



Zoning: An Introduction

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Why enact zoning?

- To keep conflicting uses separate
- To preserve community character
- To channel growth and economic development
- To maintain affordability for farmers



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Why not?

- Stifles growth?
- Invasion of privacy and property rights?
- Too much government?
- Not having zoning is a good way to keep things the way they are?



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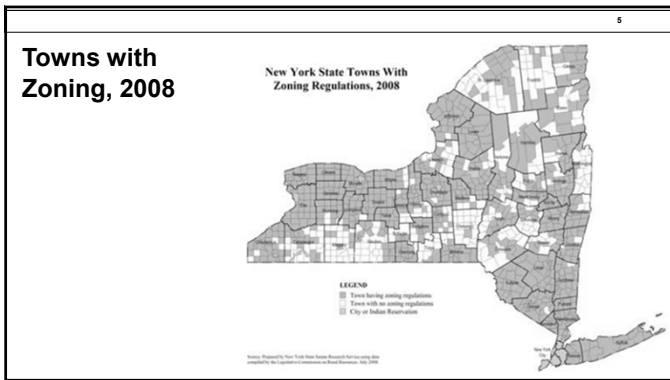
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78% of all Local Governments in New York have Zoning

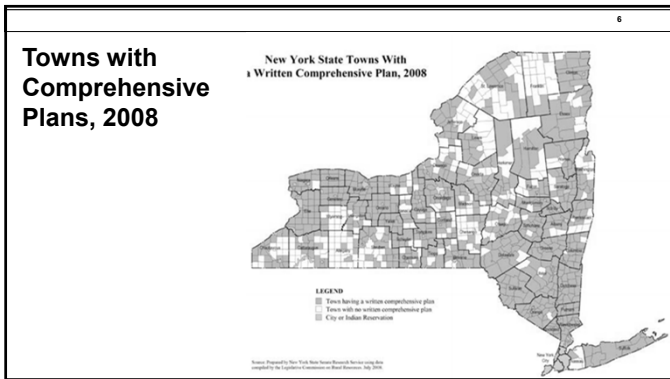
	2004	2008
Cities	100%	100%
Villages	88%	89%
Towns	70%	71%

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SEQR – Mitigation of impacts, needs trigger

- 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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County referral

- GML 239 m and n (for subdivisions)
- County Planning Agency:
 - Approval
 - Approval with modification
 - Disapproval
 - **No significant county-wide or inter-community impact**
- County must include reasons for recommendation

GENERAL MUNICIPAL LAW
SEC. 239 m

DEFER:

- ADOPTION
- AMENDMENT
- VARIANCE
- SPECIAL PERMIT

MUNICIPAL BOUNDARIES

COUNTY OR STATE:

- PARKS
- HIGHWAYS
- DRAINWAYS
- STREAMS
- INSTITUTIONS
- BUILDINGS

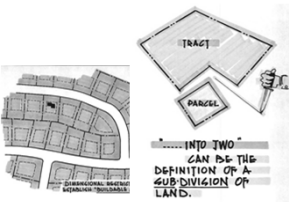
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Other Land Use Tools

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Subdivision



The division of a parcel of land:

- Into lots, blocks or sites (with or without streets)
- For sale, transfer of ownership, or development
- Purpose: to oversee land division in an orderly manner and avoid creation of lots that can't be used.

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

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Site Plan Review

Rendering, drawing, or sketch with project's proposed design and layout on a single parcel

May apply to many uses, from single family home to shopping mall

Zoning not necessary to enact site plan review

Purpose: to improve physical design and layout of development proposals



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What Subdivision and Site Plan Review Don't Do

- Establish minimum lot size
- Provide for maximum lot coverage
- Set height limits
- Standardize setbacks
- Regulate density
- Determine permitted uses
- Restrict unwanted uses



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Zoning

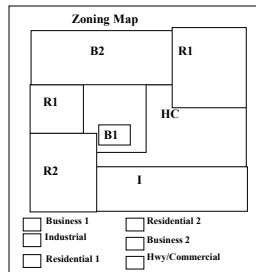
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Zoning

- Regulates use, density, and placement of structures on a parcel
- Each district has a list of as of right and special uses and bulk and area regulations
- Original intent: To separate incompatible uses to protect public health, safety, and welfare



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Common contents

- Text with intent for zones and definitions
- Map
- Schedule of uses
- Bulk and area standards
- Illustrations or diagrams



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General text provisions

- Statutory source of power and intent
- Definitions
- Summary of uses permitted in each district
- Reference to official zoning map and establishment of district boundaries
- Relationship to other regulations
 - NYS Uniform Fire Prevention & Building Code
 - Site plan or subdivision review (easiest to administer when combined into one law)
- Administration and enforcement
- Application and permit fees
- Saving or severability clause

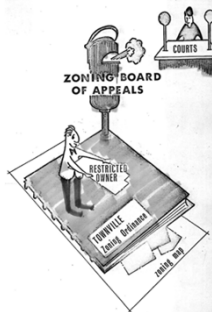
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Zoning requires a safety valve

Municipalities with zoning must have a **zoning board of appeals**

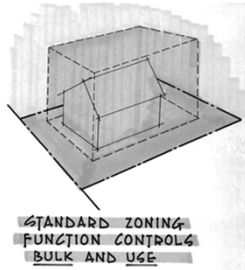
ZBA is a “buffer” for aggrieved applicants between decisions of the zoning enforcement officer and the State supreme court



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Regulating Setback and Height = Zoning

If standardized setbacks, height, and lot coverage are part of a local law or ordinance, even if it's not *called* zoning, a board of appeals is necessary as a means of possible relief.



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Regulating dimensions of signs = Zoning

If standardized setbacks, height, and other design criteria are part of a local law or ordinance for signs, a board of appeals is necessary as a means of possible relief.



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Regulating Use = Zoning

Example: sale of used tires in a hamlet

Property Maintenance Code can help but alone can't restrict use



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Regulating Use = Zoning

Example: go kart track

Noise regulations, site plan review, SEQR can mitigate impacts, but without zoning won't prevent use from locating close to residences



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Regulating Use = Zoning

Example: Short-term rentals

Noise law can help but won't alone stop the activity



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Regulating locations = Zoning

Distribution centers

If one were proposed in your town, where would it be most appropriately be located?



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Simple zoning

- Agricultural
- Rural residential
- Hamlet residential
- Commercial
- Industrial

- Hamlet business
- Institutional

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Town of Greenwich Zoning

- Rural Ag
- Residential
- Hamlet/Mixed Use
- Commercial
- Industrial

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City of Ithaca Future Land Use Map


Legend	
Future Land Use	—+— Railroad
■ Educational	— NYS Roads
■ Enterprise	— City Streets
■ Low Density Residential	— Waterway
■ Medium Density Residential	- - - City Border
■ Waterfront Mixed-Use	★ Focus Area
■ Urban Mixed-Use	
■ Environmentally-Sensitive	
■ Parks	
■ Cemetery	

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Town of Red Hook



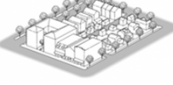
Waterfront Conservation	Traditional Neighborhood Development
Limited Development	Residential Neighborhood
Rural Development 5	Commercial Center
Rural Development 3	Office-Industrial
Residential 1.5	
Residential 1	Flood Fringe Overlay
Hamlet	Historic Landmarks Overlay
Hamlet Business	Environmental Protection Overlay
Institutional	
Business 1	
Business 2	
Agricultural Business	




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Form-Based Zoning

<p>Conventional Zoning Density use, FAR (floor area ratio), setbacks, parking requirements, maximum building heights specified</p> 	<p>Zoning Design Guidelines Conventional zoning requirements, plus frequency of openings and surface articulation specified</p> 	<p>Form-Based Codes Street and building types (or mix of types), build-to lines, number of floors, and percentage of built site frontage specified.</p> 
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Conventional vs. Form-Based

Conventional	Form-Based
<ul style="list-style-type: none"> • Use is primary • Segregated <ul style="list-style-type: none"> – Single-use • Auto-centric • Reactive & development led • Uses dimensions and definitions with deliberative process 	<ul style="list-style-type: none"> • Physical form is primary • Mixed-use • Urban-centric <ul style="list-style-type: none"> – Walkable & compact • Proactive & community led • Prescriptive <ul style="list-style-type: none"> – Regulates to create places



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Comprehensive Plan

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Comprehensive plan purpose

- Statement of community vision : An expression of a municipality's goals and recommended action to achieve those goals.
- Provides strategies for achieving expressed goals, often in the form of new or revised land use regulations
- Serves as a framework and defense for land use regulations which focuses on immediate and long-term protection, enhancement, growth and development of the municipality.
- An outline for orderly growth, providing continued guidance for decision-making.

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Zoning implements goals of the plan

- Current land uses and regulations
- Growth patterns
- Economic development
- Housing
- Priorities for preservation

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Preparation of plan and amendments to zoning

- Governing board, planning board or special board, oversees preparation
- Public hearings must be held by both board preparing plan and governing board
- Governing board adopts plan and zoning amendments



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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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Municipal Home Rule Law

Section 10

“Every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government”



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Adopting zoning for the first time

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Zoning Commission

Appointed by Village Board of Trustees or Town Board

Membership:

- Planning Board
- “Fresh” group of citizens, with at least one Planning Board member
- Number of members is a local option

Town Law §266
Village Law §7-710

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Zoning commission duties

- Prepare draft map (or description) of proposed zoning district boundaries
- Prepare draft regulations to be enforced within districts
- Hold at least one public hearing on preliminary zoning map & text
- Prepare final report to local governing board, taking public comment and subsequent investigations into account

When local governing board accepts final report, zoning commission ceases to exist

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Public participation

- All meetings of zoning commission are open to public
- Obtain public input at public hearings held by:
 - Zoning commission
 - Local governing board
- Obtain informal public input by:
 - Surveys
 - Public information sessions or workshops
- Zoning cannot be subject to a referendum

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Zoning commission hearing notice

- Publish in official paper;
 - No notice period set by law, but 10 days prior to hearing is recommended
 - Post on municipal website
 - Post in conspicuous places
- Multiple hearing dates is an option
- Send copy of notice, draft text & draft map to local governing board

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Procedures for Zoning Revisions and Adoption

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Drafting Revisions

- Governing Board
- Planning Board
- Appointed Advisory Board
 - Number of members is a local option
 - At least one member of the planning board
- Possible resources
 - Municipal attorney
 - County planners
 - Consultant



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SEQRA

- Type I Action is more likely to require EIS (positive declaration)
 - Initial zoning local law or ordinance adoption is
 - Zoning amendment affecting 25 or more acres
- Governing board makes "determination of significance"
 - Positive or negative declaration

As part of its final report, Commission could be directed to prepare:

- EAF; or
- Draft EIS

GEIS

- Potential to reduce SEQRA review for specific actions
- Encourages thorough analysis of proposed changes

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General Municipal Law §239-m

No final action on adoption until County Planning Agency makes recommendation on referral

- Municipal boundary
- Boundary of state or county park or recreation area
- R-O-W of state or county road
- R-O-W of county-owned stream or drainage channel
- Boundary of state or county land on which a public building is located
- Boundary of a farm operation that is in a state agricultural district



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Governing board public hearing

- Notice must be published in newspaper at least:
 - 10 days prior in villages
 - 5 days in towns & cities
- Hold only after DEIS is complete OR negative declaration is made
- Written notice at least 10 days prior when 500' from:
 - Housing authority
 - Adjacent city, village or town
 - County boundary
 - State park or parkway

NEWS

NOTICE
Should give average reader reasonable warning that land in which he or she has an interest may be affected by proposed regulations

Town Law §264 Village Law §7-706

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Public hearing

- Ensure access to all wishing to participate
- Provide general review of proposed revisions
- Determine method by which public comment will be taken
- Keep detailed record of proceeding

Record can be used in by ZBA for future interpretations

- If recording, take notes to go with recording
- Written record does not have to be verbatim


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Procedural compliance

- Requires majority vote of full board
- Must be entered into legislative board's minutes
- Must file zoning map
- If FEIS exists, board must make written findings prior to adopting zoning regulations



Majority plus one vote needed to act contrary to county's recommendation

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Expect Revisions!

Once the new zoning is adopted and effective, expect to revise it again as the new regulations are applied in practice:

- **Common, don't be surprised or discouraged**
- May need to be tweaked to address an unexpected scenario or offer a more or less stringent standard for a specific use or category
- For efficiency, collect revisions and amend and adopt as a group, not individually



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Nonconforming uses "grandfathered"

- Legally existed prior to current zoning
- Don't need use variances to continue
- Use variances on properties with nonconforming uses must prove no reasonable return on allowed uses & nonconforming uses
- "Grandfathered" not necessarily permanent (abandonment, amortization)



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Zoning runs with the land, not the owner

The purpose of zoning is to regulate the use of land, irrespective of who may be the owner of the land - *Matter of Weinrib v. Weisler, 1970*

While it is proper...to impose appropriate conditions and safeguards in conjunction with a change of zone or a grant of a variance or special permit, such conditions...must be reasonable and relate only to the real estate involved without regard to the person who owns or occupies it. - *Dexter v. Town Board of Gates, 1975*



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The power to regulate land is with local government

- Most sensitive natural resources are not regulated by the federal or state governments
- Even if a permit by a state or federal agency is needed, that doesn't preclude the alteration of a sensitive area



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