



BEGINNER'S GUIDE TO LAND USE LAW

**Land Use Law Center
Pace University 2010 Use Law Center**

- [The Building Permit Application](#)

What is Land Use Law? – A Primer

plans and the adoption of land use regulations. Certain local land use actions

forbidden by law, most zoning laws permit nonconforming uses to continue but not to be expanded or enlarged. Typically, nonconforming uses may not be reestablished after they have been abandoned or reconstructed after serious damage. Where certain nonconforming uses are particularly inconsistent with the as-of-right uses permitted in a district, the zoning law can require the nonconforming uses to be terminated, or amortized, after a specified number of years. Nonconforming uses that are considered threats to public health or safety can be required to cease immediately. The local zoning administrator must decide questions raised as to whether a use is nonconforming or conforming, whether it has been abandoned, or whether proposed improvements constitute a prohibited expansion or enlargement. The administrator's decision on these matters can be appealed to the zoning board of appeals. Occasionally, the owners of nonconforming parcels request the zoning board of appeals to grant them a use variance which legalizes the nonconforming use and can allow it to be expanded or enlarged.

Variations

1. If a proposed use of property does not conform to applicable zoning restrictions it can be authorized by a use or area variance awarded by the zoning board of appeals in certain circumstances.
 - **Use variations** are defined by state statutes as "authorization by the zoning board of appeals for the use of land in a manner or for a purpose which is otherwise not authorized or is prohibited by the applicable zoning regulations." To qualify for such a variance, the petitioning property owner must prove to the zoning board of appeals that the property cannot yield a reasonable return under any use permitted under the zoning law and meet other burdens of proof required by the state statute.
 - **Area variations** are defined as "the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations." In considering a request for an area variance, the zoning board of appeals must use several statutory factors to balance whether the detriment to the community caused by granting the variance is outweighed by the benefit to the property owner. The statutes require the zoning board of appeals to "grant the minimum variance that it shall deem necessary." The courts have held that the imposition of conditions on variations is proper because they are "corrective measures designed to protect neighboring properties against the possible adverse effects" of the use of the property benefited by the variance.

Special Use Permits

2. In addition to permitting certain land uses as-of-right in zoning districts, the zoning law can authorize other uses to be made of the land, but only if they receive a special permit issued by a local administrative agency such as the zoning board of appeals or the planning board. Typical land uses that are permitted by special permit include religious institutions, nursing homes, and day care centers. When such uses are listed as specially permitted uses in the zoning law, they are declared by the local legislature to be uses that are harmonious with as-of-right uses, in general, with the recognition that, in a specific location, they can negatively impact adjacent properties and need to be limited or conditioned to mitigate such impacts. If an applicant for a special use permit can demonstrate conclusively that no such impacts will result, or that the proposal mitigates those impacts effectively, the

3. Finally, where a proposed use is not permitted by one of the above devices, the property owner may request that the local government rezone the property, making the proposed activity an as-of-right use under that zoning amendment. Alternatively, the local legislature, at its initiative, can rezone a parcel or area in the public interest. In most cases, the local legislature is not required to entertain a single owner's rezoning petition.

What constitutes a valid zoning regulation has been the subject of much debate. The restrictive view is that zoning is a rigid, district bound technique and that the locality is constrained by a literal reading of the enabling statutes. This view asserts, additionally, that zoning can regulate only the "use," not the "user" of property. The breadth of the statutes delegating zoning authority to local governments and the presumption of validity accorded zoning regulations by the courts have made it possible, however, for localities to create a variety of zoning mechanisms not referred to in the statutes but upheld by the courts as within the locality's implied authority to legislate to achieve the most appropriate use of the land.

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against governmental bodies, in general, and against local land use decisions, in particular. The applicable rules

and " have an obligation to protect the environment for the use and enjoyment of this and all future generations."

The extensive provisions setting forth the procedures and requirements for the environmental review of local land use actions are found in the Environmental Conservation Law, Article 8, which is commonly referred to as the State Environmental Quality Review Act, or SEQRA, and in the regulations of the Department of Environmental Conservation. Under SEQRA, a local agency must determine whether an action it is considering may have a significant adverse environmental impact. If an action has such potential, the agency must first prepare an Environmental Impact Statement (EIS) which forces it to consider alternatives and to avoid or mitigate the adverse environmental impacts of a proposed project.

A failure to follow the procedures required by SEQRA will render the action invalid. The procedural steps required by SEQRA and the time periods within which they must be taken have been determined to take precedence over other statutory provisions and deadlines that regulate the land use actions of local governments.

SEQRA requires local agencies to "use all practicable means to realize the policies" of the legislation and to choose alternative actions or impose mitigation conditions, where practicable to "minimize or avoid adverse environmental effects, including effects revealed in the environmental impact statement." The Court of Appeals has held that this language imposes substantive, in addition to procedural, obligations on local decision-makers that force them to take effective action to protect the environment.

- proposed measures, programs, devices, and instruments to implement the goals of the comprehensive plan;
- all or part of the plan of another public agency; and
- any and all other items which are consistent with the orderly growth and development of the municipality.

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plans and official maps. They provide technical assistance to local governments in land use matters and can, upon request, serve as the administrative arm of local governments regarding land use actions.

Counties review applications for the subdivision of land and proposed municipal actions that affect intermunicipal, county or state interests. They adopt, propose, and create water, sewage, and drainage districts. These districts can finance and construct infrastructure needed to support land development. In addition, counties acquire land for and finance parks, county roads, and facilities for transit, solid waste disposal and even affordable housing. County governments create and assist independent soil and water conservation districts, agricultural districts, farmland preservation boards and environmental management councils. Counties are authorized to act directly to acquire open space and develop recreational facilities for their populations. This power enables counties to affect significantly the shape of land development patterns through the acquisition of land needed to buffer development trends in the area.

Where local governments fail to act, counties can adopt regulations to control development in wetlands, to prevent coastal erosion and to administer the Uniform Fire Prevention and Building Code. Counties can apply for and administer a variety of federal programs including community development block grants. In limited instances, counties veto local land use actions and acquire development rights to farmland. County highway commissioners can control access to county roads.

Vested Rights

The doctrine of vested rights protects property owners from changes in zoning when they have received a valid building permit and have completed substantial construction and made substantial expenditures in reliance on the permit. When a court finds that a property owner has vested rights to a validly issued permit, the effect is to immunize the approved project from all changes in zoning or other land use re

public purpose must be demonstrated and just compensation paid to the owner of the condemned property. When a government regulation has the practical effect of a public condemnation, the owner may allege that the regulation is a regulatory taking, a de

Why are variances allowed?

Variations provide flexibility in the

2. The hardship must be unique to the owner's property and not applicable to a substantial portion of the zoning district. If the hardship is common to the whole neighborhood, the remedy is to seek a change in the zoning, not to apply for a use variance. In another case, the applicant had failed to establish that the hardship -- being located near a city landfill -- was unique to his property. Rather, it was held that the hardship was common to all properties in the area. Thus, the property owner should make an application for rezoning to the local legislature.

3. Granting the variance will not alter the essential character of the neighborhood. In making this determination, the court often considers the intensity of the proposed development as compared to the existing and permitted uses in the neighborhood. For example, a use variance to permit construction of an office building in a single-family neighborhood where several tall commercial structures already exist would not alter the essential character of the neighborhood. Conversely, a cemetery would alter the essential character of a district zoned for residential development, despite the fact that the land in the district was undeveloped at the time of the application.

4. The hardship is not self-created. In *Clark v. Board of Zoning Appeals of Town of Hempstead*, the Court of Appeals held that "one who ... knowingly acquires land for a prohibited use, cannot thereafter have a variance on the ground of special hardship." For example, a developer may not acquire land zoned for residential use at the time of acquisition and successfully petition for a variance to construct office buildings. Whether the purchaser actually knew about the use restriction is not relevant; it was his responsibility to discover such restrictions.

In issuing a use variance, the board may impose "such reasonable conditions and restrictions as are directly necessary to and incidental to the proposed use of the property. Such conditions shall be ... imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

Statutory Standard for Area Variances

For a zoning board of appeals to grant a variance from the dimensional and area requirements of a zoning ordinance, it must find that the benefits to the applicant of the requested variance outweigh the detriment it will cause to the health, safety, and welfare of the neighborhood. The board must weigh the benefits of the requested variance to the applicant against the five factors set forth in the statute:

1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance?
2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?
3. Is the requested area variance substantial?
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
5. Is the alleged difficulty self-created? This consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

As an example, a case involved an application for an area variance to allow the property owner to build a boat house on a lot that was smaller than the required minimum lot size. The zoning board of appeals granted the

area variance and several neighbors challenged that decision. In upholding the determination of the zoning board of appeals, the court found that the board had carefully considered the five statutory criteria and made a rational decision. The zoning board had found that construction of the boat house would not cause a change in the character of the neighborhood as adjacent properties had similar structures; no alternatives other than an area variance existed because the subject parcel was smaller than required and there was no available adjacent land to be purchased so as to meet the minimum requirements. The fact that the hardship was determined to be self-created was not fatal to the granting of the variance. Even though the owner had knowledge that the lot was substandard when purchased, the statute specifically provides that this is just one factor to be considered and "shall not preclude the granting of an area variance."

Limitations on variances

Use variances involve an inherent contradiction. It is the prerogative of the legislative body to separate one land use from another. This is the essential purpose of dividing the community into zoning districts. Allowing a quasi-judicial body, such as the zoning board of appeals, to vary the uses allowed in a district must be limited in order to avoid that body usurping this essential legislative function. At the same time, the legislature does not want property owners to be denied a reasonable return on their property because of use restrictions, where some relief from these restrictions can be afforded without altering the underlying purpose of the zoning district. For this reason, zoning boards have been authorized to grant use variances subject to the requirements of the statute. The statute imposes a burden of proving several factors on the petitioner. Area variances involve similar tensions, but to a lesser degree. There, the zoning board of appeals is charged with the task of balancing the benefit of the variance to the petitioner against its impact on the area.

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. Zoning, however, does not contain specifications regulating many of the de

assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met." An example of a special use is a church in a single-family residential neighborhood. The legislature may conclude that the church should be permitted in a residential district, subject to conditions that ensure the size and layout as well as parking and lighting are carefully designed so that the neighborhood is not adversely affected.

A variety of uses may be permitted in various zones as special uses. These include adult homes, professional offices, group homes, swimming pools, nursing homes, or day care centers in residential zones; and drive-in establishments, video arcades, marinas, shopping centers, gas stations, and convenience stores in commercial districts. Once a special permit has been issued, it is not personal to the applicant, but affixes to, and runs with, the ownership of the land.

The local legislature must adopt standards to guide the review, conditioning, and approval of special uses. These standards will include, for example, requirements that gasoline stations and drive-in establishments provide adequate traffic safety improvements, that professional home offices provide adequate parking and landscape buffering, or that a shopping center provide adequate storm drainage and lighting controls to protect surrounding areas.

Special use permits are referred to by a variety of terms in local practice and court decisions. These terms include special exception use, special permit, conditional use permits, and special exceptions. The statutory term is special use permit.

Why Allow Special Uses?

Local legislatures achieve a degree of flexibility by adding special uses to the types of land uses otherwise permitted in zoning districts. In its inception, zoning was justified on the ground that the strict separation of uses was in the public interest and promoted the public health, safety, and welfare. This alone, however, would lead to the creation of single-family districts, residential districts, and neighborhood commercial districts where relatively few uses are allowed and thereby exclude a variety of uses historically associated with one another, sDs use, trict"ia9borhood co

Conditions can be imposed when the local legislature rezones a parcel as well as when local agencies approve applications for subdivision and site plan or issue special permits or variances. These local actions all involve

Although the imposition of conditions is clearly within the authority of local governments, the conditions must comply with several standards or they can be declared invalid. Courts invalidate a condition when there is no rational basis in the record for its imposition, when the condition is unreasonable, or when it is not related to the impacts of the proposed development.

Nonconforming Uses

A nonconforming use is created when existing land uses, valid when established, are prohibited by a new or amended zoning law. Nonconforming use issues arise when the zoning law is first adopted. When a district is zoned residential, for example, all existing nonresidential uses in that district are rendered nonconforming. Later amendments to the zoning ordinance may have the same effect.

When property owners propose the improvement, expansion, rebuilding or other change in their nonconforming property use, they must be certain to comply with local regulations governing those matters. Normally, these regulations are found in a discrete article of the local zoning law, entitled Nonconforming Uses. The nonconforming use article of the zoning law will prohibit or limit changes in buildings and lot uses that are nonconforming and provide in a variety of ways for the termination of nonconforming uses, such as limiting their expansion or enlargement, prohibiting the reconstruction of damaged structures, disallowing the reestablishment of nonconforming uses after they have been discontinued for a time, or simply terminating them after the passage of a sti

Enlargement, Alteration, or Extension

Similarly, local laws often prohibit the enlargement, alteration, or extension of a nonconforming use. To allow the expansion of nonconforming uses, which the zoning law wishes to eliminate over time, would defeat that underlying policy. Normally, the law allows the owners of nonconforming land uses to perform property repairs, conduct normal maintenance, and complete internal alterations that do not increase the degree of, or create any new, noncompliance with the locality's zoning regulations.

Courts have upheld prohibitions on the construction of an awning over a courtyard outside a restaurant, on the theory that it would create additional space for patrons to congregate and, in this sense, increase the degree of the nonconforming use. Similarly, the prohibition of the conversion of seasonal bungalows to year-round residences has been upheld as an acceptable method of preventing the enlargement of a nonconforming use.

Where nonconforming business operations are proposed to be expanded, the case law is somewhat less clear. Where roads and structures built on a parcel used as a gravel mining operation exhibited the owner's intention to use the entire parcel, the court held that expanding the mining operation to another location on the property was permitted. The addition of a body-toning operation to the premises containing a nonconforming beauty parlor, however, was considered a prohibited extension of the prior nonconforming use. The court's interest in protecting the owner's demonstrated investment in the gravel mining operation could explain the difference between these cases.

Nonconforming use provisions in zoning laws vary considerably from one locality to another. A municipality particularly intent on eliminating nonconforming uses may prohibit any physical expansion of a building; another may favor property use by allowing, for example, the construction of an additional story because it does not increase the footprint, or lot coverage, of the structure.

Changing to Another Nonconforming Use

The property owner's right to continue a nonconforming use does not allow the owner to change to a materially different use. The important question here is what constitutes a material change. The consequence of a finding that a material change in use has occurred, is to deem the prior nonconforming use abandoned and, therefore, terminated. The property owner could argue that the change of a nonconforming use from one commercial use to another, for example, should not be prohibited by the zoning law. The assertion is that to change a building's occupancy from a dairy plant to a business that rents machinery simply shifts the type of nonconformance from one commercial category to another. It has been held, however, that it is not only a change in the volume of business conducted but in the character of that business that determines whether one business use is a continuation of another. This is true despite the generic similarity between the old and new proposed use.

Occasionally, courts hold that changes from one use to another within the same category of use are permitted. In one case, for example, the owner was allowed to establish a storage business in a building that had been occupied as a nursery and florist enterprise. Determinations in these cases depend on the particular facts involved, the court's interpretation of how material the change will be and the specific language of the local ordinance that regulates changes in nonconforming uses.

Abandonment

A property owner's right to continue a nonconforming use may be lost by abandonment. Local zoning laws frequently stipulate that any discontinuance of the nonconforming use for a specified period constitutes

abandonment. Courts hold that such provisions are sufficient to establish the owner's intent to abandon the nonconforming use as a matter of law. Where the established period is reasonable, discontinuance of the use for that time amounts to an abandonment of the use. It has been held that local discontinuance periods apply even when the owner can prove that he did not actually intend to abandon the nonconforming use.

Amortization

Some local ordinances require certain nonconforming uses to be amortized over a specified period at the end of which they must be terminated. The term "amortization" is used to describe these provisions because they allow the owner some time during which to recoup her investment in the nonconforming use. The Court of Appeals has upheld such provisions "where the benefit to the public has been deemed of greater moment than the detriment to the property owner." The courts have said that the test for when an amortization period is reasonable is "a question that must be answered in the light of the facts of each particular case. Certainly, a critical factor is the length of the amortization period in relation to the investment. The critical question, however, is whether the public gain achieved by the exercise of the police power outweighs the private loss suffered by the owners of the nonconforming uses."

Contexts in which amortization provisions are likely to be upheld are:

1. When the common law of nuisance would allow neighboring property owners to enjoin the continuation of a nonconforming use. For example, a gravel pit, auto wrecking operation, or junkyard, harmful to children in a developing residential area, might be enjoined under a private nuisance action. Likewise, a zoning law can legally require such a nonconforming use to be terminated in an appropriate case. If an amortization provision is challenged, the municipality can show that the owner's property interest is slight because of its vulnerability to a nuisance action. In this context, however, the label "amortization" is inappropriate. The grace period, if any, allowed by the local statute is gratuitous if, in fact, the owner's use may be enjoined as a nuisance.
2. When the nonconforming use is somewhat noxious and the owner has little investment in it. For example, a provision requiring the owner to cease raising pigeons on the roof or to remove an old outdoor sign might withstand challenge because of the minimal nature of the owner's investment and the significant harm done to the zoning scheme if the owner's activity is allowed to continue. Harder cases are presented when the owner has a demonstrable investment in the use and the public interest in removing it is clear but where the threat to public health and safety is not imminent.

Limitations on the Restriction of Nonconforming Uses

The local legislature, in adopting zoning regulations, is most concerned with the separation of incompatible land uses. When a building, that preexisted the zoning requirements, is out of compliance with set-back, area, or height restrictions, it is not a nonconforming use in the technical sense; it is simply out of compliance with the dimensional requirements of zoning: a noncomplying building. Since noncomplying buildings do not offend the legislative policy of separation of incompatible uses, zoning provisions often do not so severely constrain their enlargement or reconstruction. A typical provision may require, for example, that no enlargement or reconstruction of a noncomplying building can increase the degree of noncompliance or create any new noncompliance.

A practice in some municipalities that extends the life of nonconforming uses is that of awarding use variances so that the nonconforming use can be enlarged, expanded, or reconstructed. This can occur when an owner is denied a building permit because the proposed construction would enlarge or reconstruct a nonconforming use. The owner can apply to the zoning board of appeals and, if the owner can show that the statutory criteria for a

Why have Accessory Uses?

Accessory use provisions in zoning laws allow a range of incidental uses of property that owners expect to engage in when they purchase their property for its principal use. By permitting uses customarily incidental and subordinate to the principal activity, zoning ordinances allow property owners additional beneficial use of their property. Regulations which limit the accessory uses allowed in a district also recognize that some neighborhoods should be protected from accessory uses that are not consistent with the expectations of the property owners. This separation of inconsistent uses into zoning districts is part of the original purpose of zoning.

Illustrations

The Town of Southeast's zoning ordinance provides an example of how an accessory use may be defined. It provides that an accessory use is:

A use incidental to the principal use and located on the same lot. In buildings restricted to residential use, the office of a professional, customary home occupations and woodworking and similar workshops not conducted for compensation shall be deemed 'accessory uses.' There may be no uses accessory to an accessory use.

Greenburgh, in Westchester County, has taken the approach of listing permitted accessory uses and prohibiting all others. The zoning ordinance lists the allowed accessory uses in each zoning district. For instance, § 285-10, the section which regulates the R-40, One-Family Residence zone, states:

A. Permitted Uses. No building or premises shall be used and no building shall be erected, altered or added to unless otherwise provided in this chapter, except for the following uses: (1) Permitted uses . . . (2) Special permit uses . . . (3) Accessory Uses (a) Off-street parking, . . . (e) private swimming pools and tennis courts, (f) domestic gardens, . . . (i) the keeping of dogs and cats, (j) private garages

Home Occupations

Historically, single-family homes have been used by their occupants for a variety of occupational uses such as beauty parlors, dressmaking, laundries, and day care. Zoning limits single-family homes to residential uses and to those uses that are customarily associated with residential use and incidental and subordinate to that residential use. Does this mean that a single-family homeowner can conduct a particular business in a particular neighborhood, as an accessory use, or is the occupational use prohibited?

In some communities, this question is answered on a case-by-case basis without benefit of any special regulations. The zoning authorities examine the proposed occupational use and determine whether it is customary, incidental, and subordinate to the residential use. Other municipalities define "home occupations" more specifically in their zoning laws, requiring homeowners to conform their occupational uses to those definitions. Some adopt a list of permitted occupational uses of homes while others prohibit a specific list of occupations.

Why are there limitations on home occupations?

Permitting occupations to be conducted in single-family zoned neighborhoods honors expectations of homeowners that such uses have been permitted historically and are within the bundle of rights purchased with the single-family home. Zoning restrictions limiting the occupational use of homes recognize that residential districts must be protected from home occupations that are out of character with the neighborhood and are not uses that homeowners expect to be affected by when they purchase a home in a single-family area. One of the original purposes of zoning is to separate uses that are inconsistent with one another into distinct zoning districts.

The Village of Brewster defines a permitted “home occupation” as:

An occupation, profession, activity or use that is clearly a customary, incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.

Illustrations

A broad definition of a home occupation is found in the Village of Brewster zoning law: “An occupation, profession, activity or use that is clearly a customary, incidental and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.” Art. IV, §170-3B.

A more specific definition of a home occupation, containing a list of excluded uses, was adopted by the Village of Hastings-on-Hudson: “Any use customarily conducted entirely within a dwelling ... , which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes The conducting of a clinic, hospital, barber shop, beauty parlor, tea room, tourist home, animal hospital, or raising of animals, or any similar use shall not be deemed to be a home occupation.” Art. I, § 132.

The Town of Carmel’s zoning law contains a definition of home occupation listing both included and excluded occupations: “An activity conducted within a dwelling and carried on by an inhabitant thereof, which use is secondary to the use of the dwelling for dwelling purposes as customarily found in the home, and does not change the character thereof. Individuals engaged in music instruction, including voice and instrument lessons, were limited to a single pupil at a time, and the occupations of dressmaker, milliner or seamstress are deemed to be “home occupations.” Dance instruction, band instrument instruction in groups, tearooms, beauty parlors, barber shops, real estate offices or insurance offices shall not be deemed “home occupations.” Art. III, § 63-7B.

A specific definition of a “home professional office” permitted as a home occupation is contained in the zoning ordinance of the Town of Harrison: “The office or studio of a resident physician, surgeon, dentist, or other person licensed by the State of New York to practice a healing art, lawyer, architect, artist, engineer, real estate broker or salesman, insurance broker or agent or teacher.” Art. I, § 235-4.

Exclusionary Zoning and Affordable Housing

When local zoning laws prevent lower income households from living in the community, those laws are called exclusionary zoning and can be declared unconstitutional by the courts. Zoning laws and other municipal actions that are aimed at providing housing for persons of limited income are called inclusionary zoning. State

statutes provide municipalities with a variety of mechanisms that can be used to encourage and provide desired affordable housing. The topic of affordable housing covers both exclusionary and inclusionary zoning.

1. Exclusionary zoning

In New York, the obligation not to exclude households in need of affordable housing means that communities may not exclude from their residential zoning districts types of accommodations, such as multi-family housing, that generally are more affordable than single-family homes on individual lots. Developers are given standing to challenge zoning laws that exclude more affordable types of housing since their rights cannot “realistically be separated from the rights of . . . nonresidents, in search of a comfortable place to live.” A locality that has been found zoned in an exclusionary fashion can be required by the court to amend its zoning laws to accommodate more affordable types of housing. This is one of the few instances in New York when the courts will direct a local legislature to take a particular action such as rezoning to accommodate a specific amount of affordable housing.

2. Inclusionary zoning

State statutes encourage local governments to adopt inclusionary programs regarding affordable housing. Localities have specific authority to provide zoning incentives, such as additional development density, to encourage private developers to set aside a percentage of residential units in a proposed development for affordable housing. Municipalities may abate local taxes, provide mortgage financing, acquire and dispose of property, and subsidize and provide infrastructure for affordable housing built by private and non-profit corporations organized under state housing laws. Cities, towns, and villages are authorized to establish municipal housing authorities that can issue bonds and make land available, provide infrastructure, and subsidize the costs of operating the projects of their municipal housing authorities.

Most discussions of affordable housing refer to state and federal subsidy programs that define affordable housing as synonymous with “low-income housing.” The public housing programs and housing subsidy programs administered by the U.S. Department of Housing and Development and various state agencies have largely defined affordable housing in the public mind as high-rise rental housing for low-income families or publicly subsidized rural housing of a particular architectural design. There is, however, no standard definition of affordable housing that directs or binds a municipality that wishes to establish an inclusionary program or avoid a successful exclusionary zoning challenge. Localities may wish to encourage or assist either rental housing or housing that is for sale. Municipally encouraged or assisted affordable housing may be multi-family townhouses, garden apartments, attached low-rise units, single-family modular units, or any other housing type that can be affordably constructed. Local affordable housing initiatives can aim to serve any income group that is priced out of the local housing market.

Why encourage affordable housing at all?

The purpose of encouraging housing for those in need of affordable homes is to provide housing for individuals and families that the community wishes to accommodate to create a more efficient, workable, and equitable community. Local governments in New York have used their zoning authority to encourage the development of housing for all types of households: senior citizens, middle-income families, homeless families, employees of the municipality, volunteer firemen, farm workers, and first-time homebuyers.

When local legislators discover that municipal employees or volunteers, senior citizens, young families or other groups of households are having trouble locating affordable housing in the community, they may wish to take some action to encourage its development. Localities may want teachers in the local school system, municipal

The federal Fair Housing Act and Amendments prohibits housing discrimination on the basis of color, race, religion, national origin, gender, and handicap including physical or mental impairment. The federal Americans with Disabilities Act implements a comprehensive approach to eliminating discrimination against the disabled. Local zoning provisions that violate these protections risk invalidation.

Environmental Review

The State Environmental Quality Review Act (SEQRA) applies to all agencies and instrumentalities of the state, which includes local agencies such as legislatures, planning boards and zoning boards of appeals. Local agency decisions on applications for site plan or subdivision approval or the issuance of variances and special permits must be preceded by an assessment of the environmental impact of the proposed project. The adoption of comprehensive plans and zoning ordinances, and their amendment, must also be accompanied by a review of their impact on the environment. SEQRA also applies to proposed plans of local governments to build capital projects or to provide funding for projects of any kind. The essence of SEQRA is the requirement that the impact of all such local actions on the environment be considered in the planning process and that local agencies act effectively to avoid any possible adverse environmental impacts.

SEQRA gives local land use agencies independent authority to impose conditions on land use approvals to mitigate the potential negative impacts of proposed projects on the environment. Since the environment is defined very broadly, SEQRA extends local agency authority to impose conditions on land use approvals for the protection of any aspect of the environment. Both with regard to these substantive conditions and to the procedures that proposals must follow, SEQRA amounts to a regulatory overlay on the process of reviewing and approving all other applications for land use approvals.

SEQRA also gives local governments additional authority to study and adopt plans for areas of environmental significance. In certain instances, localities may designate critical environmental areas, conduct cumulative impact analyses, and perform generic environmental impact statements. These environmental review tools expand the techniques available to villages, towns, and cities to anticipate and review future land use impacts in a more comprehensive manner.

Environmental Review Techniques

New York's State Environmental Quality Review Act, known as SEQRA, requires local agencies, when reviewing development projects, adopting plans, and establishing programs, to prepare an environmental impact statement for actions that may have a significant adverse impact on the environment. SEQRA requires such agencies to use all practicable means to minimize or avoid adverse environmental effects.

In SEQRA terms, the local land use review and approval agency is called the "lead agency" and a development approval, the adoption of a plan or enactment of land use regulations, are called "actions." When any local agency is about to undertake an action that is not exempt from review, it must consider the environmental impacts of that action and go through the procedures required by SEQRA.

When does Environmental Review come into play?

SEQRA applies to local land use actions such as approving applications for rezoning, subdivision and site plan review, the issuance of special permits and variances and the adoption of comprehensive plans and capital projects. Regulations issued under SEQRA list certain actions as Type II actions where no environmental review is required. The Type II list includes, for example, area variances for one, two, and three family houses,

the construction of noncommercial structures of less than 4,000 square feet and the construction or expansion of one, two, or three family homes on improved lots. Ministerial actions, such as the issuance of building permits where no discretion is exercised, are not subject to SEQRA.

With respect to other actions, the local lead agency must take a hard look at the potential environmental impacts and, where there may be a significant adverse impact on the environment, prepare an Environmental Impact Statement (EIS) on the proposal or project before granting, conditioning, or denying it. The regulations list certain actions as Type I which are deemed "more likely to require the preparation of an Environmental Impact Statement" than Unlisted Actions, which are simply not listed in the regulations, as either Type I or Type II actions. Some examples of Type I actions are the adoption of a comprehensive plan or zoning law, changes in allowable uses in any zoning district affecting 25 acres or more and the construction of 50 or more

the zoning law. By designating zoning districts and specifying the land uses, densities, and dimensions of construction permitted in each one, zoning both permits and limits land development. To a degree, natural resources are permitted to be used and are protected from development by the typical zoning law.

Communities can go further and protect particular environmental resources that they fear will be affected negatively by the development that is permitted under zoning. They can regulate development to protect aquifers, woodlands, wetlands, watersheds, watercourses, lakes, ponds, habitats, floodplains, and open spaces. They can protect steep slopes and woodlands, prevent soil erosion and sedimentation, mitigate pollution from non-point sources, control chemical applications, and determine the location of solid waste facilities, junkyards, mines, and quarries. The local laws and ordinances th

Both CACs and Conservation Boards are authorized to perform other duties assigned to them by resolution of the local legislative body as long as they are consistent with their general statutory advisory role regarding the

A land trust is a local or regional 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 trusts usually pursue their own organizational agendas. However, under contract with a local government, a land trust may agree to serve as a vehicle for the negotiation, acquisition, holding, and enforcement of conservation easements agreed to by, or imposed on, landowners as part of the local development review and approval process.

What conservation easements and land trusts accomplish

The purpose of a conservation easement is to preserve or conserve the scenic, open, historic, archaeological, architectural, or natural condition of real property. The easement is used to preserve scenic viewsheds, wildlife habitats, ecosystems, forest land or farmland, historic buildings or districts and open space as such. In addition to restricting land use, conservation easements may permit public access, such as hiking over a trail on the property or biking along a designated path.

The purpose of involving a private land trust in a municipal conservation program is to save the local government the expense and inconvenience of holding, monitoring, and enforcing conservation easements and to take advantage of the land trust's expertise in these matters.

Watershed Protection/New York City Watershed Protection

Watershed management is much like the traditional planning and regulating that is done within a municipality, except that, rather than being confined to a locality's borders, the plans and regulations are applicable to an area defined by an aquatic resource. It is a broad concept that incorporates all currently available programs, resources, and regulatory tools to protect aquatic ecosystems and human health.

A watershed management program involves several phases. These include:

- identifying a stream, river, lake, or other water body in need of protection;
- drawing the boundaries of the land that drains into that water body;
- knowing the agency or agencies that will assume responsibility for the quality of water in that land area;
- understanding the causes of the deterioration of the quality of that water; and
- developing an effective plan of action to preserve and enhance the quality of the water.

A typical watershed management plan will include a physical description of the watershed area and a clear description of the land uses that threaten its future quality. It will also prioritize the features and areas of the watershed that must be preserved and improved to insure its vitality as a habitat, source of drinking water, or recreational resource.

Regulations to Protect the New York City Watershed

One example of blanket regulations used to protect a watershed are the New York City Department of Environmental Protection (DEP) Watershed Regulations which were enacted May 1, 1997. To call it the New York City Watershed is a misnomer, because it is really a collection of watersheds, from which New York City draws its drinking water. The boundaries of the watershed encompass areas east of the Hudson in Westchester, Putnam, and Dutchess Counties and west of the Hudson in Delaware, Schoharie, Green, Sullivan and Ulster Counties. The Regulations were promulgated by New York City to avoid filtration of and to prevent the contamination, degradation, and pollution of the City's water supply.

These Regulations were developed at the initiative of one municipality, New York City, which worked in conjunction with the affected communities. What developed was a Memorandum of Agreement (MOA) under which participating municipalities agreed to act in good faith to effect and comply with the watershed regulations. In return, the

Freshwater Wetlands Regulation

Nearly all types of construction and development activities that are regulated by local land use laws may also be regulated under applicable federal, state, or municipal wetlands laws. There are a number of land use activities that may not proceed unless the landowner receives a wetlands permit if the activity affects a regulated wetland or buffer area. These include the construction of a home or residential subdivision, development of a commercial store or strip mall, extension of a driveway or road, the addition of a room, garage or tennis court, or the placing of any impervious surface on the land. In addition to this permit, the landowner must also receive approval under any applicable local regulations such as those governing land subdivision, site plan development, and the award of special permits or variances.

Other activities not typically regulated by local land use laws may be governed by wetlands laws. These include agricultural activities such as animal grazing, harvesting wetlands vegetation, draining or filling of any wetland, fence construction, fertilizer and chemical applications, and other personal or business activity on the land that could pollute a wetland or diminish its viability.

Wetlands laws typically contain a list of activities that are exempt from wetlands regulation. Examples of exempt activities include certain agricultural operations such as irrigation ditch construction and non-intensive recreational uses. Particularly harmful activities, such as the deposit of hazardous chemicals, may be prohibited altogether. Generally, landowners who propose to conduct regulated activities must apply to the designated administrative agency for a permit. Where certain standards and conditions can be met, a permit may be granted allowing the regulated activity to proceed. Conditions may be placed on the permit to avoid, minimize or mitigate the loss or degradation of wetlands.

Why do wetlands regulations exist?

The New York Freshwater Wetlands Act lists the critical public benefits that wetlands provide. These include flood and storm water control, aquifer protection, groundwater recharge, maintaining stream flow, pollution elimination, erosion control, and the provision of recreational opportunity, open space and habitat for wildlife, including threatened, rare, and endangered species. The purpose of adopting

APPENDIX A: GLOSSARY OF TERMS AND PHRASES

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 (SEQRA), 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 SEQRA 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
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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.

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 stockemhe side of roup F

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

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,

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

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.

SEQRA. The State Environmental Quality Review Act re

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 zoning regulations by local law or ordinance.