Table of Contents

CHAPTER 1. EVOLUTION OF LAND USE CONTROLS

B. PREZONING RESTRICTIONS ON THE USE OF LAND

§ 1:04 Common-law nuisance
§ 1:05 Restrictive covenants
§ 1:06 Eminent domain

C. PLANNING, ZONING AND SUBDIVISION CONTROLS

§ 1:12 Urban renewal and other methods of implementing the community plan

D. IMPACT OF LAND USE CONTROLS

§ 1:17 Zoning amendment or variance

CHAPTER 2. SOURCES OF ZONING POWER

A. LEGISLATIVE POWER OF THE STATE

§ 2:01 State power to regulate the use of land
§ 2:02 State planning and zoning legislation

B. MUNICIPAL HOME RULE

§ 2:03 Local zoning power; generally
§ 2:07 Local zoning power; generally—Villages

C. DELEGATION OF POWER; THE ZONING ENABLING ACTS

§ 2:10 Zoning enabling acts; cities
CHAPTER 3. LEGISLATIVE LIMITATIONS
ON THE ENACTMENT, AMENDMENT,
AND REPEAL OF ZONING
REGULATIONS

A. INTRODUCTION; PROCEDURAL
REQUIREMENTS—GENERALLY
§ 3:01 Litigation relating to legislative procedure: 1984-1999
§ 3:03 Municipal Home Rule Law
§ 3:04 Municipal Home Rule Law—Supersession
§ 3:05 Procedural requirements applicable to cities
§ 3:06 Procedural requirements applicable to cities—Towns

B. PRELIMINARY PLANNING
§ 3:12 County planning agency or regional planning council
§ 3:12.1 Coordination with SEQRA [New]

C. LEGISLATIVE HEARINGS
§ 3:13 Notice and hearing
§ 3:20 Necessity for second hearing
§ 3:21 Nature of hearing

D. FINAL LEGISLATIVE ACTION
§ 3:27 Entry in minutes; filing
§ 3:28 Publication, posting, and personal service
§ 3:30 Power to amend
§ 3:32 Amendment procedure
§ 3:32.50 Applicability of amendments [New]
§ 3:34 Protest petitions; towns

CHAPTER 4. LEGISLATIVE LIMITATION ON
THE SUBSTANCE OF ZONING
REGULATIONS

A. INTRODUCTION
§ 4:02 Substantive limitations on the zoning power

B. THE COMPREHENSIVE LAND USE PLAN
§ 4:03 A comprehensive or well-considered plan—historical
development
§ 4:04 Statutorily defining the comprehensive land use plan
§ 4:05 Content of the comprehensive plan
§ 4:07 Coordinating preparation of the plan
TABLE OF CONTENTS

§ 4:08 Procedures leading to adoption
§ 4:09 Effect of plan adoption; periodic review

C. SPOT ZONING, PIECEMEAL ZONING AND THE “FLOATING ZONE”

§ 4:10 Spot zoning
§ 4:13 Benefit or detriment to owner of the land reclassified
§ 4:17 Moratoria, interim or stop-gap zoning [Retitled]
§ 4:18 “Floating zone”

D. MISCELLANEOUS LIMITATIONS

§ 4:19 Uniformity
§ 4:22 Conflict with state law
§ 4:23 Territorial limitations
§ 4:24 [Deleted]

CHAPTER 5. CONSTITUTIONAL LIMITATION ON THE ZONING POWER

A. INTRODUCTION

§ 5:01 Constitutional litigation
§ 5:02 Validity of zoning ordinances

D. PRESUMPTIONS AND BURDEN OF PROOF

§ 5:09 Presumption of constitutionality

E. CRITERIA OF CONSTITUTIONALITY

§ 5:15 Highest and best use

F. REGULATORY TAKINGS

§ 5:21 Introduction
§ 5:22 Background
§ 5:23 Per se taking
§ 5:24 The tests
§ 5:25 Distinct investment-backed expectations
§ 5:26 Elimination of Value
§ 5:27 Ripeness
§ 5:28 Essential nexus and rough proportionality

G. SUBSTANTIVE DUE PROCESS

§ 5:32 Substantive due process claims

H. EQUAL PROTECTION

§ 5:33 Rational Relationship Test
§ 5:34 Similarly situated
§ 5:35 Selective enforcement

I. PROCEDURAL DUE PROCESS
§ 5:36 Procedural due process

J. RIGHT TO PETITION GOVERNMENT
§ 5:37 Right to Petition Government

CHAPTER 5A. EMINENT DOMAIN

A. IN GENERAL
§ 5A:5 Property subject to condemnation
§ 5A:6 Public use
§ 5A:10 Redevelopment, blight removal, and economic development takings

B. THE EMINENT DOMAIN PROCEDURE LAW
§ 5A:11 Generally
§ 5A:12 Notice, public hearings, determination and findings
§ 5A:14 Judicial review
§ 5A:16 Just compensation

CHAPTER 6. THE LEGITIMATE OBJECTIVES OF ZONING

A. INTRODUCTION
§ 6:01 The purpose of zoning regulation
§ 6:02 Legislative limitations; the enabling acts

B. ZONING FOR AESTHETIC PURPOSES
§ 6:04 Generally
§ 6:08 Zoning ordinances

C. MISCELLANEOUS OBJECTIVES OF ZONING RESTRICTIONS
§ 6:18 Preservation of the character of the neighborhood
§ 6:25 Zoning to provide housing for the aged
CHAPTER 7. TYPES OF ZONING REGULATION

B. DISTRICTS AND BOUNDARY LINES

§ 7:03 Zoning districts
§ 7:04 District boundary lines
§ 7:05 District boundary lines—Split lots
§ 7:07 District boundary lines—Underwater land

C. GENERAL CHARACTERISTICS OF ZONING ORDINANCES

§ 7:10 Exclusive zoning—New York City
§ 7:12 Special use permits
§ 7:15 Contract zoning
§ 7:17 Incentive zoning

D. USE RESTRICTIONS

1. RESIDENTIAL USE DISTRICTS

§ 7:20 Residential districts; generally—Exclusion of commercial uses
§ 7:21 Residential districts; generally—Accessory uses
§ 7:22 Single-family districts; generally
§ 7:23 Single-family districts; generally—Unrelated persons; communes
§ 7:24 Single-family districts; generally—Group homes; foster homes
§ 7:25 Single-family districts; generally—Physically or mentally disabled persons

2. COMMERCIAL USE DISTRICTS

§ 7:26 Commercial districts
§ 7:26.50 Commercial districts—Accessory uses [New]

5. FLOOD PLAIN ZONING

§ 7:30 Flood plain zoning

6. REGULATIONS TO CONTROL COMMUNITY DEVELOPMENT

§ 7:31 Control of community development; generally

E. HEIGHT, BULK, AND AREA RESTRICTIONS

§ 7:35 Height, bulk, and area regulations
§ 7:38 Yard regulations
§ 7:39 Lot area regulations
§ 7:41 Substandard lots

© 2020 Thomson Reuters, 9/2020
§ 7:43  Restrictions on families or dwelling units

F.  ARCHITECTURAL CONTROLS
§ 7:47  Regulation of exterior design
§ 7:50  Transfer of development rights
§ 7:57  Extraterritorial jurisdiction [New]

G.  LOT MERGERS [New]
§ 7:58  Mergers [New]
§ 7:59  Form Based-Codes [New]

CHAPTER 8. MUNICIPAL PLANNING

A.  INTRODUCTION
§ 8:01  Planning departments; planning boards and commissions

B.  PLANNING BOARDS: CREATION AND ORGANIZATION
§ 8:02  Establishment of planning board; cities
§ 8:03  Establishment of planning board; cities—Towns
§ 8:04  Establishment of planning board; cities—Villages
§ 8:05  Qualifications for membership
§ 8:06  Appointment of alternate members
§ 8:07  Organization; staff; rules
§ 8:08  Records
§ 8:11  Powers and duties of planning boards
§ 8:12  Preparation of comprehensive plan
§ 8:14  Approval of plats; review of proposed changes in maps
§ 8:15  Voting [New]
§ 8:16  Other referrals [New]
§ 8:17  Training [New]
§ 8:18  Immunity [New]

CHAPTER 8A. ANNEXATION
§ 8A:8  Limits on annexation—Statutory prohibitions
§ 8A:12  Determinations of local governments

CHAPTER 9. COUNTY AND REGIONAL PLANNING

A.  INTRODUCTION
§ 9:01  Regional planning: an historical perspective
B. PLANNING BOARDS: ESTABLISHMENT AND ORGANIZATION
§ 9:02 County boards
§ 9:03 Regional planning councils

C. PLANNING BOARDS: POWERS AND DUTIES
§ 9:06 Powers of county planning boards, regional planning councils; collection and distribution of information
§ 9:09 Regional planning councils—Zoning; legislative policy
§ 9:10 Regional planning councils—Zoning; review of municipal action

E. STATE PLANNING AGENCIES
§ 9:15 State planning agencies; generally
§ 9:19 Adirondack Park Agency; purpose—Powers
§ 9:21 Adirondack Park Agency; purpose—Procedure and review
§ 9:23 Hudson River Valley Greenway Communities Council
§ 9:24 Long Island Pine Barrens Joint Regional Planning Council
§ 9:25 State Commission on Tug Hill

F. INTERJURISDICTIONAL COOPERATION IN PLANNING AND ZONING
§ 9:27 Intermunicipal cooperative agreements
§ 9:28 Practical considerations
§ 9:29 Smart growth [New]
§ 9:30 Adjacent municipalities [New]

CHAPTER 9A. THE ADIRONDACK PARK AGENCY ACT AND RELATED AUTHORITIES ADMINISTERED BY THE ADIRONDACK PARK AGENCY WITHIN THE ADIRONDACK PARK
§ 9A:3 The Adirondack Park Land Use and Development Plan (APLUDP)
§ 9A:6 Project review process

CHAPTER 9B. PLANNING AND ZONING WITHIN NEW YORK’S COASTAL ZONE
§ 9B:26 Other water-related regulations
CHAPTER 10. PROTECTION, LIMITATION, AND TERMINATION OF NONCONFORMING USES

A. NONCONFORMING USE PROBLEM

§ 10:02 Nonconforming use; definition
§ 10:05 Retroactive zoning; vested interest
§ 10:06 Pattern of municipal regulation

B. ESTABLISHMENT OF NONCONFORMING USE

1. TIME OF USE

§ 10:08 Generally

2. LEGALITY OF USE

§ 10:09 Legality of use
§ 10:10 Legality of use—Uses which offend zoning ordinances
§ 10:12 Legality of use—Uses without permit or license

3. NATURE AND EXTENT OF USE

§ 10:15 Existing business use
§ 10:17 Issuance of permit
§ 10:19 Delay, denial, and revocation of permit
§ 10:20 Regulations which protect permit holders or applicants

C. RESTRICTIONS ON NONCONFORMING USE

§ 10:21 Limitations on nonconforming use

1. CHANGE OF USE

§ 10:22 Generally
§ 10:23 Change in volume of use
§ 10:25 Change of ownership
§ 10:26 Change to more restrictive use
§ 10:27 Accessory use
§ 10:28 Change with administrative approval

2. EXTENSION OF USE

§ 10:30 Generally
§ 10:31 Volume of use
§ 10:32 Enlargement of building
§ 10:33 Use of new land
§ 10:34 Approval of the zoning board of appeals

3. ALTERATION OF STRUCTURE
Table of Contents

§ 10:36 Alteration of nonconforming structure
§ 10:37 Variance of nonconforming use

4. REPAIR OR RESTORATION OF STRUCTURE

§ 10:40 Restoration of nonconforming structure
§ 10:41 Defects in provisions restricting restoration of nonconforming structure

5. ABANDONMENT OR DISCONTINUANCE

§ 10:42 Abandonment or discontinuance of use
§ 10:43 Ordinances which supply or remove the element of intent to abandon

D. TERMINATION OF NONCONFORMING USE

§ 10:45 Amortization of nonconforming uses
Table of Contents

CHAPTER 11. REGULATION OF USES WHICH HAVE A UNIQUE RELATION TO PUBLIC WELFARE

A. INTRODUCTION
§ 11:1 Uses having a unique relation to the public welfare
§ 11:2 Regulation of particular uses

B. USES OF LAND BY THE GOVERNMENT
§ 11:3 Municipal uses
§ 11:4 Municipal uses—New test—balancing the public interests
§ 11:5 Municipal uses—Intermunicipal problems
§ 11:6 State uses
§ 11:7 Federal uses

C. EDUCATIONAL USES
§ 11:8 Generally
§ 11:9 Exclusion of schools
§ 11:10 Regulation of schools
§ 11:11 Dimensions of the term “educational use”
§ 11:12 Private and parochial schools
§ 11:13 Colleges and universities
§ 11:14 Nursery schools and daycare
§ 11:15 Mentally disabled and delinquent children
§ 11:16 Recreational uses; day camps
§ 11:17 Instruction in arts, crafts, and sports
§ 11:18 Student housing

D. PUBLIC UTILITIES
§ 11:19 Public utilities
§ 11:20 Prohibition of transmission lines, etc
§ 11:21 Special permits
§ 11:22 Variances
§ 11:23 Municipally owned utilities
§ 11:24 State regulation
§ 11:25 Siting of power plants
§ 11:26 Wind farms
§ 11:27 Solar energy
§ 11:28 Natural gas
§ 11:29 Climate change

E. AIRPORTS

§ 11:30 Airports; condemnation of flight hazards
§ 11:31 Airport zoning
§ 11:32 Administration and appeal

F. USES OF LAND BY RELIGIOUS INSTITUTIONS

§ 11:33 Religious uses
§ 11:34 Exclusion of religious uses
§ 11:35 Regulation of religious uses
§ 11:36 Permits; conditions
§ 11:37 Dimensions of religious uses

G. MISCELLANEOUS USES NOT FOR PROFIT

§ 11:38 Uses not for profit
§ 11:39 Clubs
§ 11:40 Dimensions of club use
§ 11:41 Neighborhood or community centers
§ 11:42 Hospitals
§ 11:43 Drug Treatment Centers
§ 11:44 Homeless shelters
§ 11:45 Animals
§ 11:46 Water
§ 11:47 Temporary Storage Units
§ 11:48 Short Term Rentals

CHAPTER 11A. HISTORIC PRESERVATION AND LAND USE LAW

§ 11A:01 Introduction
§ 11A:02 Statutory Authority for Historic Preservation
§ 11A:03 State Environmental Quality Review Act
§ 11A:04 Local Laws and Ordinances
§ 11A:06 Landmark designation
§ 11A:08 Grants and Tax Credits
§ 11A:09 Miscellaneous [New]
§ 11A:10 NY Appellate Court affirms certificate of appropriateness allowing building alterations in historic district [New]

CHAPTER 11B. THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT (RLUIPA)

§ 11B:1 In general
§ 11B:2 “Land use regulations” covered by RLUIPA
§ 14:08 Open space and land conservation districts
§ 14:09 Parks [New]
§ 14:10 Backyard chickens [New]

CHAPTER 15. MINING OPERATIONS
§ 15:01 Introduction
§ 15:06 The MLRL express supersession provision—post 1991 amendments
§ 15:08 Decisions of note since the 1991 MLRL amendments
§ 15:10 Decisions of note since the 1991 MLRL amendments—Site plan review and other permissible local land use regulation
§ 15:11 Decisions of note since the 1991 MLRL amendments—Special use permits

CHAPTER 16. GASOLINE STATIONS AND RELATED USES
§ 16:06 Nonconforming gasoline stations
§ 16:07 Factors considered in reviewing applications for special permits or variances; consent requirements
§ 16:14 Related or accessory uses; garages
§ 16:17 Related or accessory uses; garages—Sale of alcohol [New]

CHAPTER 17. SIGN CONTROL
§ 17:01 Sign control; objectives of regulation
§ 17:02 Constitutional limitations
§ 17:03 Constitutional limitations—On-site and off-site signs
§ 17:04 Signs near public highways, thruways, and parks
§ 17:05 Exclusion from the municipality; exclusion from certain districts
§ 17:06 Height, size, and construction
§ 17:07 Nonconforming signs
§ 17:08 Regulating political signs

CHAPTER 18. ADULT USES
§ 18:01 Introduction
§ 18:02 Types of adult use zoning laws
§ 18:03 Criteria for adult use zoning generally
§ 18:05 Highlights of City of Renton v. Playtime Theaters, Inc.
§ 18:07 Highlights of Stringfellow's of New York, Ltd. v. The City of New York
§ 18:07.1 Highlights of City of Los Angeles v. Alameda Books [New]
§ 18:08 Secondary effects of adult uses
§ 18:09 Substantial governmental interest and burden on free speech
§ 18:10 Reasonable alternative avenues of expression
§ 18:12 Definition of adult uses
§ 18:14 Regulation by special permit
§ 18:16 Other types of regulation of adult uses
CHAPTER 19. SUBDIVISION CONTROLS

A. INTRODUCTION

§ 19:01 The objectives of subdivision control
§ 19:02 Subdivision defined
§ 19:03 Municipal definitions
§ 19:04 Major and minor subdivisions
§ 19:05 Other

B. REVIEW OF PLATS

§ 19:06 Approval of plats; planning board
§ 19:07 Approval of plats; planning board—Department of Health
§ 19:08 Application requirements
§ 19:09 Procedure for review of plats
§ 19:10 Notice of the public hearing
§ 19:11 Decision of preliminary plat
§ 19:14 Final plat approval
§ 19:18 Final plat approval—Decision on final plats
§ 19:20 Approval and certification of final plats—Conditional approvals
§ 19:22 Approval and certification of final plats—Filing of the decision on a final plat
§ 19:22.50 Approval and certification of final plats—Filing of plats [New]
§ 19:23 Approval and certification of final plats—Default approvals
§ 19:24 Approval and certification of final plats—Referral to county or regional planning agency

C. STANDARDS FOR APPROVAL OF PLATS

§ 19:25 Subdivision regulations
§ 19:26 Standards for plat approval; official map and comprehensive plan
§ 19:27 Standards for plat approval; official map and comprehensive plan—Zoning regulations
§ 19:33 Standards for plat approval; official map and comprehensive plan—Open development areas
§ 19:34 Standards for plat approval; official map and comprehensive plan—Reservation of land for parks
§ 19:35 Standards for plat approval; official map and comprehensive plan—Money in lieu of land for parks
§ 19:36 Standards for plat approval; official map and comprehensive plan—Miscellaneous considerations
§ 19:36.1 Other fees [New]
§ 19:36.2 Cluster subdivision [New]
§ 19:37 Effect of approval on power to rezone
D. RELIEF FROM SUBDIVISION REGULATION
§ 19:38 Waiver of requirements
§ 19:39 Variance or exception
§ 19:40 Performance bond in lieu of improvements
§ 19:41 Time to appeal [New]
§ 19:42 Miscellaneous [Retitled]
§ 19:43 Environmental review [New]

CHAPTER 20. EXCLUSIONARY ZONING/ AFFORDABLE HOUSING

A. INTRODUCTION
§ 20:01 The exclusionary zoning problem; generally
§ 20:02 Exclusionary zoning defined
§ 20:03 Patterns of exclusionary zoning

B. TECHNIQUES OF EXCLUSIONARY ZONING
§ 20:04 Zoning to exclude persons of a certain race or color
§ 20:07 Euclidian zoning; minimum lot area—Exclusion of multiple dwellings

C. CHALLENGES TO EXCLUSIONARY ZONING
§ 20:09 State developments: National Land & Investment Company through Mount Laurel and its progeny
§ 20:10 Federal development: Arlington Heights
§ 20:11 New York applications: Berenson
§ 20:13 Standing

D. AFFIRMATIVELY PROVIDING AFFORDABLE HOUSING
§ 20:14 The statutory approach
§ 20:15 Local initiative: the Westchester experience
§ 20:16 Affordable housing as a valid public purpose [New]

CHAPTER 21. MOBILE AND MANUFACTURED HOMES AND PARKS
§ 21:01 Mobile homes
§ 21:02 Definition of mobile home/manufactured home and mobile home court
§ 21:03 Regulation of mobile homes; zoning
§ 21:05 Regulation of mobile homes; zoning—Exclusion of mobile homes
§ 21:07 Licensing of mobile homes
§ 21:08 Regulation of mobile home courts; zoning
CHAPTER 22. HOME OCCUPATIONS

A. INTRODUCTION
§ 22:02 Home occupations, generally
§ 22:03 Home occupations, generally—New York City

B. RESTRICTIONS ON HOME OCCUPATIONS
§ 22:04 Limitations on home occupations

C. PROFESSIONAL AND RELATED USES
§ 22:06 Professional offices
§ 22:07 Professional offices—Doctors, dentists, and surgeons
§ 22:09 Professional offices—Veterinary medicine
§ 22:10 Professional offices—Attorneys
§ 22:13 Professional offices—Real estate, insurance, and other business uses
§ 22:14 Professional offices—Music studios
§ 22:16 Professional offices—Artists' studios

D. MISCELLANEOUS USES
§ 22:17 Barber shops; beauty salons

CHAPTER 23. SENIOR HOUSING AND ZONING
§ 23:1 Introduction
§ 23:3 Zoning districts for the elderly
§ 23:6 Accessory apartments
§ 23:10 ADA and FHA claims

CHAPTER 24. PLANNED UNIT DEVELOPMENT
§ 24:01 Planned unit development; generally
§ 24:02 Planned unit development; generally—Purpose
§ 24:04 Planned unit development; generally—The floating zone feature
§ 24:08 Administrative features of planned unit development; creation of the district—Review of site plans

CHAPTER 25. SITE DEVELOPMENT PLAN REVIEW
§ 25:01 Introduction
§ 25:02 Nature of the site plan review process
§ 25:02.50 Nature of the site plan review process—Coordination with SEQRA [New]
§ 25:03 Site plan review structure
§ 25:04 Review procedure overview
§ 25:10 Public hearing
§ 25:11 Decision
§ 25:12 Submission requirements
§ 25:14 Submission requirements—Impact of proposal on environs
§ 25:18 Review standards
§ 25:19 Development considerations
§ 25:20 Review

CHAPTER 26. THE ADOPTION AND AMENDMENT OF OFFICIAL MAPS

A. ADOPTION OF MAP
§ 26:01 Official map; adoption and filing

B. AMENDMENT OF MAP
§ 26:03 Amendment of the official map

C. EFFECT OF MAP
§ 26:08 Effect of adoption of official map; evidence of location

CHAPTER 27. ZONING ADMINISTRATION: THE INSTRUMENTS AND AGENCIES OF ENFORCEMENT

A. INTRODUCTION
§ 27:01 The problem of zoning administration [Deleted]

B. THE INSTRUMENTS AND AGENCIES OF ADMINISTRATION
§ 27:02 Building permits [Deleted]
§ 27:02.10 Building permits—Fees [New]
§ 27:07 The zoning board of appeals
§ 27:07.50 Municipal Attorney [New]

C. PURPOSES OF THE ZONING BOARD OF APPEALS
§ 27:08 Purposes of the zoning board of appeals
§ 27:10 Purposes of the zoning board of appeals—To perfect the zoning ordinance
§ 27:12 Purposes of the zoning board of appeals—To interpret the zoning ordinance

D. CREATION AND COMPOSITION OF ZONING BOARD OF APPEALS

§ 27:13 Establishment of zoning boards of appeal
§ 27:14 Establishment of zoning boards of appeal—Cities
§ 27:15 Establishment of zoning boards of appeal—Towns
§ 27:16 Establishment of zoning boards of appeal—Villages
§ 27:17 Qualifications for membership on boards of appeal

E. ORGANIZATION AND STAFF OF THE ZONING BOARD OF APPEALS

§ 27:18 Organization of the zoning board of appeals
§ 27:19 Staff services; compensation

F. MEETINGS, RULES, AND QUORUMS

§ 27:22 Records
§ 27:23 Jurisdiction of zoning boards of appeal
§ 27:24 Appellate jurisdiction; review of administrative decisions
§ 27:25 Appellate jurisdiction; review of administrative decisions—Validity of the zoning ordinance
§ 27:27 Original or appellate jurisdiction; exceptions and special permits
§ 27:28 Power to stay proceedings
§ 27:29 Power to require building inspector to act
§ 27:30 Power to make final disposition
§ 27:31 Power to assess costs
§ 27:32 Other powers
§ 27:33 Immunity [New]

CHAPTER 28. PROCEDURE OF THE ZONING BOARD OF APPEALS

A. INTRODUCTION

§ 28:01 Procedure of the zoning board of appeals: the last quarter century
§ 28:02 Generally

B. PARTIES

§ 28:03 Who may appeal to the zoning board of appeals

C. PLEADINGS

§ 28:04 Application for relief
§ 28:06 Time within which an appeal may be perfected

© 2020 Thomson Reuters, 9/2020
D. NOTICE
§ 28:07 Notice and hearing
§ 28:09 Parties who must be notified
§ 28:11 Content of notice

E. HEARING
§ 28:12 Hearings before the zoning board of appeals
§ 28:13 Public hearing; executive session
§ 28:14 Evidence; generally
§ 28:17 Personal inspection by board members

F. DECISION
§ 28:26 Required majorities
§ 28:27 Time within which decision must be rendered
§ 28:28 Record of vote

G. THE DECISION AND FINDINGS
§ 28:29 The decision
§ 28:30 The board must make findings
§ 28:31 Findings conclusory in form
§ 28:32 Findings must be supported by substantial evidence

H. REHEARING
§ 28:33 New evidence

I. REFERRAL
§ 28:37 Referral to county planning agency or regional planning council

CHAPTER 29. VARIANCES

A. INTRODUCTION
§ 29:2 Special use permit distinguished
§ 29:3 Nonconforming use distinguished
§ 29:4 Use variance
§ 29:5 Area variance

B. USE VARIANCES

1. STATUTORY TEST
§ 29:6 Unnecessary hardship test for use variances

2. ELEMENTS
C. AREA VARIANCES

1. STATUTORY TEST
§ 29:12 Balancing test for granting an area variance

2. FACTORS
§ 29:13 Undesirable change in the neighborhood
§ 29:14 Alternatives to the variance
§ 29:15 Size of the variance
§ 29:16 Adverse effect or impact on the physical or environmental conditions
§ 29:17 Self-created hardship

3. METHODS OF ESTABLISHING THE FACTORS
§ 29:18 Types of acceptable proof

D. ZONING BOARDS OF APPEAL

1. DEFERENCE GIVEN TO THE ZONING BOARDS OF APPEALS
§ 29:19 Authority of the zoning boards of appeal and variances
§ 29:20 Standard of review—Rational basis support by substantial evidence
§ 29:21 Inconsistency in granting and denying variances
§ 29:22 Effect of public opinion
§ 29:23 Refusal to decide

2. SPECIFIC LIMITATIONS ON THE POWER TO GRANT VARIANCES
§ 29:26 No power to vary a building code or specific safety requirement

3. POWER TO ATTACH CONDITIONS TO VARIANCES
§ 29:28 Conditions generally
§ 29:30 Permissible subject matter of conditions
§ 29:31 Conditions improperly imposed
§ 29:32 Conditions imposed by courts
4. POWER TO IMPOSE TIME LIMITATIONS
§ 29:33 Imposing time limitations on variances and special permits
§ 29:34 Granting time extensions

E. PROCEDURAL ISSUES
§ 29:35 Time frames for rendering decisions, filing of decisions, and filing of appeals

F. MISCELLANEOUS
§ 29:37 Effect of miscellaneous governmental rulings

CHAPTER 30. ADMINISTRATIVE RELIEF FROM ZONING REGULATIONS: SPECIAL USE PERMITS
§ 30:1 Introduction
§ 30:2 Variances distinguished
§ 30:5 Conditions
§ 30:6 Temporary permits and renewals
§ 30:7 Waiver of requirements
§ 30:8 Delegation of powers
§ 30:9 Reservation of powers
§ 30:10 Public hearing
§ 30:11 Notice to the public, applicant, and regional planning council
§ 30:13 Compliance with SEQRA
§ 30:14 Compliance with SEQRA—Decision
§ 30:15 Basis of issuance or denial of special use permit
§ 30:16 Basis of issuance or denial of special use permit—Public safety
§ 30:17 Basis of issuance or denial of special use permit—Traffic congestion
§ 30:19 Basis of issuance or denial of special use permit—Impact on surrounding community and comprehensive plan
§ 30:20 Basis of issuance or denial of special use permit—Generalized community objections
§ 30:23 Court review
§ 30:24 Findings
§ 30:25 Findings—Range of discretion
Table of Contents

CHAPTER 31. ETHICAL CONSIDERATIONS
§ 31:01 Introduction
§ 31:02 Contractual conflicts of interest for board members
§ 31:03 Familial conflicts of interest
§ 31:04 Other conflicts of interest
§ 31:06 Appointment of alternate members of planning and zoning boards
§ 31:07 Dual office holding
§ 31:09 When bias is in issue
§ 31:10 Bad faith
§ 31:13 Conflicts of interest for land use attorneys
§ 31:14 Attorney appearances before former municipal clients
§ 31:15 The part-time municipal land use counsel
§ 31:20 Other conduct [New]
§ 31:21 Miscellaneous ethics issues [New]

CHAPTER 32. MEDIATION AND LAND USE DISPUTES
§ 32:03 When to use the mediation process
§ 32:06 Drafting a local option land use mediation law

CHAPTER 33. PROCEEDINGS IN THE NATURE OF CERTIORARI AND MANDAMUS
§ 33:01 Proceedings in the nature of certiorari and mandamus
§ 33:02 Judicial review of administrative conduct; the principal statutes
§ 33:03 Judicial review of administrative conduct; the principal statutes—Cities
§ 33:06 Parties entitled to review; a person aggrieved by administrative decision
§ 33:07 Parties entitled to review; a person aggrieved by administrative decision—Owners
§ 33:08 Parties entitled to review; a person aggrieved by administrative decision—Sellers and purchasers
§ 33:09 Parties entitled to review; a person aggrieved by administrative decision—Tenants
§ 33:10 Parties entitled to review; a person aggrieved by administrative decision—Associations and agencies

© 2020 Thomson Reuters, 9/2020
§ 33:11 Parties entitled to review; a person aggrieved by administrative decision—Competitors
§ 33:12 Parties entitled to review; a person aggrieved by administrative decision—The municipality as an aggrieved party
§ 33:13 Indispensable parties
§ 33:14 Time within which Article 78 proceedings must be initiated
§ 33:16 Proceedings in the nature of certiorari to review
§ 33:17 The dimensions of review; the presumption of validity
§ 33:18 The dimensions of review; the presumption of validity—Miscellaneous restrictions on review
§ 33:20 Remand, transfer, or final disposition
§ 33:21 Proceedings in the nature of mandamus
§ 33:22 Exhaustion of administrative remedies
§ 33:24 Judicial estoppel [New]
§ 33:25 Stays [New]
§ 33:26 Statute of limitations [New]

CHAPTER 34. INJUNCTIONS
§ 34:01 The role of injunctions in the enforcement of zoning ordinances
§ 34:02 Action to enjoin enforcement or to enjoin violation by a public official
§ 34:04 Temporary injunction
§ 34:05 Parties; the municipality
§ 34:06 Parties; the municipality—Taxpayer’s action
§ 34:07 Parties; the municipality—Private action
§ 34:08 Laches
§ 34:09 Exhaustion of administrative remedies
§ 34:10 Mootness [New]
§ 34:11 Mootness—Estoppel [New]

CHAPTER 35. DECLARATORY JUDGMENTS
§ 35:01 Declaratory judgments; availability of remedy
§ 35:02 Justiciable controversy
§ 35:03 Parties plaintiff; landowners
§ 35:06 Parties plaintiff; landowners—Associations, corporations and boards
§ 35:08 Parties defendant
§ 35:09 Commencement of action
§ 35:11 Exhaustion of administrative remedies
§ 35:12.50 Mootness [New]
§ 35:13 Effect of compliance, violation, or application for administrative relief
§ 35:15 Effect of judgment
§ 35:16 Other claims [New]
§ 35:17 Statute of limitations [New]
§ 35:18 Standing [New]
## Table of Contents

### CHAPTER 36. ENFORCEMENT

#### B. THE PLAYERS IN ZONING ENFORCEMENT

§ 36:3 The building inspector

#### F. CIVIL PROCEEDINGS

§ 36:19 Civil penalties and disgorged profits

#### G. CRIMINAL PENALTIES

§ 36:26 Accusations

### CHAPTER 36A. GEOGRAPHIC INFORMATION SYSTEMS & PLANNING AND ZONING

§ 36A:01 Introduction

### CHAPTER 36B. ACCESS TO MEETINGS AND RECORDS

§ 36B:01 Introduction

§ 36B:02 Coverage of the Open Meetings Law—Public bodies

§ 36B:03 Coverage of the Open Meetings Law—Committees and subcommittees

§ 36B:05 What is a meeting?

§ 36B:08 The intent of the Open Meetings Law

§ 36B:09 Barrier-free access

§ 36B:11 Before the meeting: Notice

§ 36B:12 Presumption of openness

§ 36B:13 Executive sessions

§ 36B:16 Exemptions from the Law—Political caucuses

§ 36B:16.50 Advisory boards [New]

§ 36B:17 Matters made confidential by law—The attorney-client privilege

§ 36B:19 Litigation

§ 36B:24 Minutes of meetings

§ 36B:26 Enforcement of Open Meetings Law

§ 36B:27 Audio and video recording

§ 36B:28 Public participation in meetings

§ 36B:31 Records subject to FOIL—Generally

§ 36B:33 Records subject to FOIL—Electronic records

§ 36B:35 Procedures under FOIL

§ 36B:38 Presumption of access

§ 36B:40 Exceptions to right of access—Attorney-client privilege

§ 36B:46 Exceptions to right of access—Interagency and intra-agency materials

© 2020 Thomson Reuters, 9/2020
§ 36B:48 Exceptions to right of access—Security of electronic information
§ 36B:49 Defending denial of access; burden of proof
§ 36B:50 Attorneys’ fees

CHAPTER 37. USING THE INTERNET FOR LAND USE LAW RESEARCH IN NEW YORK
§ 37:01 Introduction
§ 37:07 Search engines on the Web
§ 37:08 General Land Use Law web sites
§ 37:09 New York State Specific Land Use Resources
§ 37:10 New York Local Zoning Ordinances on the Web
§ 37:11 Land use resources for the New York practitioner
§ 37:12 Land use law blogs [New]

CHAPTER 38. THE LANGUAGE OF ZONING
§ 38:01 The language of zoning; strict construction
§ 38:02 Interpretation of zoning ordinances; the zoning board of appeals
§ 38:03 Preambles; purpose clauses; rules of construction
§ 38:04 Common meaning
§ 38:05 Sample definitions

CHAPTER 39. ORDINANCE AND CHARTER PROVISIONS ADOPTED BY NEW YORK MUNICIPALITIES: PLANNING, ZONING AND SUBDIVISION CONTROL
I. PARTICULAR USES
§ 39:90 Outdoor advertising

CHAPTER 40. ORDINANCE AND CHARTER PROVISIONS ADOPTED OR PROPOSED BY NEW YORK MUNICIPALITIES: ZONING ADMINISTRATION
§ 40:17 Conditional and temporary permits
Table of Contents

CHAPTER 42. FORMS RELATED TO ENFORCEMENT
§ 42:7 Notice of Violation/Order to Remedy
§ 42:12.50 Criminal summons
§ 42:12.70 Information and complaint

CHAPTER 44. STATE ENVIRONMENTAL QUALITY REVIEW FORMS
§ 44:2 ENB SEQRA notice publication form
§ 44:3 Short environmental assessment form part 1
§ 44:4 Short environmental assessment form part 2
§ 44:5 Full environmental assessment form part 1
§ 44:6 Full environmental assessment form part 2
§ 44:7 Full environmental assessment form part 3
§ 44:8 Visual EAF addendum
§ 44:9 Positive declaration form
§ 44:12 Coastal assessment form

Table of Laws and Rules
Table of Cases
Index

© 2020 Thomson Reuters, 9/2020