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 STATE OF OPPORTUNITY.

**Division of Local Government Services**

# Planning and Zoning: An Introduction

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## Overview

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



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## Local Governing Board

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

Local Governments in NYS	
62	Counties
62	Cities
933	Towns
532	Villages
14	Native American Reservations

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### Planning Board

Advisory Board to local governing board on:

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



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### Planning Board

Most often regulatory board for review of:

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



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### Zoning Board of Appeals

Zoning requires a safety valve

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



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# Comprehensive Plan

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## Comprehensive Plan – Purpose

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

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

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

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

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## Comprehensive Plan – Considerations

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



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### Comprehensive Plan – Preparation

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



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### Comprehensive Plan – Updating

Possible indications that it is time:

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



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### Moratorium

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

- May be enacted to gather information for and/or adopt a plan or new regulations
- Development that might occur without a moratorium could undermine the ultimate value of a plan in progress

Time periods:

- Fixed period of time, with a specified termination date
- No longer than reasonably necessary to adequately address the issues (generally not longer than 6 months)

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## Zoning and Other Land Development Tools

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### Zoning

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

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

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

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### Zoning

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

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# Zoning

- Modern zoning uses illustrations or diagrams to present key concepts

**Building Height**  
 Building height limit  
 10 stories, 40'

**Story Height**  
 First floor height limit  
 10'

**Supplemental Standards**  
 1. See Section 2.2.1 for height and setbacks which apply along specified portions of Delaware Avenue, Gates Drive, and North Street between 125th and 135th streets, and along specified portions of Delaware Avenue, Main Street, and Hagner Street at the 135th street.

**Transparency**  
 Ground floor transparency (non facade) 20%  
 Ground floor transparency (corner site) 20%  
 Upper floor transparency (front and corner side facades) 20%

**Pedestrian Access**  
 Main entrance (corner entrance) First, second and/or corner side facades

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# Zoning

**Zoning Map of the Town of Watertown, NY**

**Zoning Districts**  
 - R-1 Single-Family Residential  
 - R-2 Single-Family Residential  
 - R-3 Single-Family Residential  
 - R-4 Single-Family Residential  
 - R-5 Single-Family Residential  
 - R-6 Single-Family Residential  
 - R-7 Single-Family Residential  
 - R-8 Single-Family Residential  
 - R-9 Single-Family Residential  
 - R-10 Single-Family Residential  
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 - R-98 Single-Family Residential  
 - R-99 Single-Family Residential  
 - R-100 Single-Family Residential

**City of Watertown, New York  
 Watertown Zoning District Map**

No one size fits all!

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# Subdivision



The division of a parcel of land:

- Into lots, blocks or sites (with or without streets)
- For the purpose of sale, transfer of ownership, or development

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

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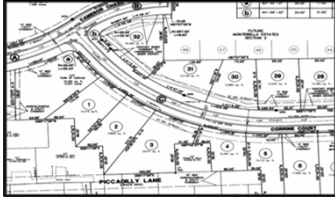
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### Subdivision Elements

Regulates design and improvements such as:

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



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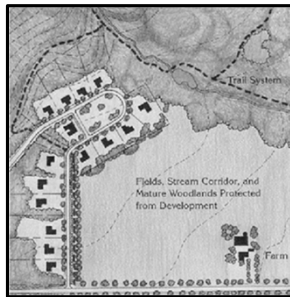
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### Cluster or "Conservation" Subdivisions

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



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### Subdivision Review Procedures

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

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### Boundary or lot line adjustment

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

#### Examples:

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

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### Site Plan Review

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



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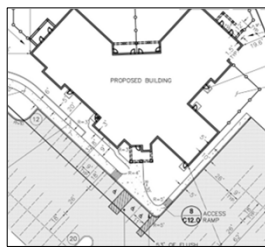
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### Site Plan Elements

- Relationship to adjacent uses
- Location/dimensions of buildings
- Utilities: sewage & storm drainage
- Proposed grades and contours
- Screening and landscaping
- Parking, access
- Lighting, signage



Remember: Municipality can add elements of review

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### Special Use Permits in Zoning

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

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



Gas stations often require an SUP to review for potential impacts

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

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### ZBA Interpretations & Variances

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### Interpretations

#### Definitions are important!

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

- Appellant believes Enforcement Officer wrongly applied the law
- May only be made upon appeal of a Zoning enforcement official's decision/interpretation
- Common areas of interpretation:
  - Definitions
  - Method of taking measurements
  - Ordinary meaning of terms, if term is undefined
  - Past decisions on same regulations or similar facts

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### Variations

- **Use variance:**  
To use land for a purpose not allowed in the zoning regulations
- **Area variance:**  
Provides relief from dimensional requirements of zoning regulations

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### Use Variance Test

To use land for a purpose not allowed in the zoning regulations. Applicant must prove all four factors:

1. No reasonable return
2. Unique circumstances
3. No self-created hardship
4. No alteration to the essential character of neighborhood



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### Use Variance Considerations

- Although not a legislative change, a use variance is essentially a change in zoning as it applies to the parcel – the alternative would be to rezone the parcel
- If applicant cannot prove all 4 factors; ZBA must deny
- The burden of proof in addressing the factors is on the applicant, not the ZBA
- Use variances and any related conditions run with land, not the landowner, in perpetuity

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### Use Variances vs. Special Use Permits

Use Variance	Special Use Permit
<ul style="list-style-type: none"> <li>• Required for a use prohibited by zoning</li> <li>• Required for use not listed as permitted in district</li> <li>• Statutory tests</li> </ul>	<ul style="list-style-type: none"> <li>• Required for use permitted by zoning but subject to additional requirements</li> <li>• Local standards</li> </ul>

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

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### Area Variance

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



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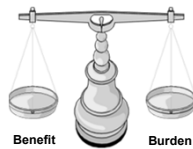
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### Area Variance Test

1. Is there an undesirable change to neighborhood character or detriment to neighboring properties?
2. Are there alternatives not requiring a variance?
3. Is the request substantial?
4. Are there adverse effects or impacts on physical or environmental conditions?
5. Is the situation self-created?



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### Area Variance Tips

- All factors must be reviewed and weighed balancing benefit to applicant vs. burden on community
- Area variances run with the land, not the landowner, in perpetuity
- Grant the minimum variance necessary
- Conditions may be imposed to address impacts directly related to the variance only – not the landowner or other concerns



Alternative parking lot location granted with conditions of vegetative screening

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### Procedures: Planning Boards & Zoning Boards of Appeals

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### State Training Requirements

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

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

Failure to comply does not void decisions

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### Board Procedures

To be binding, board procedures must be adopted by governing board by local law or ordinance. They cover a variety of issues, including:

Officer and committee duties

Calling meetings, agendas, public input

Referrals

Minutes

Official document signatures

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### State Environmental Quality Review (SEQRA)

- To incorporate the consideration of environmental factors into an agency's decision-making process at the earliest possible time
- SEQRA defines environment broadly as resources or characteristics that could be affected by an action, including:
  - Land, air, water, minerals
  - Flora, fauna
  - Noise
  - Features of historic or aesthetic significance
  - Population patterns
  - Community character



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### SEQRA – Classification of Actions

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

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

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### SEQRA Process

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

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

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### Open Meetings Law

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

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### Meetings: Notice and Access

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




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### Remote participation & videoconferencing

#### Non-public locations

- OML §103-a authorizes public bodies to adopt local law for Boards to participate & vote via videoconference in **non-public location under “extraordinary circumstances”** (undefined)
- Quorum required in public location(s)
- Public location(s) notice and access required

#### Public locations

- Boards may participate via videoconferencing where they are seen, heard, AND their remote location is open to public (i.e.: member participates via videoconference in another state in public location)
- Remote public location(s) notice and access required
- No local law needed for this option

More info and model law: <https://opengovernment.ny.gov/>

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### Public Hearings

For the public to be heard on:

- Special use permit applications
- Subdivision applications
- Preparation of preliminary comprehensive plan
- Site plan application (if required by municipality)
- Any appeal before a zoning board of appeals

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### Hearing Notice Requirements

#### State notice requirements:

- Public meeting requirements
- Legal notice in official newspaper at least 5 days before hearing
- Mail notice to:
  - Parties to appeal or applicant
  - Regional state park commission, if 500' from state park or parkway (ZBA only)
  - Other agencies, if applicable
  - GML § 239-m, GML § 239-nn



#### Examples of local notice requirements:

- Signs on application property (best practice)
- Mailings to neighbors
- Municipal ListServ

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### Notice to Adjacent Municipality GML § 239-nn

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

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

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

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

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

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




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### County Recommendations

- **Options include:** approval, modification, disapproval, or "no significant county-wide or inter-community impact"
- County must include reasons for recommendation
- If county recommends disapproval or approval with conditions, and local board wants to proceed without recommendations, it must have supermajority (majority plus one vote)
  - Board must explain reasons for acting contrary in record




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### Waiting to act

Planning boards and ZBAs cannot act until:

- Local board receives county planning agency's report
- OR**
- 30 days after county receives full statement
- After 30 days, if local board meets at least two days after receiving the county's referral, the local board is bound by it
- Local board and county may also agree to extend review period




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### Decisions

#### Must be based on a record

- Must be made within 62 days after hearings closed
- Minutes must contain record of each vote
- Include language of motion and any conditions passed
- Send copy of decision with findings to applicant and county, if applicable



#### Boards should support their decisions with findings

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

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### Enforcement

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




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### Article 78

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

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

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### Planning and Zoning Funding

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




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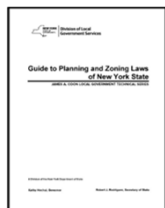
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