Department of State
Local Government

REVISING ZONING

1

Outline

- Comprehensive Planning
- Zoning 101
- Trends
- When to amend
- Contents of zoning regulations
- Procedures



2

Comprehensive Plan – Purpose

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

67% of NYS Local Governments have Comprehensive Plans

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

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

3

Comprehensive Plan – Considerations

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



4

What Is Zoning?

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

78% of NYS Local Governments have Zoning

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

5

What Can Zoning Do For Your Community?

- Help maintain and enhance community character
- Support current land uses and compatible new ones; mixed use hamlets and villages
- Protect investment by creating some predictability
- Protect farmland, open space, sensitive environments and scenic resources
- Leverage walkability, community amenities
- Can be used to encourage priorities for economic development, housing and hot button issues



6

Zoning Trends

- More emphasis on development form to address:
  - Compatibility amongst land uses
  - Preservation of community character
  - Interaction with public and civic spaces



- More mixed-use neighborhoods/transition areas; less auto-orientation
- More housing choice for all ages and incomes:
  - Accessory dwelling units, “missing middle housing”
  - Programs to generate more affordable units

7

Zoning Trends

- Options for adaptive reuse of existing vacant structures
  - Multi-family and services in former schools and churches in residential neighborhoods
  - Multi-family housing in empty commercial and industrial buildings in predominantly commercial areas
- Zoning for resilience
  - Low impact development practices
  - Green infrastructure
  - Avoiding flood-prone areas for development



8

WHEN TO AMEND

9

Signs That It's Time To Update Your Zoning

- You updated your Comprehensive Plan and Goals changed significantly
- New technologies or uses are proposed not defined or addressed in zoning
- New infrastructure installations support growth in areas not zoned for more density or intensity
- Development trends seem to be getting worse, not better

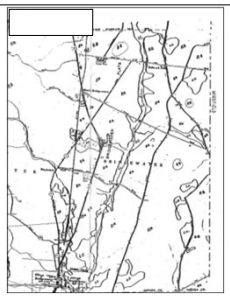


NYS DOS | Local Government 10

10

Signs That It's Time To Update Your Zoning

- Can't decipher zoning map
- Many interpretations and/or variances being sought/granted
- Outdated terminology or language
- Confusion on definitions, wording, what's allowed and prohibited, etc.
- Lack of guidance for permitting reviews and decisions



NYS DOS | Local Government 11

11

Adopting Moratoria

Avoid establishing unwanted uses in some or all zoning districts



- May be enacted to gather information to adopt new regulations
- Development that might occur without moratorium could undermine value of regulations in progress
- Should be for fixed time period with specified end date, no longer than reasonably necessary to adequately address issues



NYS DOS | Local Government 12

12

ZONING CONTENTS

13

Zoning Framework

- General framework uses map(s) and districts which define permitted uses, lot area, bulk and form standards
- Additional regulations of use/site functionality, adverse impact mitigation, community character and natural resource protection
- Illustrations or diagrams used to present key concepts
- Permitting and administrative process



14

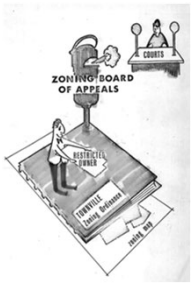
General Text Provisions All Codes Should Have

- Statutory source of power and intent – **reference Comprehensive Plan**
- Definitions
- Reference official zoning map and establishment of districts
- Relationship to other regulations
  - NYS Uniform Fire Prevention & Building Code
  - Site plan or subdivision review (easier to administer when combined into one law)
- Permitting process
- Administration, enforcement and appeals process
- Saving or severability clause

15

Zoning Requires a Safety Valve

- Municipalities with zoning must have Zoning Board of Appeals
- ZBA is "buffer" for aggrieved applicants between decisions of zoning enforcement officer and State Supreme Court



16

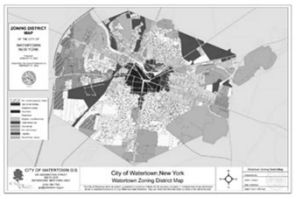
Updating Zoning Districts and Maps

Things to consider:

- Districts reflect supported mixes of uses/densities in the comprehensive plan?
- Purpose statements for each district clearly defined?
- Minor distinctions between zones call for consolidation?
- Relation to current transportation, infrastructure, modern design?
- Adequate transition zones?
- Effect of strip zoning?

17

Zoning Districts and Maps





No one size fits all!

18

Identifies Permitted Uses

SCHEDULE A: PERMITTED USES
P = Permitted as of right **SU**= Requires a Special Use Permit
Blank = Prohibited in that District

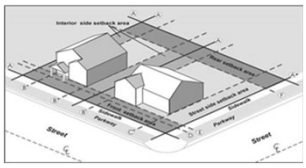
USE CATEGORY	RR	R	R-2	R-3	MU	CB	Additional Standards
RESIDENTIAL USES							
Dwelling, single-family	P	P	P	P	P		
Dwelling, two-family, newly constructed			P	P	p		
Dwelling, two-family, conversion of a single- family residence					p		
Dwelling, multi-family					P		§170-32
Dwelling, temporary rental	P	P	P	P	P	P	
Dwelling units above first floor commercial					P	P	
Dwellings, existing at the time of Chapter adoption	P	P	P	P	P	P	
Live-Work Space			P	P	P	P	
Manufactured homes, individual				P			§170-28
Residential care facility			SU	SU	SU		
Senior housing			SU	SU	SU		
Townhouses	SU			SU			
COMMUNITY USES							
Cemetery	P				P		
Club, membership and lodge					P		
Community center	SU				P		
Cultural facility		SU	SU	SU	P		
Daycare, child/family daycare facility	P	P	P	P	P		
Day care, adult (day treatment facility)					P		
Municipal/government facility	P	P	P	P	P	P	
Park and recreation, public	P	P	P	P	P	P	
Parking lot, public					P	P	
Public utility substation not otherwise listed	SU	SU					
Religious institution	P	P	P	P	P		
School		P	P	P	P		

19

Dimensional / Form Requirements

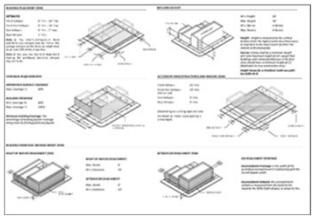
- Minimum lot size
  - Available infrastructure / adequate space for wells/septic
- Setbacks and build-to lines
- Frontage – flag lots
- Maximum lot coverage / imperviousness
- Corner lots
- Height considerations
- Application to accessory uses

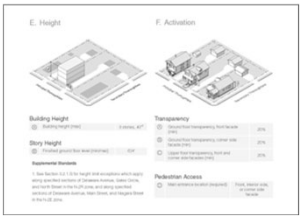
Things to consider:
- Method of measurement
- Tools for flexibility



20

Dimensional / Form Requirements





21

Dimensional Requirements

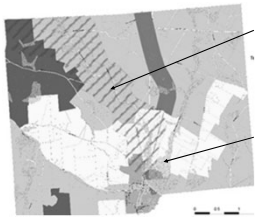
Zoning District	Minimum Lot Area (SF = square feet)	Maximum Impervious Surface	Minimum Lot Width	Principal Use Required Yard Setbacks			Building Height (minimum/ maximum)
				Front[1] (minimum/ maximum)	Side (minimum)	Rear (minimum)	
Education-Campus (E-C)	Residential: 8,000 SF for single-two-family dwellings All other uses: 12,000 SF	35%	Residential: 60 feet Nonresidential: 100 feet	For lots abutting zoning districts R-SF, R-MF, NMU: 15 feet minimum/30 feet maximum or the average or the average of adjacent lots[2]	10 feet minimum one side/25 feet minimum total of both sides for lots	50 feet	For lots abutting zoning districts R-SF, R-MF, NMU: 35 feet maximum; all interior education campus lots 50 feet maximum
Neighborhood Mixed Use (NMU)	Residential: 8,000 SF for a single dwelling unit, plus 2,000 SF for each additional dwelling unit Nonresidential: 20,000 SF	40%	75 feet	20 feet minimum/35 feet maximum or the average of adjacent lots[2]	10 feet minimum one side/25 feet minimum total of both sides	30 feet	1.5 stories minimum/2.5 stories and 35 feet maximum
Main Street (MS)	None	100%	None	0 feet minimum/5 feet maximum	0 feet minimum/10 feet maximum total of both sides	5 feet	2 story minimum/3.5 stories or 40 feet maximum
Downtown Mixed Use (DMU)	None	70%	None	Or the average of adjacent lots[2]	5 feet one side/15 feet total of both sides	30 feet	2 story minimum/3.5 stories or 40 feet maximum

22

Overlay / Special Use Districts

May address sensitive or unique areas or scenarios that require more or less regulation

- Waterfronts; flood-prone areas
- Drinking water source
- Steep slopes
- Viewshed protection
- Historic areas
- Gateways, downtowns etc.



23

Additional Use Regulations

- Applied to specific uses in tandem with dimensional, design and other supplemental standards often wherever permitted

Examples:

- Accessory dwelling units
- Adult uses
- Short term rentals
- Home occupations
- Drive through facilities
- Renewable energy facilities
- Manufactured housing parks
- Kennels
- Gas stations
- Campgrounds

24

Supplemental Regulations

- Accessory site improvements and amenities

Examples:

- Signage
- Parking and loading
- Fences and walls
- Building design standards
- Landscaping/screening
- Outdoor lighting
- Stormwater management



Example of sign regulations conveyed in a table

25

Nonconforming Uses and Lots



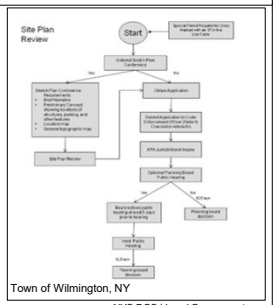


- **Legally existed** prior to current or proposed zoning
- Permitted to continue but not necessarily permanent
  - Abandonment (typically after 12 months)
  - Amortization (for minor investments i.e. signs)
- Use variance not needed to continue, but needed for expansion unless otherwise stated
- Existing lots of record – codes may allow some use of substandard lots without seeking relief if setbacks can be met

26

Permitting Process

- Consider streamlining reviews to the extent possible
- Include criteria for boards to base decisions on
- Clearly outline all steps in review process to assist Boards and applicants
  - Outline timing of coordination with other local approvals
    - Special use permits and Site Plan Review
    - Area variances associated with Site Plan Review



Town of Wilmington, NY

27

PROCEDURES

28

Who Will Draft Revisions?

- Governing board
- Planning board
- Appointed advisory board/committee
- Possible resources
  - County planners
  - Consultants
  - Municipal attorney



29

Community Engagement

- Especially important with extensive updates
- Ideas:
  - Zoning 101 presentation early
  - Presentations summarizing drafts
  - Open houses for 1 on 1 conversations
- Required public hearing on draft(s) conducted by governing board



30

SEQRA

- Zoning amendments are often Type 1 actions
  - Initial zoning local law or ordinance
  - Amendment affecting 25+ acres
- Type 1 Actions require Full Environmental Assessment Form or Generic Environmental Impact Statement
- Governing board is lead agency and makes "determination of significance"
  - Positive or negative declaration

31

General Municipal Law § 239-m

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



Any amendment that changes district classification of, or regulations applying to, real property lying within 500' of certain areas, must be referred to County Planning Agency

32

Draft Publication and Posting

- Towns and villages: copy, summary or abstract must be published at least once in official newspaper
  - Could be same legal notice for public hearing
  - File affidavit of publication with municipal clerk
- Recommend ALL post draft on municipal website with paper copy available for review in municipal building
  - Village Law requires text and map be posted conspicuously by clerk's office

Town Law § 264
Village Law § 7-706

33

Public Hearing Required

- Must be conducted by local governing board in towns and villages
- Notice must be published in newspaper at least 10 days prior in villages and towns; 5 days for cities
- Hold only after DGEIS is complete OR SEQR negative declaration is made
- Written notice of hearing when zoning change is **within 500 feet of a:** housing authority, municipal or county boundary, state park or parkway
- Ensure building is physically accessible to all wishing to participate and establish rules of order for the hearing

Cities: See public hearing options in General City Law §83

34

Zoning Adoption

- Requires majority vote of fully constituted governing board
  - Unless acting contrary to County recommendation which requires supermajority
- Must be entered into legislative board's minutes
- Must file zoning map
- If GEIS exists, board must make written findings prior to adopting zoning regulations

*No statute exists authorizing submission of first-time zoning or amendments to referendum

35

Effective Date

- Generally, 10 days after adoption, if adopted by ordinance
- Local laws effective upon filing at Department of State
  - Must file within 20 days of adoption
  - DOS Local Laws database: https://locallaws.dos.ny.gov/
- Personal service of law or amendment can make law effective as to the individual involved on date of service


Division of Local Government Services

Adopting Local Laws in New York State

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

A Division of the New York Department of State

Kathy Hochul, Governor Robert J. Rodriguez, Secretary of State

36

Citizen Protests



- Amendments subject to written protests:
  - Owners of 20% of land area included in proposed change
  - Owners of 20% of land area adjacent to land included in change (extending 100' out)
  - Owners of 20% of land area opposite land included in change (extending 100' out from street frontage of opposite land)

37

Expect Revisions

- Once new zoning is adopted and effective, expect to revise it as new regulations are applied in practice:
  - May need to be tweaked to address an unexpected scenario or offer a more or less stringent standard for specific use or category
  - For efficiency, collect revisions and amend and adopt as a group, not individually

38

Zoning Is Only As Good As Your Ability To Enforce

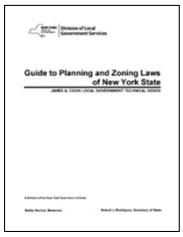
- Authorize administrative professional to enforce local laws
  - Zoning/code enforcement officer
- Capacity, capacity, capacity
- Enforcement procedures
  - Letters of violation
  - Serving notice or issuing appearance tickets
- Adequate fines and penalties



39

Resources on NYS Laws and Regulations

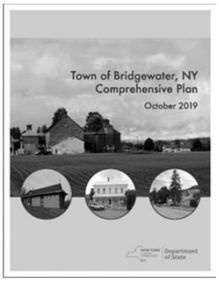
- Guide to Planning and Zoning Laws in NYS: https://dos.ny.gov/guide-planning-and-zoning-laws-new-york-state
- NY DOS Local Laws Search: https://locallaws.dos.ny.gov/
- Questions for the Analysis and Evaluation of Existing Zoning Regulations: https://dos.ny.gov/questions-analysis-zoning
- Zoning and the Comprehensive Plan: https://dos.ny.gov/zoning-and-comprehensive-plan
- All DOS publications: https://dos.ny.gov/publications



40

Planning and Zoning Funding

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



41

NEW YORK STATE | Department of State
Local Government

Division of Local Government Services
(518) 473-3355
localgov@dos.ny.gov
https://dos.ny.gov/training-assistance

Publications:
https://dos.ny.gov/publications



42