance to give to the applicant.

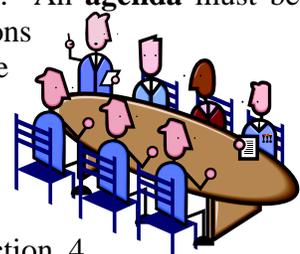
## **2. HANDLING OF APPLICATION FEES AND ESCROW ACCOUNTS**

Fees are usually collected as part of each application to a board. The amount can be as little as \$25 to as much as several thousand dollars. Each municipality employs a different process for handling money; however, the clerk is often responsible for computing, collecting, recording and depositing these fees. Application fees submitted to the planning board tend to be more complicated than fees for zoning board applications and may be more difficult for the clerk to compute. The building inspector and the municipal planner are normally the best resources for confirming the calculation of complicated application fees. It is good practice to make a copy of each check or money order accepted and to place it in the application file. The clerk should also maintain a fee log through a receipt book with receipts given to the applicant upon payment of fees. Check with the board chair or the board's rules and regulations for specific local practices.

Some funds collected from applicants may require management as an escrow account. As costs are encumbered by the municipality (such as consultant fees, charges for publication of notices), the charge is reimbursed to the municipality, or is paid, through deductions from the escrow account. After an application is approved or withdrawn, the balance of the escrow account is returned to the applicant. Management of escrow accounts requires careful accounting of deposits, charges and withdrawals. The clerk must usually assume this responsibility.

## **3. MEETING ORGANIZATION**

Preparation for a meeting should begin at least a month ahead of time. An **agenda** must be created for each meeting and should contain all of the applications submitted within the prescribed (qualifying) timeframe. Look to the board's rules and regulations for application deadlines. For example, all applications for planning board meetings in the City of Yonkers must be complete and submitted at least 15 business days before the meeting date. Any application submitted after that date is heard at the following meeting. For more information on setting an agenda, please see section 4 below.



If an application at a meeting, such as a variance request or site plan proposal, requires a **public hearing, notice** must be given to the public through publication in a newspaper within the statutorily prescribed time period. The local legislative body typically designates an "official newspaper" to be used for publishing notices. Local law may have stricter notice requirements. If the applicant has been given the responsibility of posting notice, the clerk must verify that the applicant has done so. This can be achieved by collecting a signed affidavit or searching through newspaper records. If notice has not been given in a timely manner, the application should be removed from the agenda and re-scheduled for the following meeting. Specific notice requirements for different types of applications are discussed in the next chapter.

Once the agenda is set, applications should be sent to the board members for review at least one week prior to the meeting. Some boards may require more time to review and will request that applications be sent to them at least two weeks in advance.

No decisions can be made at a board meeting unless a quorum is present. A **quorum** is the number of members who must be present in order for the body to transact business. Approval of planning and zoning applications require the affirmative vote of a majority of the board's total membership, including vacant positions. If there are not enough members present at the meeting for a quorum, actions may not be taken and the meeting will have to be rescheduled.

During the meeting the board clerk or a stenographer will take the **minutes** of the meeting. A draft copy of the minutes is submitted to the board for review and acceptance, preferably at the next meeting. A final copy of the minutes will be produced and should be filed by the clerk in an easily accessible place, as members of the public may request to view them. Many clerks maintain "minute books" that contain all approved minutes. The minutes can also be posted online. For more specific requirements regarding minutes, please see section 5.

#### 4. CREATING AN AGENDA

Prior to each board meeting an agenda is created by the planning and zoning clerk unless an alternative procedure is established by the board chair, municipal planner or building inspector. The agenda should include the date, time and location of the meeting, the name of each applicant and project (if applicable), the tax parcel number and street address of the property that is subject of the application and the type of action requested. The order of the applications is typically based on the date that the complete application was received, starting with a "carry-over" of applications from the last meeting. Depending on the board's policies, last minute additions to the agenda may need to be approved by the board chair or the board.



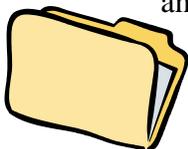
Although not required on the state or county level, copies of the agenda should be sent to board members, the municipal attorney and the municipal clerk before each meeting. Be sure to check local rules and policies for other requirements.



Many municipalities require that the chair approve the agenda before the meeting. Be aware of local procedures.

#### 5. RECORD KEEPING AND FILING

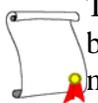
When making decisions on site plan and subdivision applications and the issuance of variances and special use permits, local boards must keep a detailed record of their deliberations. These records may be kept in narrative form rather than in verbatim transcript form. Generally, the board clerk, or a stenographer hired by the municipality, records the minutes and the clerk is responsible for managing the records. The paper records should include the applications; supporting reports, studies and documents; and submitted written public comments.



#### MINUTES OF THE MEETING



Public Officers Law §106 requires that minutes be taken at all open meetings and executive sessions. Local boards such as the planning board and the zoning board of appeals are public bodies and, as such, are bound by Public Officers Law §106.



Town Law §267-a, Village Law §7-712-a and General City Law §81-a state: "The board of appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and

shall also keep records of its examinations and other official actions. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the town/village/city clerk within five business days and shall be a public record."

The **minutes** of a meeting typically cover the important portions of the meeting. The Open Meetings Law requires that the minutes for public meetings include a record of motions, proposals and actions. This record must contain the votes on any matters and how each member voted, including any absences. Minutes of executive sessions must be taken, but they do not need to include records or a summary of any matter which does not have to be disclosed by FOIL. Normally, a sentence or two included in the minutes of the public meeting indicating that the board held an executive session and noting the subject(s) of the executive session will suffice. If any matter that is not excluded from FOIL is discussed, a record of the discussion must be included in the minutes. Minutes of a public meeting must be made available to the public within two weeks of the date of the meeting and minutes from executive sessions must be made available within one week from the date of the session. Some municipalities have provided for this by allowing a clearly labeled "draft copy" of the minutes to be made available to the public for viewing before the official minutes are approved, which usually is not until the next month's meeting.



Failure to keep proper minutes undermines the board's authority. "When each member's vote is not recorded in the minutes, the statute of limitations on the property owner's appeal does not run and thus does not prevent a lawsuit.....against the village." *McCartney v. Incorporated Village of East Williston*, 149 A.D.2d 597 (1989).

Once the minutes are approved, appropriate sections of the minutes may be placed in each application file. A copy of the minutes, along with the agenda, should be filed in the office of the local board.

Minutes can taken verbatim or as a summary of the conversation. Some municipalities tape their meetings and have the minutes typed at a later date. When a contentious issue arises, it is good practice to take the minutes verbatim, although the policies of the board will dictate which form of the minutes is required. A stenographer may be hired, but is not required.

## DECISIONS OF THE BOARD

Keeping a good record is more than good practice, it is a substantive part of any decision. The board must base its **decisions** on facts contained in the record. The board should always base its findings and its decision on reliable evidence contained in the record. The record may be the minutes of the board, if prepared in enough detail to satisfy these requirements. The basis of the decision should be found in the decision that is filed with the clerk, if not in the minutes. Whatever form the decision takes, it should contain a fair and reasoned explanation of the board's decision.

Decisions of the board must be made at a public meeting. The written form of the decision can take several forms: letter decisions mailed to the applicant, resolutions adopted by the board or minutes of the deliberations and actions if prepared in sufficient detail. Whichever form the written decision takes, it must be filed with the municipal clerk. The board's findings, often called findings of facts in zoning board decisions and determinations in planning board decisions, must be included. The decision document should articulate the action that was taken and the reasons for that action. The decision document must contain the record or summary of

all motions, proposals, resolutions, and any other matter formally voted upon and document who voted and how they voted. The decision document should also show evidence of the board's compliance with SEQR prior to taking action on the application.

Once a written determination has been made by the board, it should be sent to the chair for review prior to releasing a final document. Once the chair signs the final document, copies of the decision should be sent to the applicant, their representative if appropriate and the town/village/city clerk. Copies should be placed in the building department, planning department or zoning department files.

**NEED TO KNOW** Generally, the decision of the board should be filed within the office of the clerk within five business days of taking the action. See Chapter IV for specific filing requirements.

### FILING

**Filing** is another area in which practices differ greatly among municipalities. Files can be kept in the building department, the municipal clerk's office or in the office of the local board, if it has one. Each municipality may have its own system for maintaining such files. Clerks need to confer with a municipality's record management officer for specific policies. Land records can be difficult to find if not filed correctly. Often, a decision or resolution regarding an application will be approved with conditions. If the document is filed incorrectly, the building inspector or other future interested parties may never find out about the conditions and the intent behind the decision making of the local board will be lost. This section outlines several general procedures that should be followed in order to efficiently maintain files.



**NEED TO KNOW** Decisions of the boards and application files are filed differently. Each type of land use request (application/action) will have its own statutory filing requirements and time limits regarding decisions. Be sure to note the deadlines. See Chapter IV for more information on deadlines.

Good filing is important for three reasons:

- Under the Freedom of Information Law, municipalities are required by law to maintain current lists of records in the agency's possession.
- A municipality is vulnerable to an Article 78 proceeding up to thirty days after the filing of the decision. The longer the interval until filing, the longer the municipality's decision, and the municipality itself, is vulnerable to attack by an Article 78 proceeding.
- Good filing expedites an already long process and will make records easier to find.

**NEED TO KNOW** What is an "Article 78 proceeding?" Article 78 of the New York State Civil Practice Law and Rules allows aggrieved persons to bring an action against a government body or officer so as permit a review of a state or local administrative proceeding in court. Within 30 days of the filing of the reviewing board's decision with the municipal clerk, any aggrieved person may apply to the Supreme Court to review the decision under Article 78. The Supreme Court will consider the record of the local reviewing board and, if necessary, take additional evidence, directly or through a referee, for the proper resolution of the matter.

When an applicant submits an application to a local board, the clerk should create an easily accessible primary file for the application. Each municipality may have a different procedure.

One local zoning clerk creates ten duplicate sets of an application file, one for each board member, town inspector, the town attorney and the building department. This application file will hold all information relating to the pending application and can be filed according to last name, by tax map section, block and lot number or a combination of all. These files tend to grow very large, especially when the application is subject to a positive declaration pursuant to **SEQR**, so each municipality should use a system that works best for them. (SEQR is New York State's Environmental Quality Review Act and is discussed further in Chapter V.

As an example of filing system, in Somers each application is assigned a ZBA file number which consists of the following:

- BZ board code
- 01-12 month code
- A-Z sequence by receipt date
- /05 year

Once a decision has been made regarding an application, the application file can be streamlined and filed. The files of applications to the zoning board are usually best placed with the building department property file, maintained by tax map section, block and lot number. This is done so that all of the records pertaining to a single piece of property can be found easily. Generally, what should remain in the file is the original application, the written decision of the board, the conditions of the approval and all evidence that supports the board's decision. This can usually be accomplished by filing a copy of the minutes of the meeting(s), a copy of the board's resolution and other documents that support or clarify the board's decision. If the application was subject to a positive declaration pursuant to SEQR review, a copy of the relevant SEQR documents and of the outcome of the review should remain in the file.



Clerks must check with the municipality's record management officer for specific rules governing record retention in their municipality.

Subdivision applications, by their nature, are not amenable to the section, block and lot number filing system and planning board clerks often create a filing system similar to the "case number" system noted above. Filing solely by the applicant's or landowner's last name is not recommended as some parcels of property frequently change ownership.

The written decision of the board should be filed in three places: the office of the municipal clerk, the property file and in a binder of resolutions sorted by date. Some municipalities also have their resolutions saved electronically, which saves time when searching for records.



The best way to permanently file records is through the tax parcel number, not by the applicant's last name and not by the date of decision. The tax parcel number does not change (subdivision applications may be an exception) and allows all records regarding one piece of land to be found easily without knowing the date of every decision affecting the property.

## 6. MAILINGS

Clerks send out a lot of **mail**. One clerk lamented that she has had to start lifting weights because of all the mailing that she does for the planning board. Clerks are responsible for mailing out applications to the board members for review before the board meeting. These applications can become very heavy,



especially when dealing with applications for large development projects or projects that require extensive SEQR review. A hand-truck or cart can be helpful in transporting files from one place to another without sacrificing one's back muscles. Increased use of digital versions of application materials on compact discs may also hold promise.

Perhaps the most time consuming aspect of an application is sending out notice of public hearings to neighboring properties. One must physically create a scale and map out all residences within a prescribed area, generally 200 feet. After finding the section, block and lot numbers of all parcels within the prescribed area, the clerk must go to the tax records and copy the mailing addresses of all people residing within those blocks. Lastly, notice of the public hearing must be mailed to those residents. This procedure must be repeated for every application on the agenda that is subject to a public hearing. This process may be better managed in some communities that have digital tax records and can utilize software programs specifically designed to make this task easier.



One way to alleviate the burdens of mailing is to allocate to the applicant the responsibility of sending notice to his or her neighbors. An affidavit can be included in the applicant packet which the applicant will sign and send to the clerk's office upon completion of the mailings.

Projects that require extensive SEQR review will require additional mailings. Lists of persons that will need to be contacted must be established by the lead agency, usually the local board, which means by the clerk or municipal planner. Questions regarding SEQR may be answered at the DEC website - [www.dec.state.ny.us](http://www.dec.state.ny.us) or in Chapter V.

## 7. INTERDEPARTMENTAL COORDINATION

The amount of coordination that occurs between the planning board, the zoning board of appeals and the local legislative body depends on the type of application. Some applications will require decisions from all three local boards. In addition, in some municipalities, special arrangements are made to share applications with locally created advisory boards and councils that have a special focus such as conservation, architecture or historic preservation. While individual board members may not have the opportunity to meet with members of other boards and councils, an application can be referred with a cover memo and then, if any comments are returned, they can be distributed to the board members. The responsibility for this often time-consuming and complicated undertaking and coordination usually falls on the clerk.

Local boards also communicate at length with the building inspector, the municipal attorney, the municipal planner and the highway or public works superintendent. Memos and reports will usually pass among them and the board. The building inspector and the planner are usually present at zoning board and planning board meetings respectively.

## 8. NOTICE REQUIREMENTS

Notice is intended to inform residents and property owners so they may appear and be heard on matters pending before land use boards. The notice should be written in plain and simple language. The U.S. Supreme Court stated that notice should be “reasonably calculated under all of the circumstances to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Meetings and hearings have different notice requirements. Listed below are the general requirements for each town, village and city under the Open Meetings Law and Town, Village and General City Law.



Notice requirements for hearings may be different for each type of action proposed. Be sure to check with local law for any differences in notice requirements.

**If a meeting is scheduled at least a week in advance**, the time and place of the meeting must be published in the news media, generally in a newspaper designated by the local legislature, and be conspicuously posted in at least one designated public location at least 72 hours before such meeting.

**If the meeting is scheduled less than a week in advance**, notice must be given within a reasonable period and a good faith effort must be made to notice the public. In addition to posting notice of meetings on bulletin boards and in newspapers, time permitting, municipal web pages are a quick and easy way to disseminate information to residents about upcoming meetings.

Notice of **hearings**, not otherwise prescribed by law, must be published at least seven days in advance. Notice in the newspaper need not be an actual “legal notice” and may be tailored to fit a municipality’s needs.

In addition to public notices, the clerk may be responsible for providing the following special notices:

- Notice to County Planning Board must be provided for certain proposed land use actions. A list of these actions can be found in Chapter VIII.
- Notice to Adjacent Municipalities must be provided for certain proposed land use actions pursuant to the Westchester County Administrative Code and, as of July 1, 2006, NYS General Municipal Law (see §239-nn). Such notice is required when such proposed land use actions concern property within 500 feet of a municipal boundary. A list of these actions can be found in Chapter VIII.
- While not always legally required, many boards prefer to provide notice of certain land use applications to other outside agencies that may have a role in approving an aspect of the proposed development at a later stage. These agencies include the State Department of Transportation (when a project requires access from a State road), the County Health Department (when an action requires new wells or on-site septic systems) and the New York City Department of Environmental Protection (when the subject property is located in the Kensico or Croton Watersheds and the proposed action may require approval of DEP or compliance with City water quality protection regulations).
- Clerks should be aware that towns, villages and cities may enter into intermunicipal land use agreements that establish unique processing steps. In northern Westchester, the towns of New Castle, Yorktown and Cortlandt have collaborated on the creation of an intermunicipal approach to biodiversity protection. In instances such as this, documents, agendas and applications may need to be forwarded to other cities, towns and villages involved in the agreement or to a specially created local board.

Some municipalities have come up with creative ways to give notice to the public. The City of Yonkers requires all applicants to place a large sign stating the date and time of the public hearing on the property in question. Applicants leave a deposit with the clerk in exchange for the sign and receive their money back upon the return of the sign. This system ensures that neighbors who do not read the legal notices in the newspaper are aware of pending applications for land use projects in their neighborhood.

## **9. FREEDOM OF INFORMATION LAW (FOIL)**

Most actions taken by the zoning board of appeals and the planning board are subject to regulations mandated by the Freedom of Information Act and the Open Meetings Law, both of which are explained below. Clerks need to be aware of these requirements as decisions made by the boards may be overturned if they did not adhere to the statutory procedures.

Requests for information pursuant to the Freedom of Information Act may be received by clerks or forwarded to clerks from the municipal legal department. It is important to maintain an updated list of all documents in the office and to adhere to all other regulations.

“The legislature hereby finds that a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government.”

Public Officer Law §84

FOIL was enacted in 1978 to ensure that the public had access to government records. The law states that “each agency shall...make available for public inspection and copying all records...” NY CLS Pub O § 87(2). There are exceptions to what can be made available, such as records that are specifically exempted by statute, records compiled for law enforcement agencies and some inter- and intra- agency memos. Public Officers Law § 87(2). Questions about a certain record being made public should be conveyed to the local municipal public information officer or the municipal attorney. Also, the New York Committee on Open Government provides opinions, in written or oral form, to guide agencies, the public and local government. Contact information is provided below in this Chapter.

What is an “**agency**”?

An agency is defined as “any state or municipal department, board, bureau... or other governmental entity....” This includes the planning board and the zoning board of appeals. Public Officers Law § 83(3).

What is a “**record**”?

A record is defined as “any information kept, held, filed, produced or reproduced... in any physical form whatsoever...” Reports, statements and even digital files such as microfiche, computer disks and compact disks are all records under FOIL and as such are available to the public unless statutorily exempted. Public Officers Law § 83(4)

All agencies are required by law to maintain these three types of records:

- A record of the final vote of each member in every agency proceeding in which the member votes
- A record of each public officer’s name, address, title and salary.
- A “reasonably detailed” list of all records in possession of the agency by subject matter. Records that are exempted from public access must still be recorded on this list.

The third type of record, the “reasonably detailed” list, can be requested by the public even if all of the documents on the list are not available to the public. The public has a right to know what type of documents its officials are generating.



Public officers acting for the government cannot prevent public release of most information contained in documents. It is a violation of the law for any person to intentionally "prevent the public inspection of a record."

## 10. OPEN MEETINGS LAW

“It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the residents of the state be fully aware and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.”

Open Meetings Law § 100

The above quote is the legislative intent behind the Open Meetings Law. One of the clerk’s responsibilities is to make sure that planning and zoning board meetings follow the intent of the Open Meetings Law by making sure that the public receives adequate notice of the time and place of meetings and that the meetings are held in handicapped accessible places. Some statutes require that public hearings be held regarding the application for a variance, special use permit or subdivision approval. A public hearing regarding a site plan application may be required as a matter of local law or practice. These hearings afford residents affected by administrative hearings an opportunity to have their views heard before a decision is made.

What is a “**meeting**”?

A meeting is any gathering that includes a quorum of the board convened for the purpose of conducting public business. Traditional meetings in person and meetings done via videoconferencing must be open to the public. If a meeting is held through videoconferencing, the public may attend the meeting at any one of the locations and should be so notified. Public Officers Law §102 (1).

All meetings of these local bodies must be open to the public. Any time a public body assembles for the purpose of conducting business, the meeting is subject to the rules and regulations of Open Meetings Law and must be open to the public. The Open Meetings Law does not apply to charity events and other social gatherings at which members of the board may be present. It also does not apply when less than a quorum of the members meet together, as no decisions may be made without a quorum present. It is good practice, however, to inform the public of all meetings and gatherings of the local boards (including site visits but excluding social events) so as to avoid the appearance of impropriety and to keep the public involved.

One exception to this rule is that a board may hold an executive session which is not open to the public. Executive sessions may be held only within an otherwise open meeting but only in the rare circumstances listed in the statute, such as discussions that might imperil public safety or contain sensitive medical, financial, credit or employment information of a person or corporation. The subject of the executive meeting must be announced to the public.



Courts will carefully scrutinize whether there was a valid reason to hold a meeting in private executive session.

Meetings are different than hearings. A hearing is held to give the public a chance to voice their opinions so that the board can make a well informed decision on an application. Often, numerous public hearings will be held during a local board meeting.

If questions arise under the Freedom of Information Law or the Open Meetings Law, the **Committee on Open Government** provides written and oral advice. The Committee is composed of government officials, private residents and members of the news media and is

authorized to issue advisory opinions and make findings concerning both laws. Each year the committee reports its findings and recommendations to the legislature. The committee has provided several thousand oral opinions by telephone and has written more than 13,000 opinions since 1974.

Significant advisory opinions written since 1993 are available to read on the Department of State's website at <http://www.dos.state.ny.us/coog/coogwww.html>. In addition to the opinions, the website also includes the text of the Freedom of Information Law and the Open Meetings Law, FAQ's, and the most recent annual report to the Governor and the State Legislature. For further advice, contact:

Committee on Open Government  
NYS Department of State  
41 State Street  
Albany, NY 12231  
(518) 474-2518  
Fax (518) 474-1927

## **IV. APPLICATION PROCEDURAL REQUIREMENTS**

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This chapter is designed to assist planning and zoning clerks in processing applications for four common actions of the planning and zoning boards. Under each of the four types of action are listed and discussed the application procedural requirements. In addition to this list, New York State Environmental Quality Review Act (SEQR) procedures must also be followed. For more on SEQR, please see the next chapter.



Compliance with the procedural requirements is of utmost importance. If a decision of the zoning or planning board is challenged, and the statutory requirements have not been followed, the decision may be overturned. Check with your municipality's laws for local differences in requirements.

The following procedural step headings appear under each of the four types of actions in this chapter:

### **SUBMISSION**

Items under this heading will help explain what information is needed to complete an application to the zoning or planning board. An environmental assessment form and a filing fee are usually submitted at this stage along with the basic application for board action. The board will classify the action pursuant to SEQR as a Type I, Type II or an Unlisted action. Most actions submitted to the Zoning Board of Appeals will be classified as Type II actions and will therefore be exempt from further processing under SEQR.

### **PUBLIC HEARING**

Certain proposed land use actions require that the public be given an opportunity to voice their concerns on the application at a public hearing before the local board may take action to approve, approve with conditions or deny the application. These hearings must be held within a statutorily prescribed period following the submission of a complete application. Local boards must make motions to open and close public hearings.

### **NOTICE**

Generally, notice of public hearings, unless otherwise stated, must be given to the public at least seven days in advance. For more on notice requirements and type of notice, refer to Chapter III.

### **REFERRAL TO COUNTY PLANNING BOARD**

The Westchester County Administrative Code and New York State General Municipal Law require that certain types of actions before local planning and zoning boards be referred to the County Planning Board. The requirements that establish which actions at what locations must be referred are set forth in Chapter VIII. A referral involves the local board either notifying or sending a copy of the application or proposed action with supporting documentation to the County Planning Board. When required, materials to be sent to the County Planning Board should include a location map, municipal tax map designation, a complete description of the action, environmental assessment forms and a site plan, subdivision plat or sketch plan (as appropriate to the application).

For information or assistance on the referral process, contact the Westchester County Department of Planning at (914) 995-4400 or go online to [www.westchestergov.com/planning](http://www.westchestergov.com/planning).

## **REFERRALS TO ADJACENT MUNICIPALITIES**

When certain actions concern property within 500 feet of a municipal boundary, the County Administrative Code and NYS General Municipal Law (effective July 1, 2006) require that notice be sent to neighboring municipalities ten days prior to a hearing. Chapter IX lists which actions do and do not require referrals.

## **DECISION**

Text under this heading sets forth the statutorily prescribed time period within which the board must make its decision. In most circumstances, the board has 62 days after the close of the public hearing in which to make a decision. A quorum must be present at the meeting in order for the decision to be valid.

## **FILING**

State law requires that certain types of decisions be filed within a statutorily prescribed time period. Although the ultimate responsibility for filing an action or resolution lies with the board, the clerk is usually responsible for filing decisions in the office of the municipal clerk. As a general rule, decisions must be filed in the municipal clerk's office within five days.

### **A. Variances And Interpretations**

A variance allows a landowner to use property or to construct a structure in a manner that does not comply with the literal requirements of the zoning law. The variance procedure provides flexibility in the application of the zoning law by giving landowners an opportunity to apply for administrative relief from provisions of the law. There are two basic types of variances: **use variance** and **area variance**. An applicant will apply for a use variance when he or she would like to use the land for an activity or use not permitted in the zoning code. An area variance is sought when a proposed development or building does not meet the dimensional requirements of the zoning code, such as a bay window that violates a minimum lot line setback requirement. Area variances are both applied for and granted more often than use variances.

A property owner may seek a variance only after the zoning enforcement officer or building inspector denies an application for a building permit because the proposed development violates the use or dimensional requirements of the zoning law. If the applicant is applying for a variance as part of an application for approval of a special use permit or subdivision plat, he or she does not need to be denied first by the building inspector or zoning enforcement officer and may apply directly to the zoning board of appeals for the variance.

An **interpretation** is a request to the zoning board of appeals to "interpret" the zoning law. An applicant will ask for an interpretation when he or she thinks that a proposed use of land or proposed building arrangement (e.g. size, height or coverage) is permissible under the zoning law but a question arises if that is actually the case. State law requires applicants to seek interpretations first from the zoning enforcement officer. Then, if the zoning enforcement officer's interpretation is unfavorable, or if the enforcement officer determines the answer is not clear, the applicant may appeal the question to the zoning board of appeals.

The procedures for obtaining a variance and an interpretation are almost identical and the procedures listed below apply to both.



Town Law § 267-a/b, Village Law § 7-712-a/b, and General City Law § 81-a/b set forth the procedures and permitted actions of the zoning board of appeals and provide the statutory criteria that must be used in handling and deciding applications for variances.

### **SUBMISSION**

- The applicant must first apply to the zoning enforcement officer and receive a denial based on the officer's interpretation of the zoning law.
- The applicant must file a notice of appeal (an application for a variance) with the zoning board of appeals for a variance or interpretation within 60 days after the zoning enforcement officer's decision.
- The applicant must submit, with the notice of appeal, a completed environmental assessment form (EAF) pursuant to SEQR. Most appeals filed with the zoning board of appeals may be classified as Type II which will end the SEQR process. Additional processing steps may be required if the appeal is classified as Type I or Unlisted.



The initial denial of an application by the zoning enforcement officer or building inspector must be filed in the office of that official, rather than the municipal clerk's office, within five business days from the day it is rendered. Municipalities may adopt a resolution to require that such filings instead be made in the municipal clerk's office. Be sure to check with local laws and procedures.

### **PUBLIC HEARING**

State laws require the zoning board of appeals to hold a public hearing on all variance applications. The laws do not oblige the board to hold a hearing within a specific time period, although the hearing must be held "within a reasonable time."



Municipalities may require a more specific time period so be sure to check local laws and procedures.

### **NOTICE**

A variance can give relief to a landowner from a strict enforcement of the zoning code, but everyone who may be affected by this adjustment in regulations deserves an opportunity to be heard at a public hearing. State law requires that the public be given notice of the hearing by publication in a newspaper at least five days prior to the date of the hearing. Some municipalities require the mailing of notices or post cards to nearby property owners. Notice may also be placed on a municipal web site or local public access channel. According to Village, City and Town law, the applicant must bear the actual cost of these notice requirements or be assessed a reasonable fee to cover such costs. Such a fee may be included as part of the filing or application fee.

### **REFERRAL TO COUNTY PLANNING BOARD**

Notice must be given to the County Planning Board of all applications for a **use variance** at least ten days prior to the public hearing. If the proposed use would create 5,000 square feet or more of new or renovated floor area or it would require the disturbance of 10,000 square feet or more

or land, then the complete application must be forwarded to the County Planning Board for review. A sample County referral form is provided in Chapter VIII.

Notice of an application for an **area variance** to decrease a front yard setback, decrease the minimum street frontage or decrease average width must be given to the County at least ten days prior to the public hearing if it affects property abutting a State or County road or park.

The County Planning Board does not need to be notified of requests for an **interpretation** of the zoning law.

### **NOTICE TO REGIONAL STATE PARK COMMISSION**

An archaic provision of state law establishes a requirement that if the application affects property located within 500 feet of a state park or parkway, notice must be provided to the state park commission at least five days before the public hearing. Notice can be mailed to the attention of the director at: New York State Office of Parks, Recreation, and Historic Preservation, Taconic Region, P.O. Box 308, Staatsburg, NY 12580.

### **REFERRALS TO ADJACENT MUNICIPALITIES**

If a **use variance** would affect property located within 500 feet of an abutting municipality, State law (as of July 1, 2006) requires that notice be given by mail or electronic transmission to the municipal clerk of the abutting municipality at least ten days prior to a public hearing. County law establishes the same requirement. Adjacent municipalities do not need to be notified of applications for area variances or interpretations. For more on referrals to adjacent municipalities, see the appendix.

### **DECISION**

The zoning board of appeals has 62 days from the close of the public hearing to render a decision on an appeal. There is no set time period for how long a hearing can remain open. The board can approve, conditionally approve or deny an application for a variance.

**NEED  
TO  
KNOW**

State statutes spell out the precise factors that the zoning board must consider in deciding whether to grant an area or use variance. When a variance is granted, the zoning board's record should reveal that the board considered all required factors and the record of decision should include the findings of the board with respect to each.

### **FILING**

The decision of the zoning board of appeals must be filed in the municipal clerk's office within five days from the date of the decision. A copy of the decision must also be mailed to the applicant. As good practice, copies should be provided to the building inspector, the zoning officer, the municipal planner and the municipal attorney. The decision, along with the applicable sections of the minutes, should be filed in the property file.

### **CLERK CHECKLIST FOR VARIANCE/INTERPRETATION APPLICATIONS**

<b>Tax Parcel Number:</b> _____ <b>Section:</b> _____ <b>Block:</b> _____ <b>Lot:</b> _____ <b>Log No.:</b> _____
--

Application Name

Applicant Name and Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone (    ) \_\_\_\_\_

**Date of Action**

Application for variance/interpretation received

\_\_\_\_\_  Yes  No

Type II Action per SEQR (no SEQR review required)

If no, EAF form filed

SEQR classification determined to be:

\_\_\_\_\_  type I  unlisted

Determination of environmental significance:

positive declaration     negative declaration     conditional negative declaration

(Note: Positive declaration will initiate steps not on this checklist)

Fee paid.

\_\_\_\_\_

Fee amount:

\_\_\_\_\_

ZBA acts to schedule public hearing

\_\_\_\_\_

Notice of hearing published in paper

\_\_\_\_\_

Notice sent to applicant

\_\_\_\_\_

Notice sent to regional state park commission

\_\_\_\_\_

Not required

Notice sent to County Planning Board

\_\_\_\_\_

Not required             Complete application mailed

Response received from County Planning Board

\_\_\_\_\_

No response required/notification only

ZBA opens public hearing

\_\_\_\_\_

ZBA closes public hearing

\_\_\_\_\_

ZBA votes on decision:

approval     conditional approval     disapproval

\_\_\_\_\_

Decision filed with municipal clerk

\_\_\_\_\_

Decision mailed to applicant

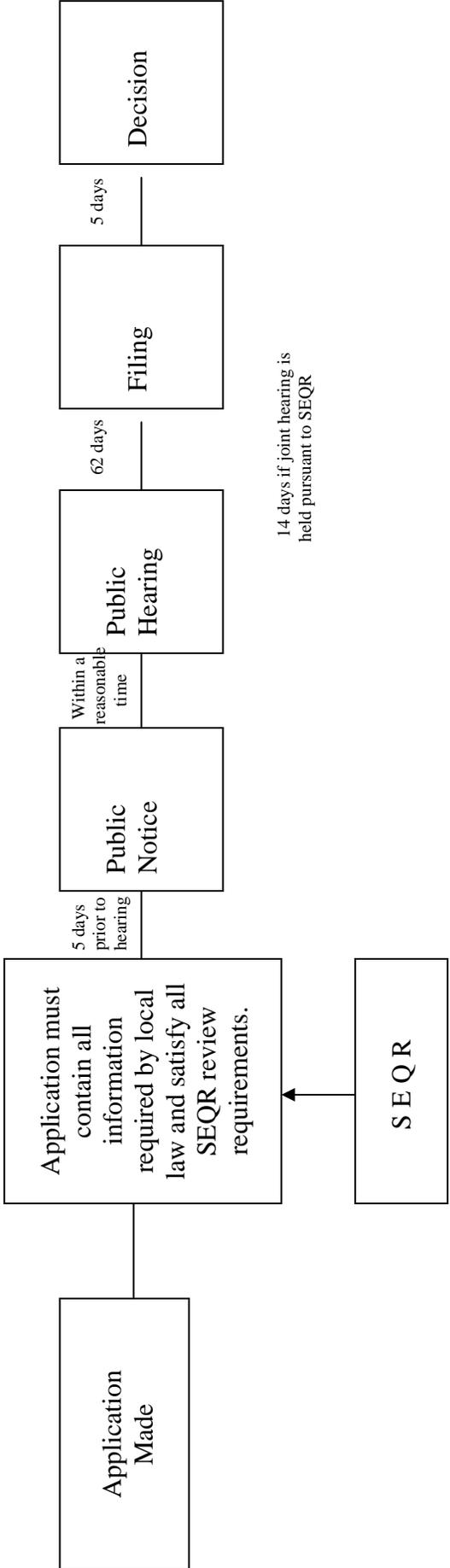
\_\_\_\_\_

Decision provided to zoning officer/building department file

\_\_\_\_\_

# Variance Application

Applicant appeal of Zoning Enforcement Officer determination that standards are not met must be made within 60 days of ZEO determination.



## **B. Subdivision Applications**

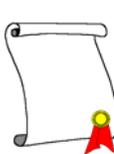
A subdivision of land involves the legal division of a parcel into a number of lots, with or without streets, for the purpose of sale and development. A subdivision may also include any proposal to alter lot lines. The authority to review and approve subdivisions may be granted to a planning board by the local legislature. The standards to be applied and the procedures to be followed by the planning board are contained in state law and expanded in subdivision regulations that are adopted by local legislature.



The state empowers municipalities to define and adopt separate criteria for a major or minor subdivision. Be aware of a municipality's unique procedures. Designation may be based on the number of lots to be subdivided, the provision of streets and the complexity of the action.

Under a typical set of subdivision regulations, the landowner or **subdivider** must submit a plat of the proposed subdivision that shows the layout and dimensions of lots and roads, the topography, drainage, proposed facilities and other features all at a scale and in such detail as required by the local subdivision regulations. A **plat** is a map, drawing or rendering of the subdivision which can contain narrative elements. In their subdivision regulations, some municipalities require only a one-step plat submission while others require a preliminary and a final plat submission. Some add an optional sketch plan review as the first step. Generally, submission of a preliminary plat to the planning board clerk's office is the beginning of the approval process. The process for both preliminary and final plat applications are outlined below, although both may not be applicable in any given municipality or to particular subdivisions.

The **County Clerk** maintains the official land records. The final plat, once approved by the local planning board and signed by the appropriate officials, must be filed with the Division of Land Records in the office of the County Clerk. Proof of the filing must then be submitted to the planning board clerk.



The statutory provisions authorizing municipalities to adopt subdivision regulations and to provide for the review and approval of subdivisions are found in Village Law §§7-728 - 7-730, Town Law §§ 276 - 278 and General City Law §§ 32 - 34. Village Law § 7-718(13), Town Law § 271(13) and General City Law § 27(13) authorize the planning board to prepare subdivision regulations, subject to final approval and adoption by the legislature.

### **SUBMISSION OF PRELIMINARY PLAT**

The **preliminary plat** must be clearly marked "preliminary." The submission of the preliminary plat must also be accompanied by proof of ownership interest in the land underlying the subdivision and a completed SEQR environmental assessment form (EAF). The application will not be considered complete until either a negative declaration or a draft environmental impact statement has been filed. A board may require an applicant to attend several discussions with the board and to submit additional or revised plans and supporting data before the board determines that the application is complete and ready to move into the formal public review process.

### **PUBLIC HEARING ON PRELIMINARY PLAT**

Within 62 days of receipt of a complete preliminary plat application (and, when required, the filing of a notice of completion for a draft environmental impact statement), the planning board must hold a public hearing on the application. The hearing may not remain open more than 120 days without the consent of the applicant. The public hearing ensures that residents have a chance to voice their opinions.

## **NOTICE**

The planning board must provide the public with notice of the hearing at least five days before the hearing date in a local newspaper of general circulation.



Municipalities may require additional means of notification including the mailing of notices to property owners within a locally selected distance from the perimeter of the property proposed to be subdivided. Be sure to check local subdivision regulations.

If the subdivision application is subject to preparation of a draft EIS and the planning board determines that a public hearing on the draft EIS is required in conjunction with the public hearing on the application itself, notice must be given at least fourteen days in advance of the hearing.

## **REFERRAL TO COUNTY PLANNING BOARD**

If the preliminary subdivision proposes a new street or drainage line that will connect directly with an existing State or County road or County drainage channel, the application must be referred to the County Planning Board no less than ten days prior to the public hearing. In practice, it is advisable to submit the application materials well before the public hearing is scheduled as the County Planning Board's comments may be useful in conducting the local review.

## **REFERRALS TO ADJACENT MUNICIPALITIES**

When a subdivision plat affects property within 500 feet of an abutting municipality, State law (as of July 1, 2006) requires that notice be given by mail or electronic transmission to the municipal clerk of the abutting municipality at least ten days prior to a public hearing. County law establishes the same requirement.

## **DECISION ON PRELIMINARY PLAT**

Within 62 days of the close of the public hearing, the planning board must by resolution approve, approve with modification or disapprove the preliminary plat. However if an environmental impact statement was required, the planning board shall take this action within 30 days of the adoption of findings by the SEQR lead agency, if the lead agency does not adopt findings until after the expiration of the 62 day timeframe.

## **FILING AND CERTIFICATION OF PRELIMINARY PLAT**

The decision of the planning board (the resolution) must be filed in the municipal clerk's office within five days from the date of the decision. A copy of the resolution must also be mailed to the applicant. The preliminary plat shall be certified by the planning board clerk as approved and a copy of the plat and of the resolution shall be filed in the clerk's office.

**NEED  
TO  
KNOW**

New York State law specifically places the responsibility for certification and filing on the "clerk of the planning board."

### **SUBMISSION OF FINAL PLAT**

The **final plat** must be submitted within six months of the planning board resolution approving the preliminary plat. If the final subdivision plat is not submitted for approval within six months after adoption of the planning board resolution, the preliminary plat approval may be revoked by the planning board.

A complete application must include the fee, the application form, the final plat and final construction plans (modified as may have been required by the resolution of preliminary plat approval), a detailed statement giving the quantity and cost estimate for all infrastructure improvements, evidence that the applicant has secured all necessary approvals from other agencies including county and state plus other items as may be required by the local subdivision regulations.

If the municipality did not require preliminary plat approval, the applicant must submit an environmental assessment form and the planning board must comply with SEQR requirements and make a negative declaration or require preparation of a draft environmental impact statement.

### **PUBLIC HEARING ON FINAL PLAT**

A public hearing is not required on a final plat submission when the planning board deems the final plat to be in substantial agreement with an approved preliminary plat. If the final plat is not in substantial agreement with the approved preliminary plat, or if a preliminary plat was not required, a public hearing must be held within 62 days after the receipt of a complete final plat by the planning board clerk. The public hearing must be closed within 120 days after it has been opened.



The clerk must check with the planning board for a determination that the final plat submission is complete and as to whether or not a public hearing is required.

### **NOTICE OF HEARING ON FINAL PLAT**

The planning board must provide the public with notice of the hearing at least five days before the hearing date in a local newspaper of general circulation.



Municipalities may require additional means of notification including the mailing of notices to property owners within a locally selected distance from the perimeter of the property proposed to be subdivided. Be sure to check local subdivision regulations.

If the final plat application is subject to preparation of a draft EIS and the planning board determines that a public hearing on the draft EIS is required in conjunction with the public hearing on the application itself, notice must be given at least fourteen days in advance of the hearing.

### **REFERRAL TO COUNTY PLANNING BOARD**

If a public hearing is held on the final plat and the final subdivision shows a new street or drainage line that will connect directly with an existing state or county road or county drainage

channel, then notification must be sent to the County Planning Board no less than ten days prior to the public hearing. In practice, it is advisable to submit the application materials well before the public hearing is scheduled as the County Planning Board's comments may be useful in conducting the local review.

### **REFERRALS TO ADJACENT MUNICIPALITIES**

If a public hearing is held on the final plat and the final subdivision plat affects property within 500 feet of an abutting municipality, State law (as of July 1, 2006) requires that notice be given by mail or electronic transmission to the municipal clerk of the abutting municipality at least ten days prior to a public hearing. County law establishes the same requirement.

### **DECISION ON THE FINAL PLAT**

If no public hearing is held, the planning board must act to approve, conditionally approve or disapprove the final plat within 62 days after the receipt of a complete final plat by the planning board clerk.

If a public hearing is held, the planning board must act to approve, conditionally approve or disapprove the final plat within 62 days after the close of the hearing.

In the case of a conditionally approved final plat, the resolution shall include a statement of the requirements which when completed will authorize the signing thereof. A final plat may be approved in sections.

**NEED TO KNOW** State law requires that "The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the planning board." It is good practice to include the grounds in the board's resolution.

### **LOCAL FILING AND CERTIFICATION OF FINAL PLAT**

The decision of the planning board (the resolution) must be filed in the municipal clerk's office within five days from the date of the decision. A copy of the resolution must also be mailed to the applicant. The final plat shall be certified by the planning board clerk as having been granted conditional or final approval and a copy of the plat and of the resolution shall be filed in the clerk's office. Copies of the resolution should be provided to the municipal engineer, building inspector, municipal planner and the municipal attorney.

In the case of a conditionally approved final plat, upon completion of the requirements specified by the planning board in the resolution, the plat shall be signed by the planning board clerk as approved and a copy of the signed plat shall be filed in the clerk's office or with the municipal clerk as determined by the municipal legislature. Conditional approval of a final plat shall expire within 180 days after adoption of the resolution unless all requirements stated in such resolution have been certified as completed. The planning board may extend, by not more than two additional periods of 90 days each, the time in which a conditionally approved final plat must be submitted for signature, if in the board's opinion such extension is warranted by the particular circumstances.

**NEED TO KNOW** New York State law specifically places the responsibility for certification and filing on the "clerk of the planning board." In the case of conditionally approved final plats, the clerk has the important responsibility to coordinate a review with appropriate municipal officials that all requirements (conditions) have been met before the final

plat may be signed as approved. The clerk must also track timeframes to ensure that the conditions are met within the permitted time period or extensions are granted.

### **FILING OF FINAL PLAT WITH COUNTY**

A final plat that has been signed as approved must be filed in the office of the County Clerk, Division of Land Records, by the property owner within 62 days of date of the signing of the final plat. If not done within this timeframe, the approval shall expire and the applicant will be required to resubmit an application for final plat approval.



The local subdivision regulations should establish a requirement that the property owner must return evidence to the planning board clerk that the filing of the final plat was accomplished within the permitted timeframe.

### **EXTENSION OF TIMEFRAMES AND FAILURE TO ACT**

The timeframes established by State law during which the planning board must take action (but not the filing and certification timeframes) may be extended only by mutual consent of the property owner and the planning board. The timeframes are intended to balance the time needed for the planning board and the public to review the application and the applicant's interest to minimize delays.



If a planning board fails to take action within the prescribed timeframes or during an extended period established by mutual consent, the preliminary or final plat shall be deemed granted approval. The municipal clerk is to issue a certification to this effect noting the application submission date and the lapse of the prescribed timeframe.

Tax Parcel Number: Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_  
 Log No.: \_\_\_\_\_

**CLERK CHECKLIST FOR MINOR SUBDIVISION REVIEW PROCEDURE**

Proposed Development Name

Applicant Name and Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone (    ) \_\_\_\_\_

**Date of Action**

Preliminary plan submitted.

\_\_\_\_\_  Yes  No

Type II Action per SEQR (no SEQR review required)

If no, EAF form filed

\_\_\_\_\_  type I  unlisted

SEQR classification determined to be:

Determination of environmental significance:

positive declaration  negative declaration  conditional negative declaration

(Note: positive declaration will initiate steps not on this checklist)

Fee paid.

\_\_\_\_\_

Application accepted as complete.

\_\_\_\_\_

Referral to County Planning Board\*

\_\_\_\_\_

County Planning Board response received.

\_\_\_\_\_

Motion to hold public hearing.

\_\_\_\_\_

Notice of hearing published in paper.

\_\_\_\_\_

Public hearing held--motion to close hearing.

\_\_\_\_\_

Action taken by resolution on the application:

conditional approval  conditional approval with modifications

disapproval  final approval

\_\_\_\_\_

Resolution mailed to applicant.

\_\_\_\_\_

Conditionally approved plat signed when complete.

\_\_\_\_\_

Records filed with municipal clerk.

\_\_\_\_\_

Plat filed in the office of the county clerk.

\_\_\_\_\_

*\*If required.*

*Checklist provided courtesy of the Department of Stat*

Tax Parcel Number: Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_  
 Log No.: \_\_\_\_\_

**CLERK CHECKLIST FOR MAJOR SUBDIVISION REVIEW PROCEDURE**

Proposed Development Name \_\_\_\_\_ Applicant Name and Address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Phone (    ) \_\_\_\_\_

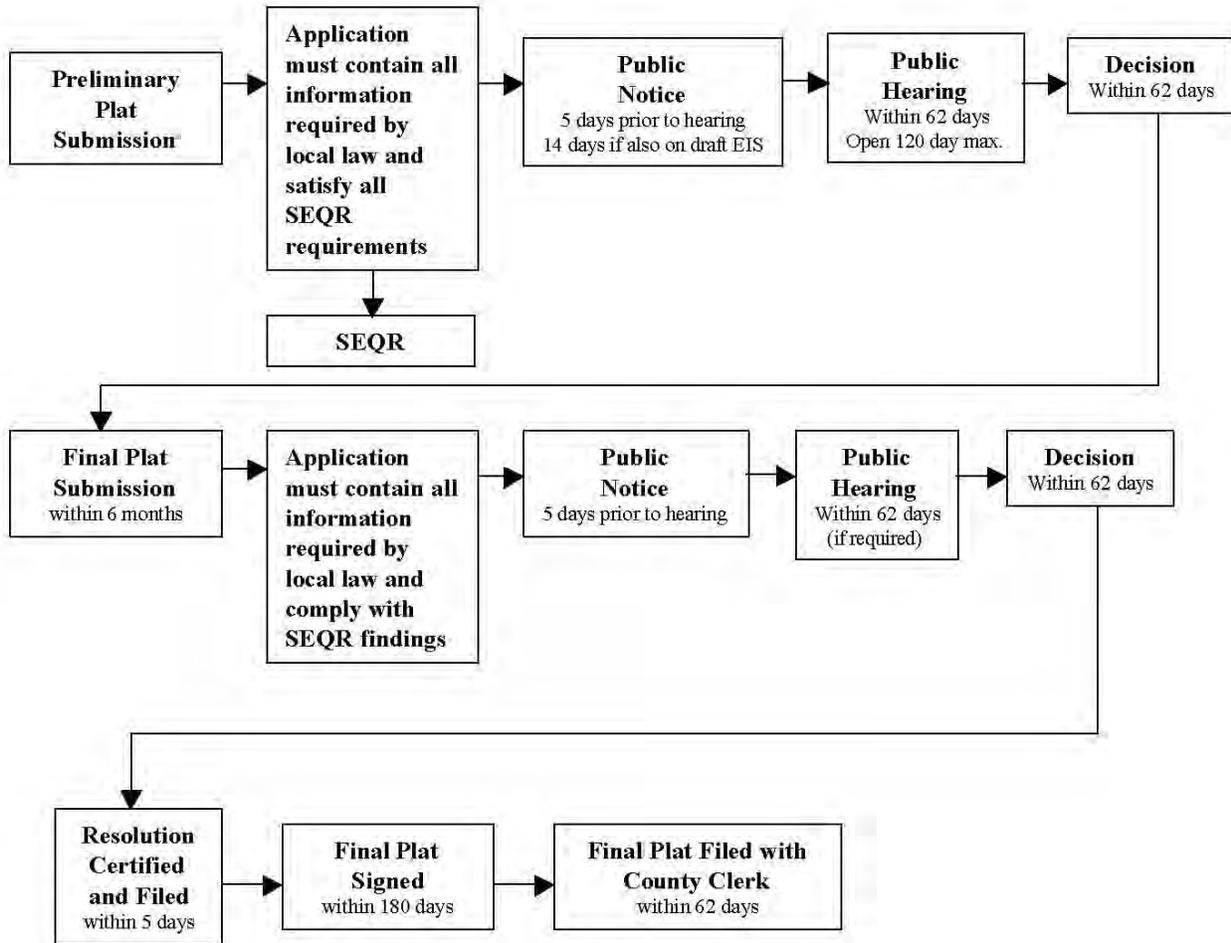
**Date of Action**

Sketch plan presented. \_\_\_\_\_  
 Type II Action per SEQR (no SEQR review required)  Yes  No  
 If no, EAF form filed \_\_\_\_\_  
 SEQR classification determined to be:  type I  unlisted  
 Determination of environmental significance:  
 positive declaration  negative declaration  conditional negative declaration  
 (Note: positive declaration will initiate steps not on this checklist)  
 Preliminary plat fee paid. \_\_\_\_\_  
 Preliminary plat accepted as complete. \_\_\_\_\_  
 Referral to County Planning Board\* \_\_\_\_\_  
 County Planning Board response received. \_\_\_\_\_  
 Motion to hold public hearing. \_\_\_\_\_  
 Notice of hearing published in paper. \_\_\_\_\_  
 Public hearing held--motion to close hearing. \_\_\_\_\_  
 Resolution of action taken on preliminary subdivision approval application:  
 approval  approval with modifications  disapproval \_\_\_\_\_  
 Final plat fee paid \_\_\_\_\_  
 Final plat accepted as complete. \_\_\_\_\_  
 Motion to waive or hold public hearing. \_\_\_\_\_  
 Notice of hearing published in paper. \_\_\_\_\_  
 Public hearing held--motion to close hearing. \_\_\_\_\_  
 If hearing held, referral to County Planning Board\* \_\_\_\_\_  
 County Planning Board response received. \_\_\_\_\_  
 Resolution of action taken on the application for final subdivision approval:  
 conditional approval  conditional approval with modifications \_\_\_\_\_  
 disapproval  final approval \_\_\_\_\_  
 Resolution mailed to applicant. \_\_\_\_\_  
 Conditionally approved plat signed when complete. \_\_\_\_\_  
 Records filed with town clerk. \_\_\_\_\_  
 Plat filed in the office of the county clerk \_\_\_\_\_

*\*If required*  
*Checklist provided courtesy of the Department of State*

# Subdivision Application

Application to the planning board to subdivide



### **C. Site Plan Applications**

A **site plan** is defined by state law as a drawing, prepared in accordance with local specifications, that shows the “arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan.” Site plan regulations are adopted by the local legislature as part of the zoning law or as a separate set of regulations. The local legislature may authorize the planning board (or such other administrative board including itself) to review and approve, approve with modifications or disapprove site plans. Landowners who wish to develop a single plot of land, without subdividing it, must submit site plan applications pursuant to the local regulations.

The regulations or the zoning law identifies the uses subject to site plan review and approval. Often, site plan review applies only to large-scale commercial developments such as shopping malls, industrial and office parks and residential condominium or town house projects. Some communities, however, require site plan review for smaller developments, including the construction of a single-family residence. When site plan regulations have been adopted, land may not be developed for uses requiring site plan approval until a site plan has been submitted, reviewed and approved.



Village Law §7-725-a, Town Law §274-a and General City Law §27-a authorize local governments to adopt and administer site plan regulations.

#### **SUBMISSION**

A property owner submits an application, fee and plans prepared in accordance with the local site plan regulations. An environmental assessment form (EAF) should also be completed and submitted by the applicant.



Each municipality will have its own requirements for which elements need to be shown on a site plan such as property boundaries, topography, mapping of wetlands, dimensions of proposed parking areas and driveways, proposed landscaping and required stormwater management facilities. Some communities may require an applicant to attend an initial site plan sketch conference with the approving board prior to formal submission.

#### **PUBLIC HEARING**

State law does not require that a public hearing be held on a site plan application; however, many locally adopted site plan regulations do require that a hearing be held. State law further states that “nothing herein shall preclude the holding of a public hearing on any matter on which a public hearing is not so required.” If a public hearing is required by local law or the approving board, State law requires that the hearing take place within 62 days from the date a complete application is received. A public hearing ensures that residents have a chance to voice their opinions.

#### **NOTICE**

The approving board must provide the public with notice of the hearing at least five days before the hearing date in a local newspaper of general circulation. The applicant must be mailed notice of the hearing at least ten days before the hearing.

#### **REFERRAL TO COUNTY PLANNING BOARD**

Based on location, certain site plan applications must be referred to the County Planning Board no less than ten days before a public hearing, if one is held, or before final action is taken, if no hearing is held. Applications which must be referred would be on property located within 500 feet of any of the following:

- The boundary of a city, town, or village
- The boundary of an existing or proposed state or county park or recreation area
- The rights of way of an existing County or State road
- The boundary of State or County-owned land on which a public building or institution is located
- The boundary of a farm located in an agricultural district.

Under rules adopted by the Westchester County Planning Board, the type of notification is dependent on the scale of the proposed development. If the site plan proposes 5,000 or more square feet of new or renovated space or will disturb more than 10,000 square feet of land, then the complete application must be forwarded to the County. For smaller projects and projects impacting less land, the County need only be notified in writing of the pending application.

### **REFERRAL TO ADJACENT MUNICIPALITIES**

If a public hearing is held on the site plan application and the site plan would affect property within 500 feet of an abutting municipality, State law (as of July 1, 2006) requires that notice be given by mail or electronic transmission to the municipal clerk of the abutting municipality at least ten days prior to a public hearing.

### **DECISION**

The approving board must make a decision within 62 days after the receipt of the complete application if there no public hearing or within 62 days after the close of the hearing. The board can approve, approve with modifications, or deny the application. The approving board may impose reasonable conditions and restrictions related to and incidental to the proposed site plan; such conditions must be met in connection with the issuance of permits by the municipal enforcement officers. The timeframe established by State law during which the approving board must take action may be extended by mutual consent of the applicant and the board.

Many local site plan regulations provide specific timeframes during which an applicant must demonstrate compliance with the conditions of the resolution and to present a final site plan to the clerk of the approving board for certification of approval. If the timeframe is not met or extended by the approving board, the conditional approval expires. Only after certification that the conditions have been met may the applicant apply for required permits and begin construction.



The approving board must comply with the provisions of SEQR in the processing of applications for site plan approval. Required steps include classification of action, lead agency action as appropriate, determination of significance, negative declaration or positive declaration and the processing of an environmental impact statement followed by the adoption of findings. These steps should be integrated with the site plan review steps.

### **FILING**

The decision must be filed in the office of the municipal clerk and a copy mailed to the applicant within five business days after such decision is rendered. It is good practice to provide copies to

the building inspector, the municipal planner and the municipal attorney. The decision, along with the applicable sections of the minutes of the board meeting should be filed in the property tax lot file.

At the completion of construction and upon verification that all rules, regulations and conditions have been followed and met, the zoning enforcement office may issue a zoning permit and the building inspector may issue a certificate of occupancy.

Tax Parcel Number: _____	Section: _____	Block: _____	Lot: _____
			Log No.: _____

**CLERK CHECKLIST FOR SITE PLAN REVIEW PROCEDURE**

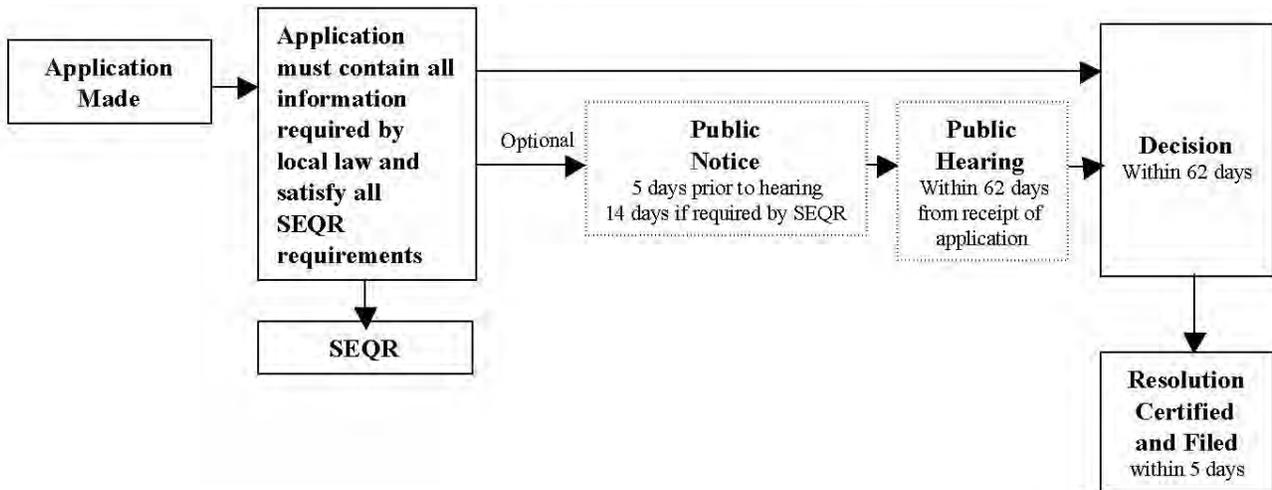
Proposed Development Name _____	Applicant Name and Address _____ _____ _____ _____ _____
	Phone (    ) _____

	<b>Date of Action</b>
Site plan application received.	_____
Type II Action per SEQR (no SEQR review required)	<input type="checkbox"/> Yes <input type="checkbox"/> No
If no, EAF form filed	_____
SEQR classification determined to be:	<input type="checkbox"/> type I <input type="checkbox"/> unlisted
Determination of environmental significance:	
<input type="checkbox"/> positive declaration <input type="checkbox"/> negative declaration <input type="checkbox"/> conditional negative declaration	
(Note: positive declaration will initiate steps not on this checklist)	
Fee paid.	_____
Application accepted as complete.	_____
Referral to County Planning Board*	_____
County Planning Board response received.	_____
Motion to hold or waive public hearing.	_____
Notice of hearing published in paper.	_____
Notice of hearing mailed to applicant.	_____
Public hearing held--motion to close hearing.	_____
Resolution of action taken on site plan application:	
<input type="checkbox"/> approval <input type="checkbox"/> approval with modifications <input type="checkbox"/> disapproval	_____
Application endorsed by planning board.	_____
Records filed with municipal clerk.	_____
Decision mailed to applicant.	_____
Zoning permit issued.	_____
Certificate of occupancy issued.	_____

*\*If required  
Checklist provided courtesy of the Department of State*

## Site Plan Application

Application to the administrative board for approval under site plan regulations



## **D. Special Use Permit Applications**

A special use permit authorizes the use of land in a manner which is permitted under the zoning ordinance subject to certain requirements. These requirements are imposed to ensure that the use is in harmony with the zoning regulations and will not adversely affect the neighborhood. A variety of uses may be permitted in various zones as special uses. Typical uses subject to special permit provisions include professional offices, places of worship, golf courses and recreation clubs in residential zones and drive-in establishments, adult businesses and marinas in commercial districts. The decision about what uses should be subject to meeting certain requirements is made separately by each local municipality as part of drafting or amending its zoning law.



Be aware that special use permits are referred to by a variety of terms. Terms that may be found in various zoning ordinances include special exception uses, special permit, conditional use permits and special exceptions. The NYS statutory term is special use permit.

The local legislature, as part of the zoning law or as a separate set of regulations, may authorize the planning board (or such other administrative board including itself) to grant special use permits. Often, legislatures split the authority by placing the authority to grant special use permits for uses that do not involve significant land alteration or construction to the zoning board of appeals and placing the authority for more complicated uses involving site plans with the planning board or reserving it for the legislature itself.



Village Law § 7-725-b, Town Law § 274-b and General City Law § 27-b set forth the procedures required for approving special use permits.



Once a special use permit has been issued, it is not personal to the applicant, but affixes to, and runs with the land.

### **SUBMISSION**

An application for the proposed use must be submitted and follow the processing guidelines established by the local board. Typically, this process is set forth in the local zoning law. The filing fee and an environmental assessment form should also be submitted.



If a proposed special use contains one or more features that do not comply with the area requirements of the zoning ordinance, an applicant may apply for a variance directly to the zoning board of appeals without first having to go to the building inspector or zoning enforcement officer.

### **PUBLIC HEARING**

Within 62 days of receipt of a complete application for a special use permit, the approving agency must hold a public hearing on the application. The public hearing ensures that residents have a chance to voice their opinions.

## **NOTICE**

The approving board must provide the public with notice of the hearing at least five days before the hearing date in a local newspaper of general circulation.



Municipalities may require additional means of notification including the mailing of notices to property owners within a locally selected distance from the perimeter of the property proposed to be subdivided. Be sure to check local regulations.

## **REFERRAL TO COUNTY PLANNING BOARD**

Any application for a special use permit affecting any land within Westchester County must be referred to the County Planning Board for review at least ten days prior to a public hearing. Under rules adopted by the Westchester County Planning Board, the type of notification is dependent on the scale of the proposed development. If the special use proposes 5,000 or more square feet of new or renovated space or will disturb more than 10,000 square feet of land, then the complete application must be forwarded to the County. For smaller projects and projects impacting less land, the County need only be notified in writing of the pending application.

## **REFERRAL TO ADJACENT MUNICIPALITIES**

If a special use would affect property within 500 feet of an abutting municipality, State law (as of July 1, 2006) requires that notice be given by mail or electronic transmission to the municipal clerk of the abutting municipality at least ten days prior to a public hearing.

## **DECISION**

The approving board must make a decision within 62 days after the close of the hearing. The approving board may impose reasonable conditions and restrictions related to and incidental to the proposed special use; such conditions must be met in connection with the issuance of permits by the municipal enforcement officers. The timeframe established by State law during which the approving board must take action may be extended by mutual consent of the applicant and the board.

**NEED  
TO  
KNOW**

The local legislature may empower the approving body to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of special use permits. Any such waiver, which shall be subject to appropriate conditions set forth in the zoning law or other local law, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.



The approving board must comply with the provisions of SEQR in the processing of applications for site plan approval. Required steps include classification of action, lead agency action as appropriate, determination of significance, negative declaration or positive declaration and the processing of an environmental impact statement followed by the adoption of findings. These steps should be integrated with the site plan review steps.

**FILING**

The decision must be filed in the office of the municipal clerk and a copy mailed to the applicant within five business days after such decision is rendered. It is good practice to provide copies to the building inspector, the municipal planner and the municipal attorney. The decision, along with the applicable sections of the minutes of the board meeting should be filed in the property tax lot file.

At the completion of construction and upon verification that all rules, regulations and conditions have been followed and met, the zoning enforcement office may issue a zoning permit and the building inspector may issue a certificate of occupancy.

Tax Parcel Number: Section: \_\_\_\_\_ Block: \_\_\_\_\_ Lot: \_\_\_\_\_  
 Log No.: \_\_\_\_\_

**CLERK CHECKLIST FOR SPECIAL USE PERMIT REVIEW PROCEDURE**

Proposed Development Name

Applicant Name and Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone (    ) \_\_\_\_\_

**Date of Action**

Special use permit application received.

\_\_\_\_\_

Type II Action per SEQR (no SEQR review required)

Yes  No

If no, EAF form filed

SEQR classification determined to be:

\_\_\_\_\_

Determination of environmental significance:

positive declaration  negative declaration  conditional negative declaration

(Note: positive declaration will initiate steps not on this checklist)

**Date of Action**

Fee paid.

\_\_\_\_\_

Application accepted as complete.

\_\_\_\_\_

Referral to County Planning Board\*

\_\_\_\_\_

County Planning Board response received.

\_\_\_\_\_

Motion to hold or waive public hearing.

\_\_\_\_\_

(Waiver may be used only for site plan review procedure)

Notice of hearing published in paper.

\_\_\_\_\_

Notice of hearing mailed to applicant.

\_\_\_\_\_

Public hearing held--motion to close hearing.

\_\_\_\_\_

Resolution of action taken on application:

approval     approval with modifications     disapproval

\_\_\_\_\_

Application endorsed by approving board.

\_\_\_\_\_

Records filed with municipal clerk.

\_\_\_\_\_

Decision mailed to applicant.

\_\_\_\_\_

Zoning permit issued.

\_\_\_\_\_

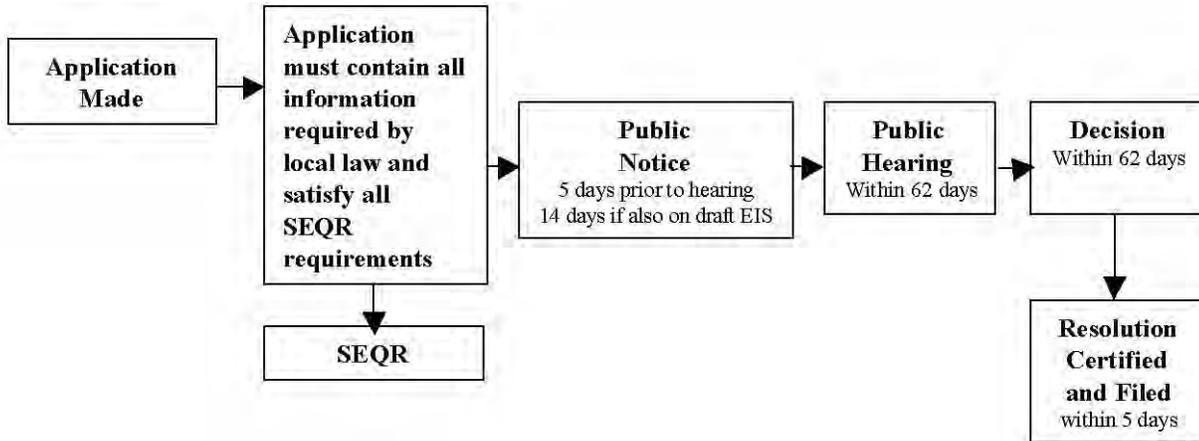
Certificate of occupancy issued.

*\*If required*

*Checklist provided courtesy of the Department of State*

# Special Use Permit Application

Application to the administrative board for a special permit under the zoning ordinance



**E. Actions Timeline**

	<b>Variances and Appeals</b>	<b>Subdivision Regulations-Preliminary Plat Approval</b>	<b>Subdivision Regulations-Final Plat Approval</b>	<b>Site Plan Review</b>	<b>Special Use Permits</b>
<b>Submission</b>	Owner must submit application to the ZBA within <b>60 days</b> from the time of denial Hearing must be held within a “reasonable” amount of time.		Must be submitted within <b>6 months</b> of the board resolution of preliminary approval		
<b>Public Hearings</b>	Hearing must be held within a “reasonable” amount of time.	Within <b>62 days</b> from receipt of a complete application	Within <b>62 days</b> of submission of final plat	If held, must take place within <b>62 days</b> from receipt	Within <b>62 days</b> from submission of application
<b>Notice</b>	Must be given by publication in a newspaper at least <b>5 days</b> prior	Must be given by publication in a newspaper at least <b>5 days</b> prior	If held, notice must be given in a newspaper at least <b>5 days</b> prior	To applicant: <b>10 days</b> prior; To public: in a newspaper at least <b>5 days</b> prior	Must be given by publication in a newspaper at least <b>5 days</b> prior
<b>Referrals to County Planning Board</b>	See Chapter VII chart; at least <b>10 days</b> prior to the public hearing	See Chapter VII chart; at least <b>10 days</b> prior to the public hearing	See Chapter VII chart; at least <b>10 days</b> prior to the public hearing	See Chapter VII chart; at least <b>10 days</b> prior to the public hearing	Land within the county; at least <b>10 days</b>
<b>Referrals to Adjacent Municipalities</b>	For action affecting land within 500 ft of border; notice to be provided <b>10 days</b> before hearing	For action affecting land within 500 ft of border; notice to be provided <b>10 days</b> before hearing	For action affecting land within 500 ft of border; notice to be provided <b>10 days</b> before hearing	For action affecting land within 500 ft of border; notice to be provided <b>10 days</b> before hearing	For action affecting land within 500 ft of border; notice <b>10 days</b> before hearing
<b>Decision</b>	<b>62 days</b> from the close of the hearing	<b>62 days</b> from the close of the hearing; a hearing may be kept open no longer than <b>120 days</b>	If no hearing is held: <b>62 days</b> . If a hearing is held: <b>62 days</b> after the hearing. Approval will expire within <b>62 days</b> of signing if not filed with the county clerk	After receipt of application: <b>62 days</b> ; If a hearing is held: <b>62 days</b> after the hearing. Approval will expire after <b>180 days</b>	<b>62 days</b> from the close of the hearing
<b>Filing</b>	Decision must be filed with municipal clerk within <b>5 days</b>	Resolution of action taken must be filed with municipal clerk within <b>5 days</b>	Resolution of action taken must be filed with municipal clerk within <b>5 days</b>	Decision must be filed with municipal clerk within <b>5 days</b>	Decision must be filed with municipal clerk within <b>5 days</b>

## V. NYS ENVIRONMENTAL QUALITY REVIEW PROCEDURES



*“It is the purpose of [the State Environmental Quality Review Act] to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state.”*

-Environmental Conservation Law, § 8-010

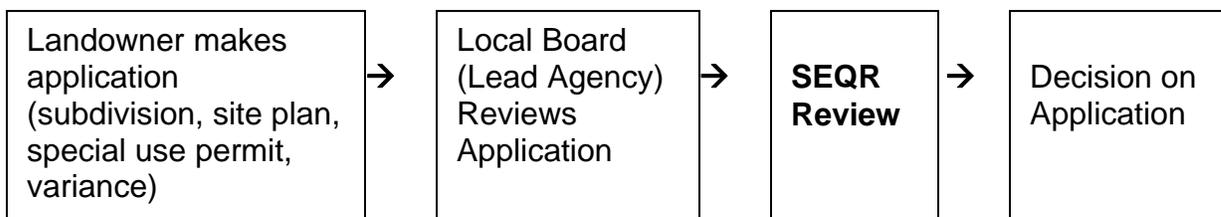
### A. What Is SEQR?

New York’s State Environmental Quality Review Act, known as **SEQR** (pronounced “seeker”), requires government agencies when reviewing development projects, adopting plans and establishing programs to consider the potential environmental impacts of these actions. For proposed actions that may have a significant adverse impact on the environment, the local agency must prepare - or require to be prepared - an environmental impact statement. SEQR requires agencies to use all practicable means, including modification of the proposed action, to minimize or avoid adverse environmental effects.



The SEQR process is required by the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law, and is governed by the State SEQR regulations, 19 NYCRR part 617.

SEQR applies to all agencies and instrumentalities of the state, including local agencies such as legislatures, planning boards and zoning boards of appeal. Local agency decisions on applications for site plan or subdivision approval or the issuance of certain variances and special use permits must be preceded by an assessment of the environmental impact of the proposed project consistent with the procedures of SEQR. The following chart illustrates the application process.



Nearly all applications submitted by property owners to a Planning Board for local land use approvals are subject to at least the initial processing steps under SEQR and must be accompanied by a completed **Environmental Assessment Form** (EAF). This form helps the approving agency to determine the extent of review that will be required under SEQR. However, most applications to a Zoning Board - such as for individual setback and lot line variances and for an area variance for a single, two or three family home - are pre-defined as Type II actions and are not subject to review under SEQR.

SEQR time periods take precedence over time periods applicable to land use approvals. When a

proposed project has been determined to have potentially significant adverse environmental impacts, the SEQR process can be lengthy, up to or beyond a year to complete. On the other hand, deadlines for land use actions are relatively short. For example, a public hearing on a subdivision application must be held within 62 days of receipt of a complete application. On the surface, these time periods are in conflict. The courts have held, and NYS laws now provide, that the evaluation of the potential environmental impacts takes precedence over an applicant's right to a speedy decision and that SEQR's lengthier time periods prevail.

**NEED  
TO  
KNOW**

Regulations and timelines imposed by SEQR supercede other application deadlines. Until the environmental impact statement submitted by the applicant is deemed to be complete by the local approving agency, the underlying land use application is not complete and the time periods applying to that approval process do not begin to run.

A clerk's involvement in the SEQR process will vary by municipality but is often very significant. Clerks may be responsible for ensuring that the proper SEQR forms are submitted, for preparing and distributing the numerous notices required under the SEQR process, for coordinating reviews with other agencies and for posting notices of public hearings

This chapter presents a brief overview of SEQR and some of the important terms to give clerks a basic understanding of the environmental review process. For complete information on SEQR, go online to <http://www.dec.state.ny.us/website/dcs/seqr/>.

## **B. Basic SEQR Terms**

The following are some of the most frequently used terms in the SEQR process:

**Action** - Any project or physical activity that is directly undertaken, funded or approved by a state or local agency that may affect the environment. Actions include subdivision and site plan approvals and the issuance of special use permits and variances.

**Environmental Assessment Form (EAF)** - A form completed by an applicant to assist an agency in determining the environmental significance of a proposed action. A properly completed EAF must contain enough information to describe the proposed action and its location, purpose and potential impacts on the environment. There are two versions, a short EAF and a full EAF. A full EAF must be completed for all Type I actions and may be required for Unlisted Actions if the short EAF would not provide sufficient information.

**Classification** - The step in the SEQR process step when the approving agency places a proposed action into one of three categories: Type I, Type II or Unlisted.

**Determination of Significance** - The step in the SEQR process when the approving agency determines if the proposed action may or may not have a significant adverse impact on the environment.

**Environmental Impact Statement (EIS)** - A written document required to be prepared when an action may have a significant adverse impact on the environment. It fully describes the project and its environmental impacts, sets forth reasonable alternatives to the proposed action and sets forth how identified impacts can be mitigated. An EIS provides a means for agencies, project sponsors and the public to systematically consider significant adverse environmental impacts,

alternatives and mitigation strategies. A draft EIS is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment. The final EIS includes the responses to the comments.

**Involved Agency** - An agency that has jurisdiction by law to fund, approve or directly undertake an action.

**Lead Agency** - The agency that is principally responsible for undertaking, funding or approving an action. The lead agency is responsible for determining whether an environmental impact statement is required in connection with the action and for the preparation and filing of the statement if one is required.

## **C. Procedural Steps of SEQR**

### **CLASSIFICATION**

Applications for land use/zoning actions received by zoning and planning boards must be categorized as one of three types of actions: Type I, Type II or Unlisted. The classification of the action will determine the level of environmental review and the processing steps required by state law. Actions that may significantly impact the environment will require the preparation of an **environmental impact statement** (EIS).

**Type I actions** are actions which are more likely to have a significant impact on the environment, and are therefore more likely to require the preparation of an EIS. 6 NYCRR 617.4 lists statewide Type I actions.



In addition to the statewide list, local legislatures may add actions to the Type I list in their jurisdiction. However, if the local government chooses to adopt a local law that supplements the state list, the locality's list cannot be any less protective of the environment than the state's list. Be sure to check local lists for additional Type I actions.

**Type II actions** are exempt from SEQR review. 6 NYCRR 617.5 lists 37 statewide Type II actions. Included on this list are: construction or expansion of a single-family, two-family or a three-family residence on an approved lot; construction, expansion or placement of accessory residential structures such as a garage, pool or tennis court; maintenance and repairs that do not involve a substantial change to existing facilities; setback and lot line variances; area variances for up to a three-family residence; and construction of non-residential structures up to 4,000 square feet of gross floor area not involving a change in zoning or a use variance. Once an action is determined to be on the Type II list, no SEQR processing is required.

The local legislative body may expand the statewide Type II list as long as the local list is no less protective of the environment than the state's Type II list. Remember to check local lists for additional Type II actions.

**Unlisted Actions** are actions which are neither Type I or Type II. Unlisted actions can be processed without implementing the "Lead Agency" process, although it is good practice to follow a consistent Lead Agency process so as to integrate other involved agencies in the review.

## **ENVIRONMENTAL ASSESSMENT FORMS**

Applicants for land use actions that are identified as Type I or Unlisted will be required to submit an **Environmental Assessment Form (EAF)**. This form assists the approving agency in determining the environmental significance of the action; the form is normally submitted with the application. A completed full EAF is required for Type I actions. A short EAF is required for Unlisted actions although the approving board may request a full EAF if more detailed information is needed. A draft EIS must be submitted later in the SEQR process if the lead agency determines that the project may have a significant adverse impact on the environment.



An applicant may submit a draft EIS with the initial application in order to speed up the review process. If the applicant submits a draft EIS, the EAF requirement may be waived. SEQR forms are available at: <http://www.dec.state.ny.us/website/dcs/seqr/forms/>.

### **COORDINATED REVIEW**

Once an application has been submitted to the zoning or planning board and has been classified as Type I, coordinated review must be conducted if there are other involved agencies. An **involved agency** would include every state or local government that that must make a discretionary decision regarding the action, such as a permit from the County Health Department or a wetland permit from the NYS Department of Environmental Conservation. A list of the involved agencies is to be provided by the applicant; there is a question that requires identification of required approvals in the full EAF. If there is more than one involved agency, a **lead agency** must be chosen. The board with greatest jurisdiction should initiate the coordinated review process by circulating the application to all other involved agencies. The local board serving as the lead agency under SEQR will likely request the planning and zoning clerk to prepare and mail out the required SEQR notices.

**NEED  
TO  
KNOW**

The applicant should identify all involved agencies in the full Environmental Assessment Form.

Coordinated review is optional for Unlisted actions. If uncoordinated, all involved agencies work independently and determine the environmental significance of the project on their own. If every agency issues a **negative declaration**, determining that implementation of the action will not result in any significant adverse environmental impacts, the processing may continue with no further environmental review. However, if one agency issues a **positive declaration**, or decides that there is potential for significant adverse environmental impact, a lead agency must be chosen and a coordinated review must begin.

## LEAD AGENCY

If there is more than one involved agency, a **lead agency** must be chosen. The proposed lead agency must provide 30 days notice to other involved agencies to object or to consent to the designation. If there is a debate as to which involved agency will take lead agency responsibility under SEQR, any of the involved agencies can request the Commissioner of the Department of Environmental Conservation to designate a lead agency.

## DETERMINATION OF ENVIRONMENTAL SIGNIFICANCE

The lead agency must determine the significance of the action within 20 days of its establishment as lead agency or within 20 days of its receipt of all information it may reasonably need to make the determination, whichever occurs later. The lead agency may issue one of three determinations:

- Negative declaration
- Conditioned negative declaration (for Unlisted Actions only)
- Positive declaration.

When a **negative declaration** is issued, SEQR review comes to an end and the project returns to the normal land use approval process.

If a **positive declaration** is issued, the applicant must move into the next step of the SEQR process and prepare a draft EIS.

The lead agency can also issue a **conditioned negative declaration (CND)** for Unlisted Actions. This may be appropriate when the board can conclude that potentially significant environmental impacts can be mitigated by imposing conditions on the project. When a CND is issued, a draft EIS is not required and no further environmental review is necessary. A public comment period must remain open for 30 days after a CND has been issued.



6 NYCRR §617.12 sets forth specific procedures for preparing, filing and publishing SEQR documents.

## SCOPING

When a positive declaration is made, the lead agency or the applicant may choose to engage in a process of determining what the **scope** of the draft EIS should be. Although this step is not required, it is encouraged because it allows for early public input and clarifies which aspects of the project need to be evaluated for potential adverse impacts to the environment. A draft and final scope will be produced if the agency chooses to undergo the scoping process.



Once a draft scope has been completed, the lead agency has **60 days** to supply a final scope. The state suggests that a 20 day period for public review of the draft scope takes place before the final scope is issued. A copy of the draft scope must be made available to anyone who has written to express interest. A website posting would be appropriate.

## DRAFT ENVIRONMENTAL IMPACT STATEMENT

After a positive declaration has been issued, and a final written scope prepared, a draft EIS must be prepared and submitted. The draft EIS considers relevant environmental issues in sufficient detail to allow the agency to make an informed final decision on the project. Once a draft EIS is submitted, the lead agency has 45 days to make a decision on the completeness of the document. If the lead agency decides that the draft EIS is incomplete, the document must be revised and resubmitted. Upon resubmission, the lead agency has another 30 days to decide if the document is complete.



Once a draft Environmental Impact Statement is accepted as complete, other statutory time periods such as those applicable to subdivision or site plan application review, may run concurrently with the remaining steps under SEQR.

## NOTICE OF COMPLETION, PUBLIC COMMENT AND HEARING PROCEDURES

After the lead agency has accepted the draft EIS as complete, the agency must file a **notice of completion**. The draft EIS must then be made available for public review for a period of no less than 30 calendar days from the filing and circulation of the notice of completion. At this time, the lead agency must decide if a public hearing is to be held on the draft EIS. If a hearing is held, the lead agency must prepare and file notice of the hearing. The notice can be contained in the notice of completion of the draft EIS. The notice must be published in a newspaper of general circulation in the area of the action at least **14 calendar days** before the hearing. The public hearing can take place between **15 and 60 calendar days** after the filing of the notice of completion. When a public hearing is held, the public comment period must remain open at least **10 days** after the close of the public hearing. Clerks are advised to pay close attention to the time periods concerning public comment and hearing procedures.

Typically, members of the public will review the draft EIS and submit written comments to the lead agency on the adequacy of the review of the potential impacts.



While a public hearing on a draft EIS is optional under SEQR, the lead agency may decide to hold one in conjunction with a required public hearing on the application itself (i.e. subdivision, site plan or special use permit).

## FINAL ENVIRONMENTAL IMPACT STATEMENT

After the conclusion of the public comment period, the lead agency must prepare or cause to be prepared a final Environmental Impact Statement within **45 calendar days** of the close of any hearing or within **60 calendar days** after the filing of the draft EIS, whichever occurs later. As with the draft EIS, when the final EIS is completed, a notice of completion must be prepared, filed and published.



A final EIS need not be prepared if the proposed action has been withdrawn or, on the basis of the draft EIS and comments made thereon, the lead agency can determine that the action will not have an adverse impact on environment. A negative declaration must then be prepared, filed and published.

## FINDINGS AND DECISIONS

Before the lead agency can complete the SEQR process and make a decision concerning the proposed project, the lead agency must give the public and other agencies a reasonable time

period in which to consider the final EIS. The SEQR regulations provide that a reasonable time period is no fewer than **10 days**. After that period, and within **30 calendar days** after the filing of the final EIS, the lead agency must prepare and adopt a written findings statement. The findings statement certifies that the action, as may be modified in the findings statement, avoids or minimizes adverse environmental impacts to the maximum extent practicable.

No agency can make a final decision on whether to undertake, fund or approve the proposed action until 10 days have passed from circulation of the final EIS. Each involved agency must prepare and adopt its own findings statement. The decision on the application and the adoption of a findings statement can be made together.

#### **D. Filing Requirements of SEQR**

The Department of Environmental Conservation sets forth very specific procedures for preparing, filing and publishing SEQR documents. This section is meant to give a brief overview of the requirements. Please see 6 NYCRR §617.12 for the complete list of requirements. Please note that all SEQR documents must be **maintained** in files that are readily accessible to the public and must be made available upon request. The lead agency must also provide copies to the local public library if there is a high demand by the public to review such documents.

#### **CONTENT AND CIRCULATION**

Each negative declaration, positive declaration, notice of completion of an EIS, notice of a hearing and findings must **contain**:

- the name and address of the lead agency
- the name of a contact person
- a brief description of the action and
- the location of the action.

Part 617 states that copies of certain documents must be **forwarded** to involved agencies and other prescribed persons. Clerks may be responsible for correctly filing and distributing these documents. Type I negative declarations, conditioned negative declarations, positive declarations, notice of completion of EIS, notice of hearings and findings must be filed with:

- the chief executive officer of the political subdivision in which the action will be principally located
- the lead agency
- all involved agencies
- any person who has requested a copy and
- the applicant.

In addition, a copy of each EIS must be sent to:

NYS Department of Environmental Conservation  
Division of Environmental Permits  
625 Broadway  
Albany, NY 12233-1750.

**Notice** of certain declarations and of public hearings must also be made pursuant to the rules set forth in part 617. Notice of a public hearing must be published in a newspaper of general circulation at least 14 days in advance.



Zoning and planning boards may charge a fee for copying costs to people requesting documents. Please check with your local board's rules and procedures.

### **ENVIRONMENTAL NOTICE BULLETIN**

The Department of Environmental Conservation publishes an Environmental Notice Bulletin (ENB). The lead agency must provide the ENB with notice of Type I negative declarations, conditioned negative declarations, positive declarations and notice of completion of an EIS. These notices are then published in the ENB. Electronic submission is the preferred method of sending a notice to the ENB for publication. The address to use when submitting a notice is [enb@gw.dec.state.ny.us](mailto:enb@gw.dec.state.ny.us). The ENB no longer accepts faxes. Notices may also be submitted by first class mail to:

Environmental Notice Bulletin  
NYS Department of Environmental Conservation  
4th Floor, 625 Broadway  
Albany, NY 12233-1750.



Local law may require additional types of notice, such as posting on bulletin boards or publication in an additional newspaper.

### **EIS POSTING ON INTERNET WEBSITE**

A new state law effective February 26, 2006 requires municipalities to post on an Internet website all draft and final environmental impact statements (EIS). The posting of the final EIS must include all public comments made on the draft EIS. Further, notices of filings and of the availability of an EIS must include the website address where the EIS can be accessed. The law provides that the Internet provisions may be waived where impracticable.

The new law will undoubtedly serve to increase public access to public documents. However, to avoid more cumbersome work at the local level, municipalities may want to consider amending local subdivision regulations and site plan regulations to accommodate this new requirement by requiring that applicants submit documents digitally in a form ready to be posted on a website, in addition to the routine hard copy versions.



## **VI. PROFILES OF COUNTY, STATE, REGIONAL AND NATIONAL AGENCIES**

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### **A. Westchester County**

#### WESTCHESTER COUNTY DEPARTMENT OF PLANNING

[www.westchestergov.com/planning](http://www.westchestergov.com/planning)

The mission of the Department of Planning is to develop and implement policies, programs and projects that protect and improve the quality of life in Westchester County and result in more livable and sustainable communities. This mission is carried out in three main areas – Land Use and Development, Environment and Housing. Activities within each of these areas focus on the existing pattern of development and the natural environment and ways in which buildings, transportation and open space can be shaped to achieve a physical environment that fosters smart growth for all county residents. The policies and programs in each of the three areas utilize the expertise of the Design and Administration sections. Achievement of the Department’s mission requires working closely with other county departments, the 45 municipalities and the private and non-profit sectors. The Department supports the efforts of a wide array of citizen boards including the County Planning Board.

The Planning Department processes municipal referrals of land use and zoning matters to the Planning Board as mandated by law. In addition, the Department provides:

- Advice and technical assistance on land use and development matters
- Environmental reviews and assistance on wetland and stormwater management issues
- Watershed planning coordination
- Water quality education
- Maps and aerial photographs
- Farmland protection assistance
- Urban and landscape design assistance
- Information on the County’s capital funding program
- Data on demographic, economic and social characteristics and trends
- Oversight of the Community Development Block Grant Program for 40 municipalities
- Section 8 rental assistance
- Numerous housing programs to promote and establish affordable, safe and sanitary housing.

Westchester County Department of Planning  
432 Michaelian Office Building  
148 Martine Avenue  
White Plains, NY 10601  
(914) 995-4400

#### WESTCHESTER MUNICIPAL PLANNING FEDERATION

[www.westchestergov.com/planning/regionalplan](http://www.westchestergov.com/planning/regionalplan)

The Westchester Municipal Planning Federation, established in 1962, is a voluntary association of local governments, local officials and private planners. The fundamental purpose of the Federation is “to create an effective and permanent County-wide organization for the exchange of information on matters of planning interest.” The Federation:

- Sponsors training on planning and zoning
- Sponsors meetings to discuss planning and zoning matters of interest to municipal officials
- Sponsors mailings on legislative matters, court decisions and State and Federal funding programs related to planning
- Administers a planning achievement awards program that recognizes and brings to countywide attention municipal planning functions
- Sponsors a Planner’s Luncheon Series to promote planning and zoning issues that are of interest to planning professionals.

Executive Director  
Westchester Municipal Planning Federation  
c/o Westchester County Department of Planning  
432 Michaelian Office Building  
148 Martine Avenue  
White Plains, NY 10601  
(914) 995-4424

#### WESTCHESTER COUNTY SOIL AND WATER CONSERVATION DISTRICT

[www.westchestergov.com/planning/environmental](http://www.westchestergov.com/planning/environmental)

- Addresses concerns related to surface water/stormwater management, wetlands protection, soils capability, and stream protection
- Prepares comprehensive (intermunicipal) watershed models and plans for surface water management
- Advises local governments regarding resource protection
- Prepares technical manuals relating to management practices, environmental protection, soil erosion and sediment control, and resource materials
- Conducts technical training and seminars

District Manager  
Westchester Soil and Water Conservation District  
432 Michaelian Office Building  
148 Martine Avenue  
White Plains, NY 10601  
(914) 995-4423

#### WESTCHESTER COUNTY ENVIRONMENTAL MANAGEMENT COUNCIL

[www.westchestergov.com/planning/environmental](http://www.westchestergov.com/planning/environmental)

The Environmental Management Council (EMC) acts as focal point for citizen concerns regarding protection and improvement of the natural and man-made environment. Members of the Council are appointed for two years by the County Executive upon the nomination of the chief elected municipal official. Appointees are members of local conservation advisory councils or boards. The Council:

- Works with local conservation advisory councils
- Conducts studies and investigates environmental factors and natural resources
- Prepares maps and reports
- Reviews pending actions within the County that may affect the environment
- Advises County government on environmental protection policies and sound use of natural resources
- Provides environmental information, assistance, and training on SEQR, groundwater, wetlands, coastal management and planning, aerial photography and bedrock geology

Chair, EMC c/o Westchester County Department of Planning  
432 Michaelian Office Building  
148 Martine Avenue  
White Plains, NY 10601  
(914) 995-4424

#### HISTORIC RIVER TOWNS OF WESTCHESTER

[www.hudsonriver.com/rivertowns/welcome.html](http://www.hudsonriver.com/rivertowns/welcome.html)

The HRTW is a non-profit organization, formed in 1994, comprised of representatives of 13 municipalities along the east bank of the Hudson River including the non-profit organization Historic Hudson Valley. The unique combination of riverine environment and cultural wealth has been attracting visitors to the HRTW region for years. HRTW provides area-wide comprehensive and coordinated tourism marketing efforts.

Chair c/o Westchester County Department of Planning

432 Michaelian Office Building  
148 Martine Avenue  
White Plains, NY 10601  
(914) 995-2090

#### NORTHERN WESTCHESTER WATERSHED COMMITTEE

[www.westchestergov.com/planning/watershed](http://www.westchestergov.com/planning/watershed)

The Northern Westchester Watershed Committee (NWWC) is Westchester's forum to oversee implementation of the historic New York City Watershed Memorandum of Agreement (MOA). The chief elected official (or an appointed designee) of the 12 Westchester County municipalities that have land area within the Croton and Kensico watersheds meet to discuss issues related to watershed protection and local involvement, including the Croton Plan for watershed protection. The County Department of Planning serves as facilitator and staff for this forum. Meetings are typically held on the second Tuesday of each month.

Chair c/o Westchester County Department of Planning  
432 Michaelian Office Building  
148 Martine Avenue  
White Plains, NY 10601  
(914) 995-4425

#### WESTCHESTER COUNTY DEPARTMENT OF PUBLIC WORKS (DPW)

[www.westchestergov.com/dpw](http://www.westchestergov.com/dpw)

The DPW has jurisdiction over approximately 160 miles of County roadway. Rules and regulations to control development affecting County roads are contained in Section 239-K of the General Municipal Law. Work related to County roads or drainage channels must be approved by the DPW before the local municipality administers a building permit. The Traffic Engineering and Highway Safety Division of the Public Works Department supervises signs, signals and safety improvements, collects safety data and conducts traffic studies.

Westchester County Department of Public Works  
500 Michaelian Office Building  
148 Martine Avenue  
White Plains, NY 10601  
(914) 995-2545

#### WESTCHESTER COUNTY DEPARTMENT OF HEALTH

[www.westchestergov.com/health/](http://www.westchestergov.com/health/)

The Department of Health administers and enforces Chapter 873, Article X of the laws of Westchester County, Sanitary Code, concerning Realty Subdivision provisions. Under these provisions, the Department's Bureau of Environmental Quality reviews and approves subdivision plans before they may be filed with the County Clerk.

Health Department Central Office  
8<sup>th</sup> Floor  
145 Huguenot Street  
New Rochelle, NY 10801  
(914) 813-5000

#### WESTCHESTER COUNTY OFFICE OF ECONOMIC DEVELOPMENT

[economic.westchestergov.com/home](http://economic.westchestergov.com/home)

The Office of Economic Development provides direct business assistance and provides contacts to other local, state and federal agencies.

Salvatore J. Carrera, Director  
Office of Economic Development  
900 Michaelian Office Building

148 Martine Avenue  
White Plains, NY 10601  
(914) 995-2963

#### WESTCHESTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

IDAs are public benefit corporations that can issue Industrial Revenue Bonds to finance the purchase of land, new construction, acquisition and renovations of existing structures and purchase of machinery and equipment. Bond financing for qualified manufacturing projects can be exempt from federal, state and local taxes. The IDA can assist not-for-profit organizations.

Theresa Waivada, Executive Director  
900 Michaelian Office Building  
148 Martine Avenue  
White Plains, NY 10601  
(914) 995-2936

### **B. New York State**

#### NEW YORK STATE DEPARTMENT OF STATE

[www.dos.state.ny.us](http://www.dos.state.ny.us)

Divisions of Local Government Services

[www.dos.state.ny.us/lgss/index.htm](http://www.dos.state.ny.us/lgss/index.htm)

- Provides land use government management and general information services to municipalities, state-wide organizations and non-profit entities
- Provides technical assistance, information and training in planning and land use powers of local government through zoning, subdivision and other land use regulations
- Operates a self-help support system to help small communities alleviate water supply and waste water problems
- Administers the Quality Communities Initiative

Division of Local Government Services  
41 State Street  
Albany, NY 12231-0001  
(518) 473-3355

Division of Coastal Resources

[nyswaterfronts.com/index.asp](http://nyswaterfronts.com/index.asp)

- Administers the Coastal Management Program that serves to encourage the protection of valuable resources and promote the formation and expansion of capital investment in waterfront areas for appropriate development. The program enables New York and its communities to use new and effective approaches for increasing cooperation to solve complex waterfront issues
- Administers the Local Waterfront Revitalization Program (LWRP). Waterfront communities are encouraged to prepare a local program with federal funding provided through the Department of State on a 50-50 matching basis. A community with an LWRP approved by the Secretary of State is eligible to receive grants for program implementation.

Division of Coastal Resources

162 Washington Avenue

Albany, NY 12231

(518) 474-3643

Committee on Open Government

[www.dos.state.ny.us/coog/coogwww.html](http://www.dos.state.ny.us/coog/coogwww.html)

- The Committee on Open Government is responsible for overseeing and advising with regard to the Freedom of Information, Open Meetings and Personal Privacy Protection Laws (Public Officers Law, Articles 6, 7 and 6-A respectively).
- The [Freedom of Information Law](#) pertains to the public's right to government records; the [Open Meetings Law](#) concerns the public's right to attend meetings of public bodies. Both of these statutes are based upon a presumption of access and, since their initial enactment, have undergone significant changes based largely upon recommendations made by the Committee

Committee on Open Government

41 State Street

Albany, NY 12231

(518) 474-2518

NEW YORK STATE DEPARTMENT OF TRANSPORTATION (DOT)

[www.dot.state.ny.us](http://www.dot.state.ny.us)

The Department of Transportation, under Section 452 of the Highway Law of New York State, sets forth policies and standards for the issuance of required permits for entrances and exits on State highways and parkways. (The Bronx River Parkway is under Westchester County jurisdiction.) Westchester County is in Region 8 of the DOT. Two sub-region offices have resident engineers who review permits for work that affects State highways. The objectives of the State DOT are to:

- Provide maximum protection of the public through the orderly control of traffic movements on, to, and from State highways
- Provide a uniform practice throughout the State for design and construction of entrances and exits on State highways
- Ensure that the necessary drainage on these roads is provided

Region 8 Office

New York State Department of Transportation

4 Burnett Boulevard

Poughkeepsie, NY 12603

(914) 421-5750

Northern Westchester Resident Engineer  
New York State DOT  
NYS Route 100  
Katonah, NY 10536  
(914) 232-3060

Southern Westchester Resident Engineer  
New York State DOT  
Saw Mill River Road  
Valhalla, NY 10595  
(914) 592-6557

#### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC)

[www.dec.state.ny.us](http://www.dec.state.ny.us)

DEC is one of New York State's major regulatory agencies. The Department has permit-granting authority over a wide range of activities that relate to the use of air, land and water. The primary objective in reviewing projects is to ensure that development takes place in an environmentally sound manner in accordance with provisions of the State Environmental Conservation Law. This agency also oversees the New York State Environmental Quality Review Act (SEQR) procedures and promulgates the rules and regulations for SEQR compliance. The DEC Division of Regulatory Affairs handles most permits associated with development through nine regional offices. Westchester County is in DEC Region 3. DEC publishes a variety of pamphlets on its permit authority and other activities. These can be obtained from the regional office.

Important permits that are under DEC control are:

- Activities involving tidal or freshwater wetlands. A permit is required for any action in or adjacent to all tidal wetlands and freshwater wetlands of 12.4 acres or greater
- State Pollution Discharge Elimination System (SPDES) permit. Required for discharge of treated wastewater or sewage effluent from an industry and subsurface discharge of 1,000 or more gallons per day of wastewater or sewage from non-residential development. Individual subsurface disposal systems (septic systems) for residential lots do not need DEC approval, but do require County Health Department approval.

NYS DEC, Region 3  
21 South Putt Corners Road  
New Paltz, NY 12561  
(914) 255-5453

NYS DEC, Region 3 Sub-Office  
200 White Plains Road  
Tarrytown, NY 10591  
(914) 332-1835

#### NEW YORK PLANNING FEDERATION

[www.nypf.org](http://www.nypf.org)

The New York Planning Federation is a unique educational association formed in 1936. Its membership is open to municipalities having planning or zoning boards, county and regional planning commissions and individuals (currently 9,600 members representing over 550 municipalities throughout the State). The Federation's objectives are to:

- Provide education and information in regional, urban, rural and local planning so that sound practices and effective administration of planning and zoning will lead to orderly growth and development of communities
- Serve as a resource for information on the purposes and techniques of planning, zoning and land use control
- Provide a forum for the exchange of experiences in the handling of the common problems of communities
- Serve as a statewide voice for the planning and zoning boards of New York State
- Conducts an Annual Planning and Zoning Institute.
- Publishes PLANNING NEWS, a bi-monthly newsletter.

Executive Director  
New York Planning Federation  
279 River Street, Suite 302  
Troy, NY 12180  
(518) 270-9855

## **C. Regional**

### NEW YORK METROPOLITAN TRANSPORTATION COUNCIL (NYMTC)

[www.nymtc.org](http://www.nymtc.org)

NYMTC is an organization of elected officials and transportation agencies that guide the federally supported transportation planning process in New York City, Nassau, Putnam, Suffolk, Rockland and Westchester counties. It is the responsibility of NYMTC to maintain the eligibility of its member agencies and operators to receive federal transportation funds for planning, capital improvements and operations. The Council provides member services through:

- Three Transportation Coordinating Committees (TCCs), one each for Mid-Hudson South (Westchester, Rockland and Putnam), New York City and Nassau-Suffolk. The members are the principal elected officials and transportation agencies. Members of the TCCs join together to make up the Council.
- A Program, Finance and Administration Committee (PFAC) composed of representatives from the NYS DOT, Metropolitan Transportation Authority (MTA) and a member from each of the three TCCs. The PFAC meets bi-monthly to provide policy guidance to the central staff of the MPO, and enables members to interact with the central staff to ensure the services provided are in the best interest of the transportation agencies and operators.
- A Central Staff of engineering, planning, accounting and administrative professionals who are responsible for conducting the daily business of the Council.
- Transportation-related services, such as the monitoring and reporting of regional population and economic trends are also provided to Council members, and to non-members on a fee basis.

Director  
New York Metropolitan Transportation Council  
199 Water Street, 22nd Floor  
New York, NY 10038  
(212) 383-7200

### REGIONAL PLAN ASSOCIATION

[www.rpa.org](http://www.rpa.org)

Regional Plan Association (RPA) is an independent, not-for-profit regional planning organization that promotes the quality of life and the economic competitiveness of the 31-county New York-New Jersey-Connecticut region through research, planning and advocacy. The RPA advocates planning solutions the region will need in the years to come by mobilizing the region's civic, business and government sectors to take action. RPA's current work is aimed largely at implementing the ideas put forth in the Third Regional Plan with efforts focused in design, open space, transportation, workforce and housing.

Regional Plan Association  
4 Irving Place, 4th Floor  
New York, NY 10003  
(212) 253-2727

## HUDSON RIVER VALLEY GREENWAY COUNCIL

[www.hudsongreenway.state.ny.us](http://www.hudsongreenway.state.ny.us)

The mission of the Hudson River Greenway Council, created by New York State, is to strengthen the ability of communities in the Hudson Valley to shape their future by supporting the development of effective long term planning. With technical assistance and funding opportunities, the Council supports local and regional planning efforts that embrace a future of sustainable economic development, environmental protection and social well-being for Hudson River Valley residents.

The Greenway Compact program was developed by the Hudson River Valley Greenway to take community planning one step further by providing a process for voluntary regional cooperation to further the Greenway criteria of natural and cultural resource protection, regional planning, economic development, public access, and heritage and environmental education. For communities that choose to participate, a variety of financial and procedural benefits are available. The *Greenprint for a Sustainable Future*, the Westchester County Greenway Compact Plan, was adopted by the Hudson River Valley Greenway on June 9, 2004, making Westchester County one of only two counties in the 13-county Hudson River Valley Greenway to have an adopted Compact Plan. As of February 2006, 15 Westchester municipalities have adopted the plan by local law, elevating their Greenway status from "Greenway Community" to "Greenway Compact Community." Compact Communities qualify for many important benefits not available to Greenway Communities.

NYS Hudson River Valley Greenway Council  
Capitol Building, Capitol Station, Room 254  
Albany, NY 12224  
(518) 473-3835

## MTA METRO-NORTH RAILROAD

[www.mta.nyc.ny.us/mnr](http://www.mta.nyc.ny.us/mnr)

MTA Metro-North Railroad, the second largest commuter railroad in the United States, provides 250,000 customer trips each weekday and 73,000,000 trips per year. A subsidiary of New York State's Metropolitan Transportation Authority, Metro-North was founded in 1983 when the MTA assumed control of Conrail commuter operations in the states of New York and Connecticut. With 384 route miles, Metro-North serves 120 stations in seven counties in New York and two counties in Connecticut with three lines east of the Hudson River (Hudson, Harlem and New Haven) terminating at Grand Central Terminal and two lines west of the Hudson (Port Jervis and Pascack Valley) terminating at New Jersey Transit's terminal in Hoboken.

(800) METRO-INFO

## **D. National**

### AMERICAN PLANNING ASSOCIATION

[www.planning.org](http://www.planning.org)

[www.nyplanning.org](http://www.nyplanning.org)

The APA is a nationwide professional organization available to individuals and organizations with an interest in the field of planning. It is organized to advance the art and science of planning at the local, regional, state and national levels. Services provided by the APA include PAS, the Planning Advisory Service which produces reports on current subjects related to planning. The Westchester County Department of Planning subscribes to this service and reports are kept on file in the Department's library which is open to the public. Other publications and services of the APA are

- Planning Magazine
- Zoning News
- Land-Use Law and Zoning Digest
- Planner Training Sessions
- Educational Programs and public information
- Regional and national conferences

The American Institute of Certified Planners (AICP) is a unit of APA for members who have met the required qualifications of education, experience and examination in the field of planning. A test is required for membership. The goal of the AICP is the continued evolution of the profession in the techniques, responsibilities and content of planning work in order to keep ahead of the rapidly evolving demands of community life.

American Planning Association  
122 S. Michigan Ave., Suite 1600  
Chicago, IL 60603  
(312) 431-9100

APA New York Metro Chapter  
Steven L. Newman Hall  
137 East 22nd Street, Room 313  
New York, NY 10010  
(212) 228-5084

#### URBAN LAND INSTITUTE

[www.uli.org](http://www.uli.org)

The Urban Land Institute is a non-profit research and education organization supported by its members. Founded in 1936, the institute has more than 28,000 members worldwide representing the entire spectrum of land use and real estate development disciplines, working in private enterprise and public service. ULI is a multidisciplinary real estate forum which facilitates the open exchange of ideas, information and experience among local, national and international industry leaders and policy makers dedicated to creating better places. The mission of the Urban Land Institute is to provide responsible leadership in the use of land to enhance the total environment.

Urban Land Institute  
1025 Thomas Jefferson Street, NW  
Suite 500 West  
Washington, DC 20007  
(202) 624-7000

#### UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[www.hud.gov](http://www.hud.gov)

Federal grants for planning and community development are administered by the Department of Housing and Urban Development (HUD). HUD administers a wide-range of federal aid programs covering:

- Community development and facilities
- Public and publicly assisted housing
- Economic development
- Federal flood insurance programs.

HUD New York City Regional Office  
26 Federal Plaza, Room 3541  
New York, NY 10278  
(212) 264-8000

#### UNITED STATES ARMY CORPS OF ENGINEERS

[www.usace.army.mil](http://www.usace.army.mil)

The Army Corps of Engineers oversees a wide range of military construction and civil works activities. Its New York District provides military design and construction support for the Army and Air Force in New York, New Jersey and New England, and supports water resource development and conservation programs in eastern New York, northern New Jersey and western Vermont. The Corps:

- Issues permits for construction of water-related structures
- Prevents and controls flood damage
- Provides information regarding flood plain management

- Restores and preserves coastlines

US Army Corps of Engineers New York District  
26 Federal Plaza, Room 2109  
New York, NY 10278  
(917) 790-8799

#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

[www.epa.gov/epahome](http://www.epa.gov/epahome)

The mission of the Environmental Protection Agency is to protect human health and the environment. Since 1970, EPA has been working for a cleaner, healthier environment for the American people. EPA employs 18,000 people across the country.

Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
(202) 272-0167

EPA Region 2 Office  
290 Broadway  
New York, NY 10007-1866  
(212) 637-3000

## VII. GLOSSARY

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The following terms should be helpful in navigating through the Land Use system:

**Accessory Apartment.** A second residential unit that may be contained within an existing single-family home, garage, or carriage house. An accessory apartment is usually required to be a complete housekeeping unit that can function independently, with separate access, kitchen, bedroom, and sanitary facilities.

**Accessory Use.** The use of land that is subordinate, incidental to, and customarily found in connection with the principal use allowed on a lot by the zoning law. A garage is incidental to the principal use of a lot as a single-family residence and is customarily found on a single-family parcel.

**Action.** Under the State Environmental Quality Review Act, any project or physical activity that is directly undertaken, funded, or approved by a state or local agency that may affect the environment. Actions include planning and policy-making activities and the adoption of rules and regulations that may affect the environment.

**Administrative Body.** A body created by local legislatures to undertake administrative functions such as the review of applications for site plans, subdivisions, and special use permits. See “Reviewing Board.”

**Adult Use.** A business that provides sexual entertainment or services to customers. Adult uses include: X-rated video shops and bookstores, live or video peep shows, topless or fully nude dancing establishments, combination book/video and “marital aid” stores, non-medical massage parlors, hot oil salons, nude modeling studios, hourly motels, body painting studios, swingers clubs, X-rated movie theaters, escort service clubs, and combinations thereof.

**Advisory Opinion.** A report by a local administrative body, which does not have the authority to issue permits or adopt laws and regulations, prepared for the consideration by a local body that does.

**Aesthetic Resources.** Natural resources such as open vistas, woods, scenic viewsheds, and attractive man-made settings whose appearance is an important ingredient in the quality of life of a community.

**Affordable Housing.** Housing developed through some combination of zoning incentives, cost-effective construction techniques, and governmental subsidies which can be rented or purchased by households who cannot afford market-rate housing in the community.

**Agency.** Under the State Environmental Quality Review Act (SEQR), any state or local agency – including zoning boards of appeals, local legislatures, planning boards, and, under certain circumstances, even building inspectors – that makes discretionary decisions that may affect the environment. These agencies are subject to SEQR regulations whenever taking an “action.”

**Aggrieved Party.** Only aggrieved parties may appeal a reviewing body or local legislature’s land use decision to the courts. The decision must result in some demonstrable harm to the party that is different from the impact of the decision on the community as a whole.

**Agricultural Land Protection.** Any law, regulation, board, or process that has as its objective the preservation of farming on land dedicated to agricultural use. Examples include agricultural zoning, farmland preservation boards, property tax relief for farmers, and anti-nuisance laws.

**Agricultural Zoning District.** A designated portion of the municipality where agricultural uses are permitted as-of-right and non-farm land uses either are prohibited or are allowed subject to limitations or conditions imposed to protect the business of agriculture.

**Amortization of Nonconforming Uses.** Nonconforming uses that are particularly inconsistent with zoning districts within which they exist and are not immediately dangerous to public health or safety may be terminated or amortized within a prescribed number of years. This amortization period allows the landowner to recoup some or all of his investment in the offensive nonconforming use.

**Appellate Jurisdiction.** A zoning board of appeals has appellate jurisdiction to review determinations of the zoning enforcement officer. Denials of building permits and determinations that proposed land uses do not meet the zoning law's standards may be appealed to the zoning board of appeals. Land use decisions of the zoning board of appeals, planning board, and local legislature may be appealed to the courts, which exercise appellate jurisdiction over them.

**Approval.** A discretionary decision made by a local agency to issue a permit, certificate, license, lease, or other entitlement or to otherwise authorize a proposed project or activity.

**Architectural Review Board.** A body that reviews proposed developments for their architectural congruity with surrounding developments and either renders an advisory opinion on the matter or is authorized to issue or deny a permit. Its review is based upon design criteria or standards adopted by the local legislature.

**Area Variance.** A variance that allows for the use of land in a way that is not permitted by the dimensional or physical requirements of the zoning law. This type of variance is needed when a building application does not comply with the setback, height, lot, or area requirements of the zoning law. For example, if an owner wants to build an addition to a house that encroaches into the side-yard setback area, that owner must apply to the zoning board of appeals for an area variance.

**Article 78 Proceeding.** Article 78 of the Civil Practice Law and Rules allows aggrieved persons to bring an action against a government body or officer. This device allows review of state and local administrative proceedings in court.

**As-of-Right Use.** A use of land that is permitted as a principal use in a zoning district. In a single-family district, the construction of a single-family home is an as-of-right use of the lot.

**Buffer.** A designated area of land that is controlled by local regulations to protect an adjacent area from the impacts of development.

**Building Area.** The total square footage of a parcel of land which is allowed by the regulations to be covered by buildings and other physical improvements.

**Building Code.** The Uniform Fire Prevention and Building Code, as modified by local amendments. This code governs the construction details of buildings and other structures in the interests of the safety of the occupants and the public. A local building inspector may not issue a

building permit unless the applicant's construction drawings comply with the provisions of the building code.

**Building Height.** The vertical distance from the average elevation of the proposed finished grade along the wall of a building or structure to the highest point of the roof, for flat roofs, or to the mean height between eaves and ridge, for gable, hip, and gambrel roofs.

**Building Inspector.** The local administrative official charged with the responsibility of administering and enforcing the provisions of the building code. In some communities, the building inspector may also be the zoning enforcement officer.

**Building Permit.** A permit that must be issued by a municipal agency or officer before activities such as construction, alteration, or expansion of buildings or improvements on the land may legally commence.

**Bulk Regulations.** The controls in a zoning district governing the size, location, and dimensions of buildings and improvements on a parcel of land.

**Bulk Variance.** See "Area Variance."

**Capital Budget.** The municipal budget that provides for the construction of capital projects in the community.

**Capital Project.** Construction projects including public buildings, roads, street improvements, lighting, parks, and their improvement or rehabilitation paid for under the community's capital budget.

**Cellular Facility.** An individual cell of a cellular transmission system that includes a base station, antennae, and associated electronic equipment that sends to and receives signals from mobile phones.

**Central Business District (CBD).** The traditional business core of a community, characterized by a relatively high concentration of business activity within a relatively small area. The CBD is usually the retail and service center of a community. Because of its compactness, there is usually an emphasis on pedestrian traffic in the CBD.

**Certificate of Occupancy.** A permit that allows a building to be occupied after its construction or improvement. It certifies that the construction conforms to the building code and is satisfactory for occupancy.

**City Council.** See "Local Legislature."

**Cluster Subdivision.** The modification of the arrangement of lots, buildings, and infrastructure permitted by the zoning law to be placed on a parcel of land to be subdivided. This modification results in the placement of buildings and improvements on a part of the land to be subdivided in order to preserve the natural and scenic quality of the remainder of the land.

**Components.** Elements of a comprehensive plan that are suggested by state law.

**Comprehensive Plan.** A written document that identifies the goals, objectives, principles, guidelines, policies, standards, and strategies for the growth and development of the community.

**Condition.** A requirement or qualification that is attached to a reviewing board’s approval of a proposed development project. A condition must be complied with before the local building inspector or department can issue a building permit or certificate of occupancy.

**Conditional Use Permit.** See “Special Use Permit.”

**Conditioned Negative Declaration (CND).** Under the State Environmental Quality Review Act, a CND is a negative declaration issued by a “lead agency” for an “unlisted action.” This involves an action that, as initially proposed, may result in one or more significant adverse environmental impacts but that, when modified by mitigation measures required by the lead agency, will result in no significant adverse environmental impacts.

**Conservation Advisory Council (CAC).** A body created by the local legislature to advise in the development, management, and protection of the community’s natural resources and to prepare an inventory and map of open spaces.

**Conservation Board.** Once the local legislature has reviewed and approved an open-space inventory and map, it may designate the conservation advisory council as a conservation board and authorize it to review and comment on land use applications that affect community open space.

**Conservation Easement.** A voluntary agreement between a private landowner and a municipal agency or qualified not-for-profit corporation to restrict the development, management, or use of the land. The agency holds the interest and is empowered to enforce its restrictions against the current landowner and all subsequent owners of the land.

**Conservation Overlay Zones.** In conservation overlay zones, the legislature adopts more stringent standards than those contained in the underlying zoning districts as necessary to preserve identified resources and features in need of conservation or preservation.

**Critical Environmental Area (CEA).** A specific geographic area designated by a state or local agency as having exceptional or unique environmental characteristics. In establishing a CEA, the fragile or threatened environmental conditions in the area are identified so that they will be taken into consideration in the site-specific environmental review under the State Environmental Quality Review Act.

**Cumulative Impact Analysis.** In conducting an environmental review of a proposed project, its negative impacts on the environment may be considered in conjunction with those of nearby or related projects to determine whether, cumulatively, the adverse impacts are significant and require the preparation of an environmental impact statement.

**Decision.** The final determination of a local reviewing body or administrative agency or officer regarding an application for a permit or approval.

**Deed Restrictions.** A covenant or restriction placed in a deed that restricts the use of the land in some way. These are often used to insure that the owner complies with a condition imposed by a land use body.

**Density Bonus.** See “Incentive Zoning.”

**Density.** The amount of development permitted per acre on a parcel under the zoning law. The density allowed could be, for example, four dwelling units per acre or 40,000 square feet of commercial building floor per acre.

**Determination.** A decision rendered by an officer or administrative body on an application or a request for a ruling.

**Development Overlay Zones.** In development overlay zones, the legislature may provide incentives, such as density bonuses or waivers of certain zoning requirements, for developers who build the type of development desired.

**District.** A portion of a community identified on the locality's zoning map within which one or more principal land uses are permitted along with their accessory uses and any special land uses permitted by the zoning provisions for the district.

**Dwelling Unit.** A unit of housing with full housekeeping facilities for a family.

**Easement.** An easement involves the right to use a parcel of land to benefit an adjacent parcel of land, such as to provide vehicular or pedestrian access to a road or sidewalk. Technically known as an easement appurtenant.

**Eminent Domain.** The government's right to take title to private property for a public use upon the payment of just compensation to the landowner.

**Enabling Act.** Legislation passed by the New York State Legislature authorizing counties, cities, towns, and villages to carry out functions in the public interest. The power to adopt comprehensive plans, zoning ordinances, and land use regulations is delegated to towns, villages, and cities under the Town Law, Village Law, General City Law, and Municipal Home Rule Law.

**Environment.** The environment is defined broadly under the State Environmental Quality Review Act to include the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution, or growth, existing community or neighborhood character, and human health.

**Environmental Assessment Form (EAF).** As used in the State Environmental Quality Review Act process, this is a form completed by an applicant to assist an agency in determining the environmental significance of a proposed action. A properly completed EAF must contain enough information to describe the proposed action and its location, purpose, and potential impacts on the environment.

**Environmental Impact Statements (EIS).** A written "draft" or "final" document prepared in accordance with the State Environmental Quality Review Act. An EIS provides a means for agencies, project sponsors, and the public to systematically consider significant adverse environmental impacts, alternatives, and mitigation strategies. An EIS facilitates the weighing of social, economic, and environmental factors in the planning and decision-making process. A draft EIS (DEIS) is the initial statement prepared by either the project sponsor or the lead agency and circulated for review and comment before a final EIS (FEIS) is prepared.

**Environmental Quality Review.** The process that reviewing boards must conduct to determine whether proposed projects may have a significant adverse impact on the environment and, if they

do, to study these impacts and identify alternatives and mitigation conditions that protect the environment to the maximum extent practicable.

**Environmental Review.** The State Environmental Quality Review Act requires local agencies that review applications for land use approvals to take a hard look at the environmental impact of proposed projects. Where the proposed project may have a significant adverse impact on the environment, the agency must prepare an environmental impact statement before approving the project. The adoption of comprehensive plans, zoning amendments, and other land use regulations is also subject to environmental review.

**Exclusionary Zoning.** When a community fails to accommodate, through its zoning law, the provision of affordable types of housing to meet proven regional housing needs, that community is said to practice exclusionary zoning.

**Executive Session.** A meeting, or part of a meeting, that is closed to the public because the topics to be discussed involve real estate, litigation, or sensitive personnel matters.

**Facilitation.** A process of decision-making guided by a facilitator who insures that all affected individuals and groups are involved in a meaningful way and that the decisions are based on their input and made to achieve their mutual interests. Facilitators may be neutral outside third parties or community leaders trained or experienced in the process.

**Family.** One or more persons occupying a dwelling as a single housekeeping unit.

**Final Plat Approval.** The approval by the authorized local reviewing body of a final subdivision drawing or plat that shows the subdivision, proposed improvements, and conditions as specified in the locality's subdivision regulations and as required by that body in its approval of the preliminary plat.

**Floating Zone.** A zoning district that is added to the zoning law but "floats" until an application is made to apply the new district to a certain parcel. Upon the approval of the application, the zoning map is amended to apply the floating district to that parcel of land.

**Floodplain.** The area on the sides of a stream, river, or watercourse that is subject to periodic flooding. The extent of the floodplain is dependent on soil type, topography, and water flow characteristics.

**Floor Area Ratio (FAR).** The gross floor area of all buildings permitted on a lot divided by the area of the lot. In zoning, the permitted building floor area is calculated by multiplying the maximum FAR specified for the zoning district by the total area of the parcel. A permitted FAR of 2 would allow the construction of 80,000 square feet of floor space on 40,000 square feet of land ( $40,000 \times 2 = 80,000$ ).

**Freedom of Information Law.** The Freedom of Information Law requires that the public be provided access to governmental records, including local land use documents, such as photos, maps, designs, drawings, rules, regulations, codes, manuals, reports, files, and opinions. Public access may be denied if it would constitute an invasion of privacy.

**Freshwater Wetlands Regulation.** Laws passed by federal, state, and local governments to protect wetlands by limiting the types and extent of activities permitted within wetlands. These laws require landowners to secure permits before conducting many activities, such as draining, filling, or constructing buildings.

**Frontage.** Zoning laws typically require that developable lots have a specified number of linear feet that front on a dedicated street. A 100-foot frontage requirement means that a lot must have 100 linear feet on the side of the parcel that fronts on a street.

**Goals.** Broad statements of ideal future conditions that are desired by the community and that are contained in the comprehensive plan. For example, a community may have a goal of “providing an ample stock of affordable housing.”

**Group Home.** Residences for a variety of special populations in need of supervised living facilities. Individuals residing in group homes may be mentally or physically disabled, recovering substance abusers, teenaged mothers, or victims of domestic violence. Able-bodied elderly persons, college students, young professionals, and other people not related by blood, marriage, or adoption might also form groups that wish to live together. When such groups of unrelated persons seek housing in a single-family home, the question arises as to whether they are a “family” entitled to live in a residential unit in a single-family zoning district.

**Historic District.** A regulatory overlay zone within which new developments must be compatible with the architecture of the district’s historic structures. Alterations and improvements of historic structures must involve minimum interference with the historic features of the buildings. The local legislature establishes standards that a historic preservation commission uses to permit, condition, or deny projects proposed in historic districts.

**Historic Preservation Commission.** A commission established to review proposed projects within historic districts for compliance with standards established for new development or alteration or improvement of historic buildings and landmarks.

**Home Occupation.** A business conducted in a residential dwelling unit that is incidental and subordinate to the primary residential use. Regulations of home occupations usually restrict the percentage of the unit that can be used for the occupation, the exterior evidence of the business, and the amount of parking allowed and traffic generated.

**Home Rule Authority.** Home rule authority gives local governments the power to adopt laws relating to their local property, affairs, and government, in addition to the powers specifically delegated to them by the legislature. The Municipal Home Rule Law gives a municipality the authority to regulate for the “protection and enhancement of its physical and visual environment” as well as for the “government, protection, order, conduct, safety, health, and well being of persons or property therein.” Zoning laws may also be adopted under home rule authority.

**Implementation Plan or Measures.** Implementation plans coordinate all the related strategies that are to be carried out to achieve the objectives contained in the comprehensive plan. An implementation plan answers the questions: who, what, where, and how.

**Incentive Zoning.** A system by which zoning incentives are provided to developers on the condition that specific physical, social, or cultural benefits are provided to the community. Incentives include increases in the permissible number of residential units or gross square footage of development, or waivers of the height, setback, use, or area provisions of the zoning ordinance. The benefits to be provided in exchange may include affordable housing, recreational facilities, open space, day-care facilities, infrastructure, or cash in lieu thereof.

**Infrastructure.** Infrastructure includes utilities and improvements needed to support development in a community. Among these are water and sewage systems, lighting, drainage, parks, public buildings, roads and transportation facilities, and utilities.

**Intermunicipal Agreements.** Compacts among municipalities to perform functions together that they are authorized to perform independently. In the land use area, localities may agree to adopt compatible comprehensive plans and ordinances, as well as other land use regulations, and to establish joint planning, zoning, historic preservation, and conservation advisory boards or to hire joint inspection and enforcement officers.

**Involved Agency.** An agency that has jurisdiction by law to fund, approve, or directly undertake an action, but does not have the primary responsibility for the action as does the lead agency under the State Quality Environmental Review Act.

**Judicial Review.** The oversight by the courts of the decisions and processes of local land use agencies. It is governed by special statutory provisions that limit both actions against governmental bodies in general and actions against local land use decisions in particular. The applicable rules of judicial review depend on the type of local body that is involved and the type of action that is challenged. The courts in New York have adopted fairly liberal rules of access, typically allowing adjacent and nearby property owners and associations of residents to challenge land use decisions that affect them in some special way.

**Jurisdictional Defect.** When a legislative action or a land use determination is taken without following a mandated procedure, such as referral to a county planning agency or the conduct of environmental review, the action or determination suffers from a jurisdictional defect and is void. Without following mandated procedures, public bodies do not have jurisdiction to act.

**Land Trust.** A not-for-profit organization, private in nature, organized to preserve and protect the natural and man-made environment by, among other techniques, holding conservation easements that restrict the use of real property.

**Land Use Law.** Land use law encompasses the full range of laws and regulations that influence or affect the development and conservation of the land. This law is intensely intergovernmental and interdisciplinary. In land use law there are countless intersections among federal, state, regional, and local statutes. It is significantly influenced by other legal regimes such as environmental, administrative, and municipal law.

**Land Use Regulation [Local].** Laws enacted by the local legislature for the regulation of any aspect of land use and community resource protection, including zoning, subdivision, special use permit or site plan regulation, or any other regulation that prescribes the appropriate use of property or the scale, location, or intensity of development.

**Landmark Preservation Law.** A law designating individual historic or cultural landmarks and sites for protection. It controls the alteration of landmarks and regulates some aspects of adjacent development to preserve the landmarks' integrity.

**Lead Agency.** The "involved agency" under the State Environmental Quality Review Act that is principally responsible for undertaking, funding, or approving an action. The lead agency is responsible for determining whether an environmental impact statement is required in connection with the action and for the preparation and filing of the statement if one is required.

**Local Board.** See "Reviewing Body."

**Local Law.** The highest form of local legislation. The power to enact local laws is granted by the state constitution to local governments. Local laws, in this sense, have the same quality as acts of the state legislature, both being authorized by the constitution. They must be adopted by the formalities required for the adoption of local laws.

**Local Legislature.** The local legislature adopts and amends the comprehensive plan, zoning, and land use regulations, and sometimes retains the authority to issue certain permits or perform other administrative functions. The local legislature of a city is typically called the city council; of a village, the village board of trustees; and of a town, the town board.

**Lot Area.** The total square footage of horizontal area included within the property lines. Zoning laws typically set a minimum required lot area for building in each zoning district.

**Lot.** A portion of a subdivision, plat, tract, or other parcel of land considered as a unit for the purpose of transferring legal title from one person or entity to another.

**Master Plan.** A term used synonymously by many to refer to the comprehensive plan. The statutory, official name for the community's written plan for the future is the comprehensive plan.

**Mediation.** A voluntary process of negotiation, conducted by a trained mediator who works with all involved parties to identify their true interests and to achieve a resolution that responds effectively and fully to those interests.

**Minutes.** The minutes typically cover the important discussions, facts found, and actions taken at a meeting. The Open Meetings Law requires that the minutes provide a record of motions, proposals, and actions.

**Mitigation Conditions.** Conditions imposed by a reviewing body on a proposed development project or other action to mitigate its adverse impact on the environment.

**Mixed Use.** In some zoning districts, multiple principal uses are permitted to coexist on a single parcel of land. Such uses may be permitted, for example, in neighborhood commercial districts, where apartments may be developed over retail space.

**Moratorium.** A moratorium suspends the right of property owners to obtain development approvals while the local legislature takes time to consider, draft, and adopt land use regulations or rules to respond to new or changing circumstances not adequately dealt with by its current laws. A moratorium is sometimes used by a community just prior to adopting a comprehensive plan or zoning law, or a major amendment thereto.

**Multi-Family Housing.** Most zoning maps contain districts where multi-family housing is permitted by the zoning law. Under the district regulations, buildings with three or more dwelling units are permitted to be constructed, such as garden apartments or multi-story apartment buildings.

**Municipal Clerk.** The public official authorized by the local legislature to keep official records of the legislative and administrative bodies of the locality. Final determinations of reviewing boards ordinarily must be filed with the municipal clerk.

**Negative Declaration** (“neg dec”). A written determination by a lead agency, under the State Environmental Quality Review Act, that the implementation of the action as proposed will not result in any significant adverse environmental impacts. A “neg dec” concludes the environmental review process for an action.

**Nonconforming Building.** A building constructed prior to the adoption of the zoning law or zoning amendment which is not in accordance with the dimensional provisions, such as building height or setback requirements, of that law or amendment.

**Nonconforming Use.** A land use that is not permitted by a zoning law but that already existed at the time the zoning law or its amendment was enacted. Most nonconforming uses are allowed to continue but may not be expanded or enlarged.

**Notice.** Notice requirements are contained in state and local statutes. They spell out the number of days in advance of a public hearing that public notice must be given and the precise means that must be used. These means may include publication in the official local newspaper and mailing or posting notices in prescribed ways. Failure to provide public notice is a jurisdictional defect and may nullify the proceedings.

**Objectives.** Statements of attainable, quantifiable, intermediate-term achievements that help accomplish goals contained in the comprehensive plan. For example, an objective would be to achieve “the construction of 50 units of affordable housing annually until the year \_\_\_\_.”

**Official Map.** The adopted map of a municipality showing streets, highways, parks, drainage, and other physical features. The official map is final and conclusive with respect to the location and width of streets, highways, drainage systems, and parks shown thereon and is established to conserve and protect the public health, safety, and welfare.

**Open Meetings Law.** The Town, Village, and General City Law requires local legislative, administrative, and quasi-judicial bodies to open all their meetings to members of the public. This law applies to all meetings where a majority of the board members are present, except those meetings that are held as executive sessions.

**Ordinance.** An act of a local legislature taken pursuant to authority specifically delegated to local governments by the state legislature. The power of villages to adopt ordinances was eliminated in 1974. Technically, therefore, villages do not adopt, amend, or enforce zoning ordinances. Zoning provisions in villages are properly called zoning laws.

**Original Jurisdiction.** When an aggrieved party must appeal a determination to a quasi-judicial or judicial body in the first instance, that body has original jurisdiction over that matter. The zoning board of appeals, for example, has original jurisdiction to hear appeals of the determinations of the zoning enforcement officer.

**Overlay Zone.** A zone or district created by the local legislature for the purpose of conserving natural resources or promoting certain types of development. Overlay zones are imposed over existing zoning districts and contain provisions that are applicable in addition to those contained in the zoning law.

**Parcel.** A piece of property. See “Lot.”

**Planned Unit Development.** An overlay zoning district that permits land developments on several parcels to be planned as single units and to contain both residential dwellings and

commercial uses. It is usually available to landowners as a mixed-use option to single uses permitted as-of-right by the zoning ordinance.

**Planning Board/Commission.** Planning boards must consist of five to seven members. Planning boards may be delegated reviewing board functions and a variety of advisory functions, including the preparation of the comprehensive plan, drafting zoning provisions, or suggesting site plan and subdivision regulations, in addition to other functions. One important purpose of the planning board's advisory role is to provide an impartial and professional perspective on land use issues based on the long-range needs of the community contained in the comprehensive plan or other local policy documents.

**Plat.** A site plan or subdivision map that depicts the arrangements of buildings, roads, and other services for a development.

**Police Power.** The power that is held by the state to legislate for the purpose of preserving the public health, safety, morals, and general welfare of the people of the state. The authority that localities have to adopt comprehensive plans and zoning and land use regulations is derived from the state's police power and is delegated by the state legislature to its towns, villages, and cities.

**Positive Declaration** ("pos dec"). A written determination by a lead agency, under the State Environmental Quality Review Act, that the implementation of the action as proposed is likely to have a significant adverse impact on the environment and that an environmental impact statement will be required.

**Preliminary Plat Approval.** The approval by the authorized local administrative body of a preliminary subdivision drawing or plat that shows the site conditions, subdivision lines, and proposed improvements as specified in the locality's subdivision regulations.

**Principal Use.** The primary use of a lot that is permitted under the district regulations in a zoning law. These regulations may allow one or more principal uses in any given district. Unless the district regulations allow mixed uses, only one principal use may be made of a single lot, along with uses that are accessory to that principal use.

**Public Hearing.** A hearing that affords residents affected by a reviewing board's decision an opportunity to have their views heard before decisions are made. State statutes require that public hearings be held regarding the application for a variance or a subdivision approval. Public hearings regarding site plan applications and draft environmental impact statements may be required as a matter of local practice.

**Public Services.** Services provided by the municipal government for the benefit of the community, such as fire and police protection, education, solid waste disposal, street cleaning, and snow removal.

**Quasi-Judicial.** A term applied to some local administrative bodies that have the power to investigate facts, hold hearings, weigh evidence, draw conclusions, and use this information as a basis for their official decisions. These bodies adjudicate the rights of the parties appearing before the body. The zoning board of appeals serves in a quasi-judicial capacity when it hears appeals from the determination of the local zoning enforcement officer.

**Record.** Local boards must keep a detailed record of their deliberations in making decisions on site plan and subdivision applications and the issuance of variances and special permits. These records may be kept in narrative form rather than in verbatim transcript form. A clerk or

secretary hired by the municipality often manages these records. The records should include the application and reports, studies, documents, and minutes of the board meetings.

**Recreational Zoning.** The establishment of a zoning district in which private recreational uses are the principal permitted uses. The types of recreational uses permitted include swimming, horseback riding, golf, tennis, and exercise clubs open to private members who pay dues and user fees or to the public on a fee basis.

**Recusal.** A term used when a board member has a conflict of interest and must abstain from voting on any issues relating to that private interest. The board member is said to be recusing himself from all deliberations on the matter.

**Redaction.** The practice of striking or otherwise taking out of a public record sensitive, private, or confidential information, in a way that does not disturb the meaning of the record.

**Regulatory Taking.** A regulation that is so intrusive that it is found to take private property for a public purpose without providing the landowner with just compensation.

**Resolution.** A means by which a local legislature or other board expresses its policy or position on a subject.

**Restrictive Covenant.** An agreement in writing and signed by the owner of a parcel of land that restricts the use of the parcel in a way that benefits the owners of adjacent or nearby parcels. See “Conservation Easement.”

**Reviewing Board.** The administrative body charged with responsibility for reviewing, approving, conditioning, or denying applications for a specific type of land use such as a variance, special use permit, or site plan or subdivision approval.

**Rezoning.** An act of the local legislature that changes the principal uses permitted on one or more parcels of land or throughout one or more zoning districts. Rezoning includes the amendment of the zoning map, and of the use provisions in the district regulations applicable to the land that is rezoned.

**Role of County Government.** Functions carried out by county government that affect land use include the adoption of land use plans, public health reviews of plans for water supply and sewage disposal, planning reviews of certain local land use decisions, the development of county roads and projects including parks, the creation of environmental management councils, farmland protection boards, soil and water district boards, and other entities, and the provision of technical and coordination sources in the land use area.

**Scoping.** A process under the State Quality Environmental Review Act by which the lead agency identifies the potentially significant adverse impacts related to a proposed use and how they are to be addressed in an environmental impact statement (EIS). This process defines the scope of issues to be addressed in the draft EIS, including the content and level of detail of the analysis, the range of alternatives, and the mitigation measures needed, as well as issues that do not need to be studied. Scoping provides a project sponsor with guidance on matters that must be considered and provides an opportunity for early participation by involved agencies and the public in the review of the proposal.

**Screening.** The act of placing landscape features, such as trees, and shrubs, or man-made screens, such as fences or berms, to reduce the impact of development on nearby properties.

**SEQR.** The State Environmental Quality Review Act requires local legislatures and land use agencies to consider, avoid, and mitigate significant environmental impacts of the projects that they approve, the plans or regulations they adopt, and the projects they undertake directly.

**Setback.** A setback restriction requires that no building or structure be located within a specified number of feet from a front, side, or rear lot line.

**Sign Regulation.** Local laws that regulate the erection and maintenance of signs and outdoor advertising with respect to their size, color, appearance, movement, and illumination, and their placement on structures or their location on the ground.

**Site Plan.** A site plan, consisting of a map and all necessary supporting material, shows the proposed development and use of a single parcel of land.

**Special Exception Permit.** See “Special Use Permit.”

**Special Use Permit.** Special uses are allowed in zoning districts, but only upon the issuance of a special use permit subject to conditions designed to protect surrounding properties and the neighborhood from the negative impacts of the permitted use. Also called conditional use permit, special exception permit, and special permit.

**Spot Zoning.** The rezoning of a single parcel or a small area to benefit one or more property owners rather than to carry out an objective of the comprehensive plan.

**Statute of Limitations.** A law that requires that an aggrieved party file a legal action in a quasi-judicial or judicial forum within a specified period or lose the right to file that action. Regarding many land use determinations, the period begins from the date the determination is filed with the municipal clerk.

**Strategies.** A set of actions to be undertaken to accomplish each objective contained in a comprehensive plan. To obtain the objective of “50 units of affordable housing” the plan may include as strategies: (1) Form a housing trust fund, and (2) Allow for accessory apartments in residential units.

**Subdivision Plat.** See “Plat.”

**Subdivision.** The subdivision of land involves the legal division of a parcel into a number of lots for the purpose of development and sale. The subdivision and development of individual parcels must conform to the provisions of local zoning which contain use and dimensional requirements for land development.

**Taking.** See “Regulatory Taking.”

**Town Board.** See “Local Legislature.”

**Transfer of Development Rights.** Provisions in a zoning law that allow for the purchase of the right to develop land located in a sending area and the transfer of those rights to land located in a receiving area.

**Type I Action.** Under the State Environmental Quality Review Act, an action that is more likely to have a significant adverse impact on the environment than unlisted actions. Type I Actions are listed in the regulations of the DEC commissioner. See also “Action.”

**Type II Action.** An action that is not subject to environmental review under the State Environmental Quality Review Act. Type II Actions are listed in the regulations of the DEC commissioner. These actions have been determined not to have a significant impact on the environment or to be exempt from environmental review for other reasons. See also “Action.”

**Unlisted Actions.** These are all of the actions that are not listed as Type I or Type II actions for the purposes of the State Environmental Quality Review Act process. These actions are subject to review by the lead agency to determine whether they may cause significant adverse environmental impacts.

**Use District.** See “Zoning District.”

**Use Variance.** A variance that allows a landowner to put his land to a use that is not permitted under the zoning law. For example, if a parcel of land is zoned for single-family residential use and the owner wishes to operate a retail business, the owner must apply to the zoning board of appeals for a use variance. A use variance may be granted only in cases of unnecessary hardship. To prove unnecessary hardship, the owner must establish that the requested variance meets four statutorily prescribed conditions.

**Variance.** This is a form of administrative relief that allows property to be used in a way that does not comply with the literal requirements of the zoning ordinance. There are two basic types of variances: use variances and area variances.

**Vested Rights.** Vested rights are found when a landowner has received approval of a project and has undertaken substantial construction and made substantial expenditures in reliance on that approval. If the landowner’s right to develop has vested, it cannot be taken away by a zoning change by the legislature.

**Village Board of Trustees.** See “Local Legislature.”

**Watershed.** A geographical area within which rainwater and other liquid effluents seep and run into common surface or subsurface water bodies such as streams, rivers, lakes, or aquifers.

**Wetlands.** Wetlands may be either freshwater or tidal. They are typically marked by waterlogged or submerged soils or support a range of vegetation peculiar to wetlands. They provide numerous benefits for human health and property as well as critical habitat for wildlife, and are generally regulated by either federal, state, or local laws.

**Zoning Board of Appeals.** Under state statutes, a zoning board of appeals must be formed when a local legislature adopts its zoning law. It must consist of three to five members. The essential function of the zoning board of appeals is to grant variances. In this capacity, it protects landowners from the unfair application of the laws in particular circumstances. The zoning board of appeals also hears appeals from the decisions of the zoning enforcement officer or building inspector when interpretations of the zoning ordinance are involved.

**Zoning District.** A part of the community designated by the local zoning law for certain kinds of land uses, such as for single-family homes on lots no smaller than one acre or for neighborhood commercial uses. Only these primary permitted land uses, their accessory uses,

and any special uses permitted in the zoning district may be placed on the land in that part of the community.

**Zoning Enforcement Officer.** The local administrative official who is responsible for enforcing and interpreting the zoning law. The local building inspector may be designated as the zoning enforcement officer. Land use applications are submitted to the zoning enforcement officer, who determines whether proposals are in conformance with the use and dimensional requirements of the zoning law.

**Zoning Law or Ordinance.** State law allows city councils and town boards to adopt zoning regulations by local law or ordinance. Since 1974, village boards of trustees have not had the authority to adopt legislation by ordinance; they may adopt legislation only by local law. Technically, zoning regulations adopted by villages are zoning laws. Only city and town legislatures may adopt zoning ordinances. Zoning regulations, however, are often referred to as zoning ordinances regardless of these technical distinctions.

**Zoning Map.** This map is approved at the time that the local legislature adopts a zoning ordinance. On this map, the zoning district lines are overlaid on a street map of the community. The map divides the community into districts. Each district will carry a designation that refers to the zoning code regulations for that district. By referring to the map, it is possible to identify the use district within which any parcel of land is located. Then, by referring to the text of the zoning code, it is possible to discover the uses that are permitted within that district and the dimensional restrictions that apply to building on that land. The zoning map, implemented through the text of the zoning law, constitutes a blueprint for the development of the community over time.

## VIII. ADDITIONAL RESOURCES

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### **Required Referrals to Abutting Municipalities 10 Days Before Hearing**

<u>TYPE OF PLANNING/ZONING ACTION</u>	<u>LOCATIONAL TRIGGER FOR REFERRAL</u>
SPECIAL USE PERMIT	Affecting land within 500 feet of municipal boundary.
USE VARIANCE	Affecting land within 500 feet of municipal boundary.
SUBDIVISION PLAT	Affecting land within 500 feet of municipal boundary.
SITE PLAN	Affecting land within 500 feet of municipal boundary.
ZONING ORDINANCE OR MAP Adoption or amendment	Affecting land within 500 feet of municipal boundary. (Westchester County municipalities only)
OFFICIAL MAP Adoption or amendment	Affecting land within 500 feet of municipal boundary. (Westchester County municipalities only)
ZONING VARIANCE	Not required.
COMPREHENSIVE PLAN Adoption or amendment	Not required.

### **Places to go for information**

#### **SPECIFICALLY FOR CLERKS**

- New York State Association of City and Village Clerks- [www.nysclerks.com](http://www.nysclerks.com)
- New York Association of Local Government Records Officers [www.nyalgro.org](http://www.nyalgro.org)
  - Ability to ask questions of knowledgeable records officers
- Cornell Municipal Clerks Institute  
[www.cardi.cornell.edu/local\\_government/resources.php](http://www.cardi.cornell.edu/local_government/resources.php)
  - Offers a training program
- General Code  
[www.generalcode.com](http://www.generalcode.com)

#### **HELPFUL IN GENERAL**

- The NYS Department of State Division of Local Government website-  
<http://www.dos.state.ny.us/lgss/index.htm>
  - A comprehensive resource for information including forms for filing local laws.
- At the website is The James A. Coon Land Use Technical Series which includes:
  - Record Keeping Tips for Zoning Administration
  - Conducting Public Meetings and Public Hearings
  - Your Right to Know- about Freedom of Information Law, Open Meetings Law, and Personal Privacy Protection
  - Zoning Enforcement
  - Guide to the Organization and Operation of Local Environmental Advisory Councils
- Local Government Handbook published by the Department of State  
Download free of charge at [www.dos.state.ny.us/lgss/publist.htm](http://www.dos.state.ny.us/lgss/publist.htm)
- Westchester County Municipal Planning Primer series available at  
<http://www.westchestergov.com/planning/regionalplan/WMPF/Primers>:
  - The Planning Board
  - The Zoning Board of Appeals

## **PACE LAND USE LAW CENTER PUBLICATIONS**

- Zoning School- <http://www.nymir.org/zoning/>
- Starting Ground Series, Environmental Review of Land Use Projects
- Starting Ground Series, Basics of Land Use Practice
- Well Grounded, by John R. Nolon
- Other publications available at [www.law.pace.edu/landuse](http://www.law.pace.edu/landuse)

## **Examples of “Applicant Information Packets”**

### **TOWN OF EASTCHESTER ZONING BOARD OF APPEALS APPLICATION PACKET**

Packet contains:

- General information and submission requirements
- ZBA application
- ZBA application checklist
- Zoning compliance table for one and two family residences
- Zoning compliance table for commercial applications
- Zoning compliance table for multi-family residential applications
- Affidavit of mailing
- Legal notice
- Criteria for area and use variances
- Short Environmental Assessment Form

### **CITY OF MOUNT VERNON PLANNING BOARD APPLICANT PACKET**

Packet contains:

- Instructions for presentation
- Planning Board application
- Consent/objection form
- Public hearing notice

### **VILLAGE OF SCARSDALE PLANNING BOARD APPLICANT PACKET**

Packet contains:

- What is the planning board?
- Procedure for processing an application with the planning board

## Information/Form for Referrals to the Westchester County Planning Board

### **ACTIONS THAT REQUIRE REFERRAL OF COMPLETE APPLICATIONS TO THE WESTCHESTER COUNTY PLANNING BOARD**

Submission should include complete application material as submitted to local board or full text/map of zoning code and comprehensive plan amendments.

<b><u>TYPE OF PLANNING/ZONING ACTION</u></b>	<b><u>LOCATIONAL TRIGGER FOR REFERRAL</u></b>
<b>COMPREHENSIVE PLAN</b> Adoption or amendment.	Affecting land anywhere in municipality.
<b>ZONING ORDINANCE OR MAP</b> Adoption or amendment.	Affecting land anywhere in municipality.
<b>SUBDIVISION PLAT</b>	Where new street or drainage line will connect directly into state or county road or county drainage channel.
<b>SITE PLAN<sup>1</sup></b> Proposing 5,000 square feet or more of new or renovated floor area or 10,000 square feet or more of land disturbance.	Affecting property within 500 feet of: <ul style="list-style-type: none"><li>• The boundary of a city, town or village</li><li>• The boundary of an existing or proposed state or county park or any other state/county recreation area</li><li>• The right-of-way of an existing or proposed state or county road</li><li>• An existing or proposed county drainage channel line</li><li>• The boundary of state- or county-owned land on which a public building/institution is located or</li><li>• The boundary of a farm located in an agricultural district.</li></ul>
<b>SPECIAL USE PERMIT/USE VARIANCE</b> Changing use classification of property and proposing 5,000 square feet or more of new or renovated floor area or 10,000 square feet or more of land disturbance.	Affecting land anywhere in municipality.
<b>OFFICIAL MAP</b> Adoption or amendment.	Affecting streets or drainage lines connecting directly into state or county road or county drainage channel.

<sup>1</sup>Additional requirement of NYS General Municipal Law; notice to be provided 30 days prior to agency action.

## **ACTIONS THAT REQUIRE NOTIFICATION ONLY TO THE WESTCHESTER COUNTY PLANNING BOARD**

Notification should consist of e-mail to [muniref@westchestergov.com](mailto:muniref@westchestergov.com) stating: type of action, title of action, address and statement that action falls within County Planning Board category that requires “Notification Only.” An e-mail acknowledgement will be sent at receipt. (FAX communication may be substituted.) A standard submission form is available at [www.westchestergov.com/planning](http://www.westchestergov.com/planning).

<b><u>TYPE OF PLANNING/ZONING ACTION</u></b>	<b><u>LOCATIONAL TRIGGER FOR REFERRAL</u></b>
<p><b>SITE PLAN<sup>1</sup></b>            Proposing less than 5,000 square feet of new or renovated floor area and less than 10,000 square feet of land disturbance.</p> <p><i>(Exception – actions that have been given a Positive Declaration pursuant to SEQR must be referred as complete application.)</i></p>	<p>Affecting property within 500 feet of:</p> <ul style="list-style-type: none"> <li>• The boundary of a city, town or village</li> <li>• The boundary of an existing or proposed state or county park or any other state/county recreation area</li> <li>• The right-of-way of an existing or proposed state or county road</li> <li>• An existing or proposed county drainage channel line</li> <li>• The boundary of state- or county-owned land on which a public building/institution is located or</li> <li>• The boundary of a farm located in an agricultural district.</li> </ul>
<p><b>SPECIAL USE PERMIT/USE VARIANCE</b>            Changing use classification and proposing less than 5,000 square feet of new or renovated floor area and less than 10,000 square feet of land disturbance.</p> <p><i>(Exception – actions that have been given a Positive Declaration pursuant to SEQR must be referred as complete application.)</i></p>	<p>Affecting land anywhere in municipality.</p>
<p><b>ZONING VARIANCE</b>            Decreasing front yard setback.            Decreasing minimum street frontage.            Decreasing average width.</p>	<p>Affecting property abutting state or county road or park.</p>

<sup>1</sup> Additional requirement of NYS General Municipal Law; notice to be provided 30 days prior to agency action. These tables are provided for convenience. The actual language of statutes involved must be checked to determine which actions to refer.

**Submission Form to the Westchester County Planning Board  
For Planning and Zoning Referrals REQUIRING NOTIFICATION ONLY**

(This form is available for e-mail use at [www.westchestergov.com/planning](http://www.westchestergov.com/planning).)

County Ref. No.

The Westchester County Planning Board has predetermined that certain categories of planning and zoning applications are matters for local determination only. For any application listed below, submission of this completed form will satisfy the requirements of NYS General Municipal Law and the Westchester County Administrative Code that the local board provided adequate notification to the County Planning Board in accordance with Planning Board procedures. No other material need be sent. Upon receipt, the County Planning Board will complete the bottom section of this form and return it to you to for your records to indicate compliance with referral requirements.

**When completed save this form and e-mail to: [muniref@westchestergov.com](mailto:muniref@westchestergov.com) or fax to 914-995-3780.**

Municipality:

Referring Agency (check one):  Planning Board or Commission  
 Zoning Board of Appeals  
 City-Common Council/Town Board/Village Board of Trustees

Application Name and Local Case Number:

Address:

Section:  Block:  Lot:

Submitted by (name and title):

E-mail address (or fax number):

The above referenced application qualifies for the notification only procedure to the County Planning Board because it falls within the category of action checked below:

**Zoning Area Variance** to decrease front yard setback, decrease minimum street frontage or decrease average lot width for property abutting a State or County road or park

**Special Use Permit or Use Variance** to allow less than 5,000 square feet of new or renovated floor area and less than 10,000 square feet of land disturbance.

**Site Plan** to allow less than 5,000 square feet of new or renovated floor area and less than 10,000 square feet of land disturbance on property within 500 feet of:

- *The boundary of a city, town or village*
- *The boundary of an existing/proposed state or county park, recreation area or road right-of-way*
- *An existing/proposed county drainage channel line*
- *The boundary of state- or county-owned land on which a public building/institution is located or*
- *The boundary of a farm located in an agricultural district.*

*(All applications given a Positive Declaration pursuant to SEQR must be referred as a complete application.)*

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Do not write below this line.

Date received by the Westchester County Planning Board:

Notification acknowledged by (name and title):