

A more in depth look  
at  
Special Use Permits

# Special Use Permit – NYS Law\*

§ 274-b. Approval of special use permits.

**1. Definition of special use permit.** As used in this section the term "special use permit" shall mean an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to 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.

**2. Approval of special use permits.** The town board may, as part of a zoning ordinance or local law adopted pursuant to this article or other enabling law, authorize the planning board or such other administrative body that it shall designate to grant special use permits as set forth in such zoning ordinance or local law.

**3. Application for area variance.** Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

**4. Conditions attached to the issuance of special use permits.** The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.

\* Town Law Section 274-b      Village Law Section 7-725-b      City Law Section 27-b

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**5. Waiver of requirements.** The town board may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.

**6. Public hearing and decision on special use permits.** The authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. Public notice of said hearing shall be printed in a newspaper of general circulation in the town at least five days prior to the date thereof. The authorized board shall decide upon the application within sixty-two days after the hearing. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and the board. The decision of the authorized board on the application after the holding of the public hearing shall be filed in the office of the town clerk within five business days after such decision is rendered, and a copy thereof mailed to the applicant.

**7. Notice to applicant and county planning board or agency or regional planning council.** At least ten days before such hearing, the authorized board shall mail notices thereof to the applicant and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

\* Town Law Section 274-b      Village Law Section 7-725-b      City Law Section 27-b

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**8. Compliance with state environmental quality review act.** The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

**9. Court review.** Any person aggrieved by a decision of the planning board or such other designated body or any officer, department, board or bureau of the town may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the town clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

**10. Costs.** Costs shall not be allowed against the planning board or other administrative body designated by the town board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

**11. Preference.** All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

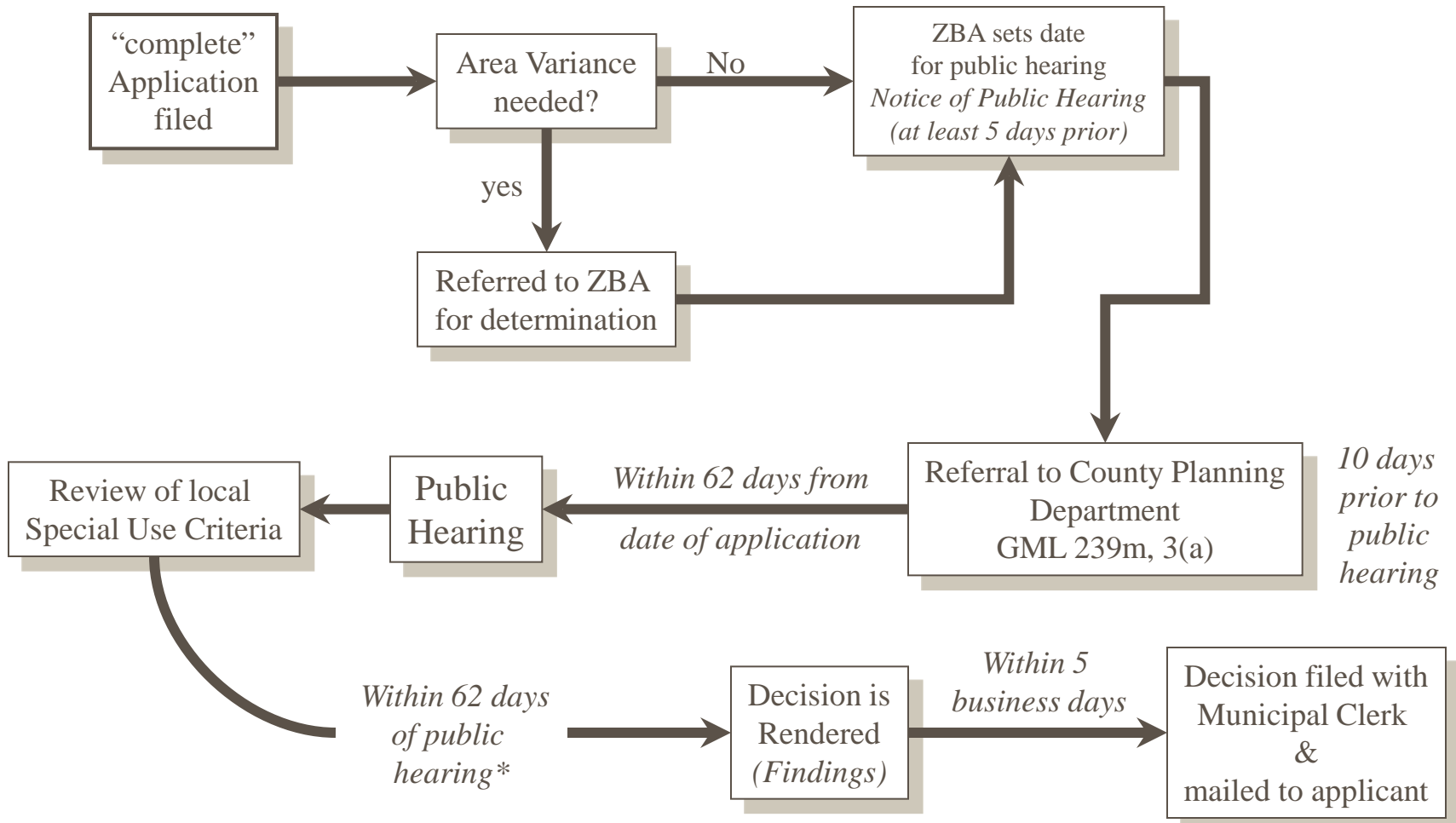
# Special Use Permit – Basics

- May be the job of the ZBA or Planning Board or the Municipal Board may reserve the authority for themselves.
- Review authority (including waivers) must be specified in local law.
- Standards for review should create an administrative, objective review process.

# Special Use Permit – Review Criteria

- Can be very general or specific or both.
- Review criteria define the extent of the reviewing boards' authority.
- They should provide adequate guidance for consistent and fair administration of special use permits.
- Submission requirements and review criteria may be waived but only if the reviewing agency is properly empowered to do so by local law.
- Specifically enumerated requirements (5 ac minimum) may be waived by the reviewing agency or the ZBA may grant a variance.

# Procedures – Special Use Permits



Town Law, Section 274-b  
City Law, Section 27-b  
Village Law Section 7-725-b

\* Can be extended by mutual consent of applicant and ZBA

# Special Use Permits – Example

## AG – Agricultural Zoning

*Statement of Intent:* The primary purpose of this zone is to maintain a viable farming community by preserving and protecting the remaining active and idle farmland while still accommodating a small amount of low density residential development.

### Allowed Uses:

- Customary Agricultural Practices (See Definitions Section)

### Allowed Accessory Uses:

- Agriculture Related Buildings (Barns, Silos, Corn Cribs, Etc)

### Specially Permitted Uses:

- Farm Employee Housing
- Individual Single Family Homes and Related Structures
- Agriculture Based Home Occupations
- Manure Storage Facilities



# Special Use Permits – Example of Criteria

Individual Single Family Homes in the AG Zoning District must meet the following criteria before a special use permit will be issued.

- 1) The house and related facilities will be specifically placed to minimize infringement upon important active or idle farmland as identified in figure 9A of the 1998 Comprehensive Plan.
- 2) The house, related facilities and landscaping will be placed to minimize potential impacts of farming on the residence (odors, dust, noise etc)
- 3) Resulting density will not exceed one house/25ac

# Special Use Permits – Rationale for Decisions

Special Use Permit review is intended to be an administrative function. In other words if all of the applicable criteria are met then the permit must be granted. If all are not met then the permit must be denied.

Avoid decisions based on a rationale that suggests that the use, by its nature is not appropriate for the entire district. Decision should be based on conditions particular to the subject location or parcel.

Any conditions must have a “rational nexus” to demonstrated potential impacts as well as ensuring that the list of criteria are met.

Be cautious about placing conditions that seek to regulate the internal operations of the business.

Avoid time limits unless the proposed use is temporary or seasonal in nature.

## Procedures – Findings of Fact

This applies to any decision made by any municipal board!

- ✓ Make a complete & thorough record of your decisions
- ✓ It will serve as the basis for judicial & other types of review.
- ✓ “Conclusory” statements vs. a showing of supportive evidence
- ✓ Disclose All Supporting Evidence

# Getting Help

*Nobody knows everything about Planning & Zoning. The local code should provide for a review process that allows for consultation with qualified people to aid in decision making.*

- ☑ A fee schedule should be set up in local law to address the need for engineers, architects and other professionals generally helpful to review.
- ☑ Different fee schedules may apply to different types and sizes of projects.
- ☑ Findings, Findings, Findings, Findings, Findings
- ☑ The decision to approve or deny must be made by the empowered agency. The decision cannot be based solely on:
  - the opinion of the municipal attorney or other professional without the facts to back it up
  - SEQR findings unrelated to review criteria
  - hearsay
  - public opposition

# Information Sources

- [www.co.ontario.ny.us/planning](http://www.co.ontario.ny.us/planning)
  - Info, Links, Dept of State Publications
- <http://www.nymir.org/>
  - New York Municipal Insurance Reciprocal
  - Simple Registration Required
- <http://leginfo.state.ny.us:82/nysleg/menugetf.cgi>
  - NYS Laws
- [http://www.dec.state.ny.us/website/dcs/EP\\_SEQR/seqr\\_1.html](http://www.dec.state.ny.us/website/dcs/EP_SEQR/seqr_1.html)
  - NYSDEC Introduction to SEQR with links to law text, downloadable forms, etc.

# Information Sources

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