REVISING ZONING

New York State Department of State

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Introduction

- Zoning purpose
- When to amend
- Contents of regulations
- Amendment procedures

Neighborhood Centers have a wide mix of uses, building types, and frontage types. They rely on a consistent streetscape and quality civic spaces to enhance the pedestrian character of the center.

City of Saratoga Springs Zoning Ordinance

Zoning regulates

- Use
- Density
- Placement of structures on lot

Health, safety and welfare

Good zoning

- Encourages orderly growth
- Encourages appropriate economic development
- Encourages construction of quality affordable housing
- Protects historic sites and structures
- Preserves scenic resources and open spaces
- Protects farmland and sensitive environments
- Improves aesthetics of buildings, signs, etc.

Planning before zoning

- Regulations must be based on comprehensive planning
  - Provides legal support
  - Periodic review provision
- Prioritize areas for municipal investments in infrastructure
- Identify areas for potential private development

Municipalities having Comprehensive Plans

Cities	92%
Towns	71%
Villages	89%
All	69%

Source: Legislative Commission on Rural Resources (2008)

Objectives

- Acknowledge comprehensive plan goals
  - State in section of intent
- Clarify and provide detail
  - Less subjectivity left to review board
  - Potentially more efficient and defensible decisions
- Correct errors, omissions & inequities
- Include newly identified uses
- Streamline procedures

Zoning in rural communities

- Only a few districts may be needed
- Cluster/conservation subdivision
- Agricultural district(s)
  - Farm-worker housing
  - Self serving wind energy facilities
- Scenic view shed, prime soil protection overlays
- Hamlet zoning
  - Mixed uses at higher densities
  - Provisions for walkability

When to amend zoning

When to amend

- Local officials can't find updated official zoning map
- Things seem to be getting worse, not better
- People need variances for everything they want to do
- Definitions are reminiscent of the 1950s
- Most people can't figure out what zoning does and does not allow on their land

Source: "Symptoms of a Sick Ordinance" NY Association of Towns

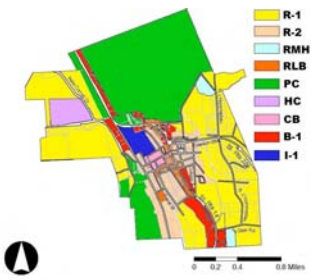
Amend definitions

- Too vague
- Frequent requests for ZBA interpretations
- Terms in zoning vary from their common use
- Scattered throughout regulations
- Conflicts between definitions
- Illustrative definitions

Amend zoning map

- Multiple revisions needed to conform with comprehensive plan
- Clarify zoning district boundaries

Make zoning map widely available



Amend districts

- Inadequate number: too many or too few
- Minor distinctions between them
- Overlays need adjustment
- Overly complex
- Broad classifications or vaguely defined uses
- 1960s boilerplate suburban setbacks
- Minimum lot size not preserving rural character

Methodology of uses permitted

Cumulative	Exclusive
▪ Most restrictive to least restrictive ▪ Each subsequent district "adds on" permitted uses ▪ Most restrictive usually single-family ▪ Least restrictive allows all uses municipality-wide	▪ Uses distinctly chosen for each district ▪ Protects desirable specialized concentrations of uses from undesirable unnecessary intrusions ▪ For example, excludes residential uses from area suited for industrial uses

Tip: check phone book to see if you have considered all uses

Cities: owner initiated amendment

General City Law §83

City council must vote on petition to amend/repeal regulations of district or part of district when:

- Owners of 50% or more of the frontage in any district or part thereof present petition requesting change
- Council must vote on petition within 90 days after filing with council's secretary

No spot zoning

"the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners …"

[Rogers v. Tarrytown, 302 NY 115, 96 NE2d 731 (1951)]

Zoning changes must be reasonably related to legitimate public purposes

City of Cohoes

- Cumulative to exclusive
- Previously listed uses permitted and prohibited
  - Left ambiguity for those not listed
- Downtown commercial district
  - Setback requirements were contrary to desired streetscape
  - Conversion of first floor retail space previously allowed
- Historic Preservation & Architectural Review Board
  - Previously only made recommendation to planning board
- Planning commission to planning board
  - New oaths and terms
  - Added alternates

Town of Ticonderoga

- New zoning: More restrictive zoning proposed in highway commercial and on waterfront
  - Reduces number of districts
- Old zoning: too many districts from 1990s village dissolution
- Bulk and area table difficult to use
  - Density and dimensional standards table in each use section.

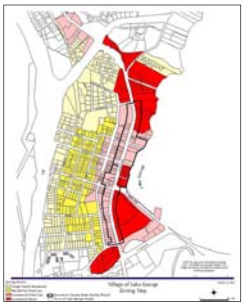
Town of Ticonderoga

- Graphics
  - In sign and design sections
- Build-to-sidewalk and two-story minimum height
  - Required in downtown
- More prescriptive language throughout
  - "Outdoor light fixtures shall not direct light upward or onto adjacent properties, public roads, or public waters. Outdoor light fixtures shall be cast downward and be designed to minimize glare. Such fixtures may include recessed, shielded or cut-off fixtures, or low luminance lamps."

Contents of regulations

Common contents

- Text
- Zoning map
- Schedule of uses
- Bulk & area standards
- Illustrations or diagrams



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
- Administration and enforcement
- Application and permit fees
- Saving clause

Supplemental regulations

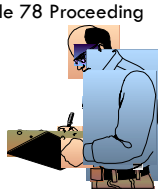
- Signs
- Stormwater management
- Excavation and grading
- Public utilities
- Manufactured housing
- Parking and loading
- Mining
- Wind energy facilities
- Shoreline

Overlay Districts

- Architectural
- Historic Preservation
- Floodplain
- Wetland
- Steep slope
- Viewshed

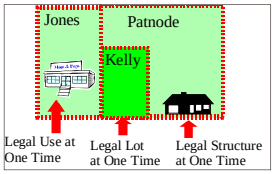
Enforcement & fines

- Authorize enforcement officer to issue citations and appearance tickets
- Enforcement Procedures
- Adequate fines and penalties
- Existing authority but no enforcement
  - Legislative body may compel
  - Article 78 Proceeding



Nonconformance provisions

- Legal nonconforming uses or structures
  - Expansion
  - Abandonment
  - Damage
- Development of nonconforming vacant lots
- Amortization of nonconforming uses



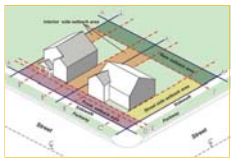
Schedule of district uses

Ag	R-1	R-2	C-1	I-1	I-2
1 – Family Farm Mobile Home SUP: Home Occupation	1 – Family SUP: Religious Institutions; Home Occupation	1 – Family 2 – Family SUP: Same as R-1; Bed and Breakfast	Residential (2nd floor and above) General Retail, barber shop; drug store; florist…. Professional Office SUP: Gas Station; car wash; outdoor sales	Every use permitted by right in C-1 plus: Light manufacturing; bottling plant; printers; machine shop SUP: Adult Use	Every use permitted by right in I-1 plus heavy manufacturing; distribution plants; trucking terminal; SUP: Same as I-1; scrap processing

Dimensional requirements

- Lot sizes & dimensions
  - Flag lots
  - Cul-de-sacs
- Setbacks
  - Build-to-line
- Lot coverage as percentage
  - Pavement
  - Green space
- Height of structures
  - Distinct number or range
  - Number of stories
  - Based on adjacent buildings
- Floor-Area-Ration (FAR)

  =Total covered area (all floors of all buildings) ÷ Lot area
- Accessory structures
  - Garages
  - Porches and decks



Text or table: consistency of measurement

Amendment procedures

Draft revisions

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

Presentation to public

- Proposed regulations online increases accessibility
- Summary of changes
- Regulatory intent
- Graphics with captions

Once adopted, many municipalities link codes to publisher's website: General Code, Municipal Code, American Legal Publishing, etc.

Citizen protest of zoning amendments

Owners of 20% of land area:

- Included in proposed change
- Adjacent to land included in change (extending 100 feet out)
- Opposite land included in change (extending 100 feet out from street frontage of opposite land)

Three-fourths majority vote of local governing board needed to overcome citizen protest of zoning amendments
(Two-thirds majority in villages with only three trustees)

Moratoria

Temporary restriction on development

- Prevent unplanned growth or development inconsistent with current plans
- Address new or unforeseen uses
- Enact by local law or ordinance
  - Specify termination date
  - Only long enough to plan and amend regulations
  - May be extended by subsequent enactments

State Environmental Quality Review

- Type I Action
  - Adoption of zoning regulations
  - Zoning amendment affecting 25 or more acres in district
- Local governing board as lead agency makes determination of significance
  - More likely to require an EIS (positive declaration)

Generic Environmental Impact Statement
§617.10 6 NYCRR

- More general review than project specific EIS
- Focus on potential effects of several actions or policies, such as adoption or amendment to zoning

Referral to county planning agency

General Municipal Law §239-m: Zoning regulations may not be adopted until county planning agency issues recommendation/report

Any amendment that would change the district classification of, or the regulations applying to, real property lying within 500 feet of certain areas, must be referred to the county planning agency

Governing board notice of hearing

- Publish prior notice of public hearing in paper of general circulation at least:
- 5 days in towns & cities
- 10 days in villages
- OML requirements
- SEQRA hearing should not occur until either
  - DEIS is filed for positive declaration
  - Notice of negative declaration has been filed

At least 10 days prior to hearing, written notice must be served to following if within 500 feet:

- Housing authority
- Clerk of neighboring town, city, village, county
- State park commission

Town Law §264 Village Law §7-706

Public hearing

- Accessibility
- General review of proposed revisions
- Method of public comment
- Detailed record of proceeding

Information later used by ZBA for interpretations

- Stenographic is best
- If taping, take notes to go with tape
- Written record does not have to be verbatim

Procedural compliance

First time adoption and amendments:

- Majority vote of full governing board required
- Record in minutes of legislative board
- File zoning map
- If FEIS, board must make written findings prior to adopting zoning regulations

Supermajority vote needed to act contrary to county's recommendation

Effective date

- If adopted by ordinance, changes generally effective ten days after publication
- Local laws effective upon filing with Secretary of State (NYS DOS)
- Personal service of law or amendment may make immediately effective as applied to individual involved

New York Department of State

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Questions for the Analysis and Evaluation of Existing Zoning Regulations

"I'll know it when I see it." We can often spot a problem by relying on our instincts. Other times though, we need more guidance to sort the good from the bad. This list of questions is intended to assist you in determining whether your existing zoning regulations are out of date or otherwise inadequate to meet the demands of present conditions in your community. Many of the most important features of a zoning law or ordinance are listed, followed by questions you should apply to your set of zoning regulations. Your answers will help you find inadequacies or omissions in your regulations, and assist you in identifying the problems which must be faced in revising them. The list is by no means comprehensive, nor need every feature on the list be included in your zoning regulations. Adjustment should be made to meet local conditions, both physical and administrative.

The questions place principal emphasis upon the structure of the zoning regulations themselves and the methods used in their enforcement. It should not be forgotten that zoning regulations are an aid in the effectuation of a comprehensive plan for sound community development. Without such a plan to establish objectives and give purpose to zoning, zoning becomes at best a means for protecting existing conditions from further deterioration and for freezing the pattern of community development at that state it was in at the time of the passage of the zoning law or ordinance.

GENERAL PROVISIONS

Most zoning regulations follow a fairly standardized pattern which includes certain features which are necessary to insure the effectiveness of zoning. When these provisions are indefinite or missing, difficulties often arise in the enforcement of the regulations or in its application by the building inspector, or its interpretation by the Zoning Board of Appeals, or the court.

▪ Do the regulations have the customary introductory phrase stating that it is "an ordinance/local law to regulate the use of land and structures, etc., for the protection of the health, safety, welfare, and morals of the community" or otherwise refer to the statutory source of power?
▪ Do the regulations contain the customary "saving clause" stating that if any portion of the ordinance or local law is declared unconstitutional or illegal, the provisions of the rest of the ordinance or local law shall be deemed to be separately adopted and are still in force?
▪ Is the official zoning map made a part of the regulations by a specific statement to that effect?
▪ Do the regulations contain a section listing all districts for which regulations are established in the body of the regulations?
▪ Do the regulations state the manner in which the boundary lines of zoning districts will be established with reference to existing street lines, property lines, plats of record or existing natural features?
▪ Do the regulations state that the regulations and requirements are in addition to, and not in place of, any other restrictions controlling the use of land which may be found in other regulations such as the subdivision regulations, site plan review regulations or health regulations?
▪ Would the objectives and requirements of the zoning regulations be clarified by the inclusion of small illustrative maps or diagrams as part of the printed regulations?

▪ Do the regulations establish the methods and conditions for granting occupancy permits?

DEFINITIONS

The proper relationship between the list of definitions of terms used in the regulations to the body of the zoning regulations can do much to clarify the zoning regulations and to avoid needless repetitive phraseology.

▪ Are definitions of terms which are generally applicable to the entire zoning regulations scattered throughout the body of the regulations instead of grouped together to form one section for easy reference?
▪ Are there too many definition of terms which are commonly accepted definitions, which follow the dictionary or popular understanding of their meaning and whose elimination would result in a desirable reduction in the bulk of the regulations?
▪ Do the definitions vary so much from the commonly accepted or dictionary meaning of the terms defined, that confusion is generated in the mind of the average citizen in attempting to understand the zoning regulation?
▪ Are the definitions so vague and general, that the Zoning Board of Appeals is too frequently required to interpret their meaning?
▪ Are the definitions overly restrictive, making it impossible for the code enforcement officer or the Zoning Board of Appeals to act in circumstances which have not been foreseen and provided for by the regulations?
▪ Are there conflicts in the definitions where the same conditions have been described in different terms by the two or more definitions?
▪ Are the means for determining the reference points or lines from which measurements are to be taken (for set back, side or rear yard lines, etc.) included in the definitions?
▪ Are the definitions limited to words which simply describe a term, or do they include regulatory provisions which should instead appear in the body of the zoning regulations?
▪ Would the definitions be clarified by the inclusion of diagrams or pictures?

THE ZONING MAP

The zoning map is the instrument which applies the general provisions of the zoning regulations to specific areas throughout the municipality. However good the general provisions of the zoning regulations are, they will have little effect if the zoning map designating the zones of land use is carelessly drawn or poorly related to existing conditions and the future development of the municipality.

▪ Is adequate provision made for the changing and the recording of changes upon the zoning map?
▪ Are the custody and care of the zoning map specifically delegated to the proper official or department?
▪ Are the procedures to be followed in making future changes in the map and in the regulations clearly established?
▪ Has the zoning map been subjected to many changes since its original adoption?

▪ Do the type, location, and number of these changes indicate that a complete revision of the zoning map should be made?
▪ Are there areas which provide for much more development in the less restricted use areas than can be reasonably anticipated in the development of the municipality in the next five to ten years?
▪ Are there any areas in the municipality (such as those occupied or previously occupied by public buildings) which are not in any zone at all?
▪ Are the existing zones in conformity with a sound and comprehensive plan for the development of the municipality?
▪ Is the map characterized by many small zone areas (comprising from a half dozen to a dozen lots) which form small spots of less restrictive zones in areas predominantly devoted to a more restricted type of land use? (For example, commercial pockets within residential areas.)
▪ Has the zoning map been kept up to date by the person in whose custody it is kept?
▪ Are copies of the map available for general distribution to the public on request?
▪ Do the drafting techniques used in the map clearly indicate all zone boundaries?
▪ Can the map be reduced in size and printed inexpensively for general distribution?
▪ Is it desirable to prepare a series of zoning maps for the entire municipality indicating respectively, permitted used by zones, permitted lot sizes and family units per lot, and permitted structure heights?

ZONING DISTRICTS

The existing zoning districts should be examined (a) with regard to the type, quality, and number of districts and (b) with regard to the size and location of the districts in relation to the sound physical, social and economic development of the community. This can be done by checking their relationship to the extent and type of development proposed by the comprehensive plan.

▪ Are the number and extent of residential, commercial, agricultural, and industrial zones adequate?
▪ Are there an excessive number of types of zones?
▪ Are the distinctions between some zones so trivial that the consolidation of these zones is desirable?
▪ Are the classifications of permitted uses in some zones so broad that it is impossible to determine in which zone certain land uses are to be permitted?
▪ Is there a statement that any use not listed as permitted is prohibited?
▪ Is there sufficient control over residential uses in industrial and commercial areas?
▪ Where the districts allow a mix of uses, are there special use permit conditions that would reduce or eliminate potential conflicts?
▪ Do the existing zoning classifications reflect the mix of uses which are now needed or desirable incertain areas?
▪ Were the zoning classifications copied from the zoning classification of another municipality where the pattern of land use and where local customs and conditions differ considerably from existing local conditions?
▪ Do the location, shape, and size of the existing zones conform to the present and future needs of the municipality for sound development in land use in conformity with modern methods of transportation, provision of public facilities, and with modern progress in knowledge regarding the design and location of structures and land uses?
▪ Has special attention been given to taking the fullest advantage of natural features, scenic attractions, and topography in the establishment of the various types of zones and in designating their boundaries?

▪ Are the types and locations of the zones such that adequate provision is made for transitions from one zone to another so that detriment to property values, loss of utility or amenity is minimized along the boundaries of a zone where it borders upon a more restricted zone?
▪ Are certain business or professional uses permitted in residential zones which act as a "foot in the door" for more extensive business or professional activities which will eventually result in the deterioration of residential values in that zone?
▪ Are the businesses or professional uses permitted as home occupations adequately defined or regulated?
▪ Have the old patterns of strip zoning all major highways and of zoning the four corners of important intersecting streets resulted in excessive traffic congestion at these points?
▪ Are the standards for the development of land reflective of the desired community character, or are property developers exceeding the existing standards due to current levels of business competition?

LOT SIZES

Minimum lot sizes and minimum lot widths and depths established by zoning regulations exercise important control over the use of land and the distribution of population. Under certain conditions they are capable of exercising considerable control indirectly over the distribution of socioeconomic groups through the effect upon the relationships between the cost of a lot and the cost of the structure developed upon it.

▪ Are the minimum lot sizes established by the zoning regulations tending to become the standard lot sizes for future development?
▪ Are the minimum lot sizes adequate to provide the necessary protection against fire hazards, noise, lack of privacy or loss of amenities?
▪ Are the minimum lot sizes in some areas excessive because they result in high cost in property maintenance and landscaping, or increased cost of streets, water, sewer, and street lighting installations and maintenance?
▪ Are the minimum lot sizes adequate to provide space for private wells or septic tanks, or both, under the recognized health standards in areas where community water and sewer facilities are not available?
▪ Do the existing standards of residential development so far exceed the minimum requirements of the zoning law for lot sizes that these minimum requirements should be increased to insure the protection of the areas already developed?
▪ Does the minimum lot size include dimensional minimums as well as square footage minimums?
▪ Do the minimum lot size standards specify that they are based on one dwelling unit per lot?
▪ Do the regulations contain provisions regulating the location of two or more separate dwelling units or other structures upon the same lot?
▪ Are the minimum lot size requirements accompanied by requirements limiting the number of family units permitted per lot in multi-family zones so that a relationship of lot area to dwelling unit is established by the regulations?
▪ Are there minimum lot standards that are also applicable to multi-family housing, linking the number of family units permitted per lot in multi-family zones to the lot area?
▪ Is there a maximum lot coverage established for the buildings or structures erected on the lot?
▪ Do the minimum lot sizes conform to the comprehensive plan?

▪ Are special provisions made governing minimum lot sizes in areas where natural features, scenic attraction, public open spaces, or topographical conditions affect the development of the land?
▪ Are there provisions setting standards for temporary or transient structures such as mobile homes or construction trailers?

SIDE AND REAR YARD REQUIREMENTS

Minimum side and rear yard requirements should be coordinated with minimum lot size requirements to establish effective standards of population distribution in residential areas. They should also be carefully examined to determine whether they provide the necessary protection in making the transition from a less restricted to a more restricted zone.

▪ Are the side and rear yards in each category adequate to ensure the provisions of the light and air required by the various land uses permitted in that zone?
▪ Do the side and rear yards provide protection against noise and ensure adequate privacy?
▪ In lots in residential areas where off-street loading is required and where no rear alley exists, are the side yard or rear yard requirements sufficient to guarantee the access of motor vehicles to garage facilities or unloading platforms in the rear of the lot?
▪ Are the side and rear yard requirements flexible and related to building height, so that tall structures are required to provide increased side or rear yard areas where an increase in height of the building would be detrimental to adjacent property?
▪ In areas of less restricted use which border upon areas of a more restricted use, are the side or rear yard requirements of the more restricted use, applicable to all lots where one or more of the lot lines are a common boundary between the two zones?
▪ Are the minimum side or rear yard requirements sufficient to provide access for fire fighting equipment or to permit access for inspection by police and health authorities?
▪ Are the reference points or lines from which side or rear yard dimensions are to be measured and the methods for the measurement of side and rear yards, (particularly in lots of irregular shapes) clearly defined in the regulations?
▪ Are special provisions necessary in dealing with side yard requirements on corner lots where two sides of the lot are bounded by intersecting streets?
▪ Are the side and rear yard requirements so inflexible in nature that they would hamper the development of private or public housing projects developed on a large area in the form of condominiums, townhouses, or other housing forms which may require a different spatial relationship between individual structures?

SET BACK LINES

Set back lines which establish the distance by which the structures must set back from lot lines are an important and flexible tool in the zoning law or ordinance for the protection of highway rights of way, sidewalk areas, space for the planting of street trees, streetscapes and “street walls”, and for the insurance of adequate sight lines for traffic. Furthermore, they can ensure adequate access to light and air, prevent overcrowding of the land and provide for openness, privacy, protection against noise, and general amenity in street design. Local customs and habits of living, climatic conditions which would affect the growth and shrubbery or other decorative planting, the extent of traffic on streets, prevailing

building heights, the directions of streets, prevailing wind, the desire to promote a downtown appearance, and the orientation of the building to obtain maximum sunlight are factors which must be considered in the establishment of set back requirements as in the establishment of side and rear yard standards. Set back lines may also be desirable along the edges of streams and drainage ways to minimize flood damage and facilitate future drainage structure installation.

▪ Are the set back requirements best handled by establishing a general minimum distance for set backs which will apply to all structures within a given zone?
▪ Are there areas in the community where a maximum setback would also be desirable in order to promote a more uniform appearance of in-fill development?
▪ Do special conditions in the municipality indicate that it would be better to establish a series of set back distances for varying conditions and types of streets rather than to attempt to establish such set back requirements by one set of overall provisions?
▪ Is the method for measuring distances clear in the regulations?
▪ Are the existing set back lines in the present regulations inadequate to ensure privacy, quiet, sufficient areas for future street widening, or to provide for street parking area?
▪ Are the set back requirements excessive in some areas by placing an unnecessary burden upon the property owner for the maintenance of the area between the structure and the street lines or by making it difficult for the owner to develop adequate space to the rear of his or her structure to meet the needs of his or her manner of living?
▪ Do the regulations make adequate provision for the future widening of the main thoroughfare in the municipality?
▪ Do conditions exist in the municipality which would make desirable the establishment of special set back lines off drainage ways, areas subject to flooding, public parks or properties?
▪ Are special set back requirements desirable to apply to public or quasi-public institutional buildings or structures for the protection of the surrounding neighborhood or for the provision of additional light, air or privacy to the public structures?
▪ Are there provisions in the law which govern the orientation of the building itself, such as requiring it to locate its entrance or to face in a certain direction or upon a public street or thoroughfare?

NON-CONFORMING USES, STRUCTURES AND LOTS

The elimination of uses which do not conform to the zoning law or ordinance is often a problem. There are some instances where communities include provisions in zoning regulations for the eventual elimination of non-conforming uses by establishing a maximum period for the operation of a non-conforming use, which would permit the amortization of capital investments in structures or other installations. Other municipalities provide for the continuation of a non-conforming use or limited expansion of a non-conforming structure.

▪ Has the number of non-conforming uses decreased appreciably since the enactment of the zoning regulations?
▪ Do the regulations provide for adequate control over the continuance or expansion of non-conforming uses to insure their eventual elimination?
▪ Do the regulations provide for control over the extension, expansion, or addition to non-conforming structures which violate the provisions establishing set back, side or rear yards?

▪ Do the regulations contain the customary phrase forbidding the reestablishment of a non-conforming use if it has ceased to operate for a specified period of time?
▪ Is it desirable to amend the existing regulations by adding a section which would provide for the elimination of non-conforming open land uses (such as parking lots) or non-conforming uses which have a small capital investment in structures (such as signs or used car lots) by establishing an amortization period for the operation of these uses at the termination of which the use itself shall cease?
▪ Do the regulations provide for the substitution of a less intensive use for a more intensive and detrimental non-conforming use under specified standards administered by the Zoning Board of Appeals?
▪ Do the regulations address the development of a non-conforming lot, perhaps by exempting the lot owner from the need to obtain certain area variances?
▪ Do the regulations provide for the merger of contiguous non-conforming lots under the same ownership?

ACCESSORY BUILDINGS

The effectiveness of the control exercised by zoning regulations can be considerably impaired if inadequate control is exercised over the use, location, size, and area occupied by accessory buildings.

▪ Are the functions and relationships of the accessory buildings to the use of the main structure clearly defined?
▪ Are standards established governing the maximum amount of the lot area which can be occupied by an accessory building or buildings?
▪ Are the uses permitted in accessory buildings having a detrimental effect upon adjacent properties in certain zones?
▪ Do side yard, rear yard or height limitations governing accessory buildings adequately control their size and location?
▪ Are the regulations governing the use of accessory buildings or structures for residential purposes adequate?
▪ Are secondary or accessory uses in accessory buildings tending to become the primary land uses?

SPECIAL PROBLEMS

Many zoning regulations establish methods for controlling certain special problems. Without attempting to suggest solutions for these problems, the following questions indicate problems for which zoning regulations may wholly or in part provide a solution.

▪ Are special problems presented by the existence of agricultural uses within predominantly urban areas for which the customary urban type of zoning regulations is inappropriate?
▪ Does the existing type of manufactured home park development require special provisions in zoning to control their location and the extent of their operation?
▪ Is special treatment required to regulate the location, height or size of public and institutional buildings where such regulation is within the community's purview?

▪ Are special provisions required to govern the location of public and private airports, air fields, or air landing strips?
▪ Should special control be exercised over land uses and structure heights in areas immediately surrounding all airports facilities in addition to the normal control exercised by the general provisions of the zoning regulations?
▪ Are the regulations overly restrictive or obsolete in the control exercised over certain types of garden apartment development or private group-housing projects?
▪ Do the regulations provide for any of the range of specialized housing types for senior citizens?
▪ Are special provisions required to control the installation and maintenance of decorative hedges, trees and shrubbery?
▪ Are special provisions required to control the location, height, and character of walls and fences?
▪ Are the required number off-street loading and parking spaces provided by property owners insufficient or excessive in the downtown area, in local shopping centers, or in association with certain types of buildings, such as theaters, churches, schools, hospitals, stadiums or large department stores?
▪ Do local conditions suggest a need to require regulations which would control the design, general layout, height, and bulk of structures in certain types of business areas by the adoption of specific designs for business development in such areas?
▪ Is adequate control exercised by the regulations over advertising sign boards?
▪ Are changes desirable in the existing business and commercial zones in order to permit the introduction of certain small light industrial activities (such as self-storage facilities) in these business zones?
▪ Are special regulations desirable to control the conversion of older homes into rooming houses, boarding houses, or bed and breakfasts by the adoption of regulations limiting the number of occupants, the minimum floor area per family unit, the construction of additions to the structure, the use of accessory buildings, the parking of vehicles or the display of advertising?
▪ Are special provisions desirable to schools, clinics and nursing homes in residential areas or in commercial areas?
▪ Do the regulations set up minimum floor areas per family in certain districts?

ZONING BOARD OF APPEALS

The Zoning Board of Appeals exists to interpret unclear provisions of the zoning regulations and to provide relief to individual applicants who can meet the standards for the grant of a use or area variance.

▪ Do the regulations specify in the clearest possible terms the exact power to be exercised by the Zoning Board of Appeals?
▪ Are the powers so specified consistent with the state statutes?
▪ Do the regulations assign certain non-appellate functions to the Zoning Board of Appeals, such as issuance of special use permits or granting of site plan applications?
▪ Do the regulations establish any training or attendance standards for members of the Zoning Board of Appeals?
▪ Does the Zoning Board of Appeals (either under the provisions of the regulations or following a local custom) act as an advisory body when zoning regulation changes are under consideration by the planning commission or the legislative body?

▪ Has the Zoning Board of Appeals been burdened with an excessive amount of cases?
▪ Have the recent decisions of the Zoning Board of Appeals been consistent with its powers as specified in the statutes and zoning law or ordinance?
▪ Have the type, character, and number of its recent decisions been such as to result in excessive difficulties in their enforcement by the building inspector?
▪ Does the Zoning Board of Appeals follow a well-defined procedure in conducting its meetings?
▪ Does the Zoning Board of Appeals use well-designed appeal forms which clearly indicate the basis upon which its action is requested?
▪ Are standard forms used and standard procedures followed in hearing appeals?

ENFORCEMENT

Obviously no law can be effective if the manner of its enforcement is careless, arbitrary, or difficult to accomplish. Many zoning regulations are omit of necessary features or by establish standards or methods of enforcement which often become ineffective because of the difficulty of enforcement.

▪ Are adequate powers granted to the building inspector or zoning enforcement officer?
▪ Is the responsibility for the enforcement of the law clearly established?
▪Are the individuals charged with the enforcement of the law adequately trained, efficient, and conscientious, and familiar with its provisions and with their powers?
▪ Are constant surveys and inspections made to discover violations of the law?
▪ Are all violations so discovered followed by remedial action or action in the court?
▪ Have the courts consistently sustained decisions of the building inspector and the Zoning Board of Appeals?
▪ Has an adequate system been developed for checking on the termination date of temporary permits upon the expiration of which conformity to the zoning regulations is required?
▪ Can improvement be made in the system of record keeping by cooperation with the agencies (if any) issuing business licences, making assessments, collecting water bills or sewer charges, or making health, sanitary or fire inspections?
▪ Do the regulations establish the fines and penalties to be imposed upon those convicted of its violation?
▪ Does it provide (in a city or village) that each day of violation shall be considered a separate offense?

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10th Floor, Suite 1015
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Andrew M. Cuomo,
Governor

January 2008

Town of Bolton
Zoning Code Update
Comparison Matrix 12/16/08

OLD CODE		NEW CODE		
Code #	**Title**	**Code Location**		**New Title**
Article I Introductory Provision				
200-1	Short Title	Article I~ Introductory Provisions		Short Title
200-2	Authority	Article I~ Introductory Provisions		Authority
200-3	Purpose and objective of Chapter	Article I~ Introductory Provisions		Purpose and Objective of Chapter
200-4	Zoning Board of Appeals	Article XIV~ Administrative Provisions		Zoning Board of Appeals
200-5	Planning Board	Article XIV~ Administrative Provisions		Planning Board
Article II General Provisions				
200-6	Applicability to land use or development within the Town	Article I~ Introductory Provisions		Application of Regulations
200-7	Authority of the Adirondack Park Agency	Article XII~ APA Review		Article X APA Review
200-8	Definitions	Article XVIII~ Definitions		Definitions
Article III Zoning Maps				
200-9	Town Zoning Map	Article III~ Establishment of Districts and Maps		Boundary Descriptions
200-10	Interpretation of zoning district boundaries	Article III~ Establishment of Districts and Maps		Boundary Descriptions

OLD CODE		NEW CODE		
Code #	**Title**	**Code Location**		**New Title**
200-11	Adirondack Park Land Use and Development Plan Map	Article III~ Establishment of Districts and Maps		Boundary Descriptions
Article IV Zoning Districts and Regulations				
200-12	Zoning Districts	Article III~ Establishment of Districts and Maps		Districts Classification
200-13	Schedule of Regulations	Article IV~ Use Regulations		Principal Uses
200-14	Use Regulations	Article IV~ Use Regulations		Use Regulations
200-15	Zoning Schedule of Area, Bulk and Height Controls	Article V~ Dimensional Regulations		Dimensional Table
200-16	Special density regulations in certain districts	Article V~ Dimensional Regulations		RCH & GB 5000 Additional Density Requirements
200-17	Provisions for clustering sites for development	Article XI~ Conservation Subdivisions		Conservation Subdivisions (entire article)
200-18	New multiple principal buildings on the same lot	Article VI~ General Regulations		Multiple Principal Buildings on the Same Lot
200-19	Setbacks for cabin colonies	Article VI~ General Regulations		Multiple Principal Buildings on the Same Lot
200-20	Scenic travel corridor overlay district	Article III~ Establishment of Districts and Maps Article VI~ General Regulations		Overlays Scenic Corridor Overlay
200-21	Application of regulations	Article I~ Introductory Provisions		Application of Regulations
200-22	Sign regulations	Article VIII~ Signs		Signs
200-23	Parcels located in more than one zoning district	Article III~ Establishment of Districts and Maps		Boundary Descriptions
200-24	Petition Zoning Ordinances	Article III~ Establishment of Districts and Maps		Boundary Descriptions
Article V Approval of Site				

OLD CODE		NEW CODE		
Code #	**Title**	**Code Location**		**New Title**
Plans and Certain Uses				
200-25	Purpose of article	Article IX~ Site Plan Review		Purpose of Article
200-26	Applicability of article	Article IX ~ Site Plan Review		Applicability of Article
200-27	Authorization to approve or disapprove site plan	Article IX ~ Site Plan Review		Planning Board Action
200-28	Application for review of site plan	Article IX ~ Site Plan Review		Application Content
200-29	Procedure	Article IX ~ Site Plan Review		Site Plan Review Procedure, Planning Board Action
200-30	Criteria for review of Type I and Type II site plan review	Article XII~ APA Review Article IX ~ Site Plan Review		~Criteria for Review of Class A Regional Projects by the Adirondack Park Agency ~Planning Board Action
200-31	Requirements for Type I and Type II site plan review	Article IX ~ Site Plan Review		Criteria for Site Plan Review
200-32	Development considerations	Article IX ~ Site Plan Review		Additional APA Development Considerations
Article VI Regional Project Review				
200-33	Purpose of article	Article XII~ APA Review		Purpose of Article
200-34	Criteria for review of Class A regional projects by the APA	Article XII~ APA Review		Purpose of Article
200-35	Planning Board authority regarding Class A regional projects	Article XII~ APA Review		Purpose of Article
200-36	Regional project review criteria	Article III~ Establishment of Districts and Maps		Appendix C in Subdivision Regulations
Article VII Supplementary Regulations				
200-37	Shoreline regulations	Article VI~ General Regulations		Shoreline Regulations

OLD CODE		NEW CODE		
Code #	**Title**	**Code Location**		**New Title**
200-38	Docks and boathouses	Article VI~ General Regulations		Docks and Boathouses
200-39	Tourist accommodations	Article VI~ General Regulations		Hotel/Motel/Cabin Colony Restrictions, Dimensional Table
200-40	Multiple-family dwellings	Article V~ Dimensional Regulations		Dimensional Table
200-41	Agricultural uses	Article VI~ General Regulations		Livestock
200-42	Animal husbandry	Article VI~ General Regulations		Livestock
200-43	Cultivation	Article VI~ General Regulations		Livestock
200-44	Mining, excavation of minerals/gravel	Article VI~ General Regulations		Extraction of Minerals/Gravel
200-45	Storage of volatile liquids	REMOVED		Regulation by DEC
200-46	Soil erosion standards	Chapter 125		Chapter 125 Stormwater
200-47	Standards for regulation of mobile homes, transient mobile home courts and campgrounds	Article VI~ General Regulations		Standards For The Regulation of Mobile Homes, Transient Mobile Home Courts And Campgrounds
200-48	Off-street parking and loading	Article VII~ Parking		Off-street Parking and Loading, Off-Street Parking Schedule
200-49	Sign regulations	Article VIII~ Signs		Signs
200-50	Antennas and dishes	Article VI~ General Regulations		Antennas and Dishes
200-51	Clearing regulations	Article VI~ General Regulations		Clearing Regulations
200-52	Fence regulations	Article VI~ General Regulations		Fences, Walls, Retaining Walls and Sea Walls
200-53	Architectural review	REMOVED		Committee Decision- legally difficult to enforce/implement
Article VIII General				

OLD CODE		NEW CODE	
Code #	**Title**	**Code Location**	**New Title**
Exceptions			
200-54	General exception to minimum lot area requirements	Article V~ Dimensional Regulations	General Exceptions to Minimum Lot Area Requirements
200-55	Gifts, devices and inheritances	Article V~ Dimensional Regulations	General Exceptions to Minimum Lot Area Requirements
Article IX Nonconforming Uses and Structures			
200-56	Continuation	Article XIII~ Nonconforming Uses Structures and Lots	Nonconforming Uses, Nonconforming Buildings and Structures
200-57	Conversions of certain existing uses	Article VI~ General Regulations	Multiple Principal Buildings on Same Lot
200-58	Discontinuance	Article XIII~ Nonconforming Uses Structures and Lots	Nonconforming Uses, Nonconforming Buildings and Structures
200-59	Change	Article XIII~ Nonconforming Uses Structures and Lots	Nonconforming Uses, Nonconforming Buildings and Structures
200-60	Completion of structure	REMOVED	Not Necessary
200-61	Destruction of nonconforming use	Article XIII~ Nonconforming Uses Structures and Lots	Nonconforming Uses
Article X Variances			
200-62	Purpose of article	Article XV~ Variance and Appeals	Purpose of Article
200-63	Authorization to grant or deny variances	Article XV~ Variance and Appeals	Area Variance Criteria and Standards, Use Variance Criteria and Standards
200-64	Application for variance	Article XV~ Variance and Appeals	Application

OLD CODE		NEW CODE		
Code #	**Title**	**Code Location**		**New Title**
200-65	Requirements for granting variances	Article XV~ Variance and Appeals		Area Variance Criteria and Standards, Use Variance Criteria and Standards
200-66	Referrals	Article XV~ Variance and Appeals		Planning Board Referral
200-67	Variance application hearing and decision	Article XIV~ Administrative Provisions		Hearing on Appeal
Article XI Amendments				
200-68	Purpose of article	Article XVII~ Amendments		Purpose of Article
200-69	Referrals	Article XVII~ Amendments		Referrals
200-70	Hearing and decision on proposed amendment	Article XVII~ Amendments		Hearing and Decision on Proposed Amendment
200-71	Records of amendments	Article XVII~ Amendments		Records of Amendments
Article XII Administrative Provisions				
200-72	Zoning Administrator/Code Enforcement Officer	Article XIV~ Administrative Provisions		Zoning Administrator, Code Enforcement Officer
200-73	Required records	Article XIV~ Administrative Provisions		General Provisions
200-74	Appeal from action of Planning Board or Zoning Board of Appeals	REMOVED		Specified in State Law
200-75	Form of petitions, applications, and appeals	Article XV~ Variance and Appeals		Application
200-76	Application fees	Article II Approval Process K		Fees
200-77	Notice of public hearing	Article XIV~ Administrative Provisions		General Provisions
200-78	Building permits	Article II Approval Process A		Permits
200-79	Certificate of occupancy	Article II Approval Process B-I		B-I
200-80	Site inspections	Article XIV~ Administrative Provisions		Zoning Administrator

OLD CODE		NEW CODE		
Code #	**Title**	**Code Location**		**New Title**
Article XIII Enforcement				
200-81	Fines; penalties for offenses	Article XVI~ Enforcement		Fines; Penalties for Offenses
200-82	Alternative or additional remedy	Article XVI ~ Enforcement		Alternative or Additional Remedy
200-83	Stop-work order	Article XVI ~ Enforcement		Stop-Work Order
200-84	Suspension of administrative review	Article XVI ~ Enforcement		Suspension of Administrative Review
200-85	Misrepresentation	Article XVI ~ Enforcement		Misrepresentation
Article XIV Cluster Provisions				
200-86	Cluster provisions as per Town Law ~ 278	Article XI~ Conservation Subdivisions		Purpose and Applicability
200-87	Requirements for clustering	Article XI~ Conservation Subdivisions		Purpose and Applicability
Article XV Planned Unit Development (PUD)				
200-88	Statement of purposes and objectives	Article X~ Planned Development District (PDD) Provisions		Statement of Purposes and Objectives
200-89	General requirements for PUD	Article X~ Planned Development District (PDD) Provisions		General Requirements for Planned Development Districts (PDD)
200-90	Planned unit development application procedure and approval process	Article X~ Planned Development District (PDD) Provisions		Planned Development District Application Procedure and Approval Process
200-91	Preliminary and final plat approvals standards	Article X~ Planned Development District (PDD) Provisions		Planned Development District Application Procedure and Approval Process

OLD CODE		NEW CODE		
Code #	**Title**	**Code Location**		**New Title**
200-92	Project staging	Article X~ Planned Development District (PDD) Provisions		Planned Development District Application Procedure and Approval Process
200-93	Other regulations applicable to planned unit developments	REMOVED		Rephrased in context of new PDD language
200-94	Financial responsibility	REMOVED		Not necessary- duplicative with subdivision regulations
Article XVI Repealer				
200-95	Repeal of prior Zoning Ordinance	Article XIX~ Repealer		Repeal of Prior Zoning Ordinance
Article XVII Telecommunications Towers				Suggest adopting as a stand alone local law
200-96	Enabling authority			
200-97	Definitions			
200-98	Purpose			
200-99	Application of site plan review regulations			
200-100	Site plan review			
200-101	Authority to impose conditions			
200-102	Professional review fees			
Article XVIII Regulation of Adult Entertainment Businesses				Suggest adopting as a stand alone local law
200-103	Purpose			
200-104	Definitions			
200-105	Prohibitions			
200-106	Application for a special use permit to operate an adult entertainment business			
200-107	Signage			
200-108	Effective date			

Supplemental Ordinances				
A	An ordinance regulating and controlling the grading of land and removal of topsoil and vegetation in the Town of Bolton	Chapter 125		Chapter 125 Stormwater
B	An ordinance establishing recreation fees in the Town of Bolton			Suggest moving to subdivision code
		NEW ORDINANCES		
		Article II Approval Process		All of Article II
		Article XII~ Administrative Provisions		General Provisions C: Referral to Neighboring Municipalities (General Municipal Law 239-NN)
		Article VI~ General Regulations		Swimming Pools
		Article VI~ General Regulations		Tennis Courts
		Article VI~ General Regulations		Outdoor Furnaces
		Article VI~ General Regulations		Private Dog Kennels
		Article VI~ General Regulations		Lighting Standards
		Article VIII~ Planned Development District (PDD) Provisions		Site Plan Review of Building Projectts Within an Established PDD
		Article VIII~ Planned Development District (PDD) Provisions		Subdivision Review in a PDD
		Article VIII~ Planned Development District (PDD) Provisions		Consultant Review Fees in a PDD
		Article VIII~ Planned Development District (PDD) Provisions		Conditions to Run With Land in a PDD

		Article VIII~ Planned Development District (PDD) Provisions		Existing Rights Preserved in a PDD
		Article VIII~ Planned Development District (PDD) Provisions		PDD Ammendment Procedure
		Article VIII~ Planned Development District (PDD) Provisions		Other Provisions
		Article IX~ Conservation Subdivisions		All of Article IX
		Article XVII~ Repealer		Severability
		Article XVII~ Repealer		Effective Date

AMENDING ZONING REGULATIONS

STEP 1: INTRODUCTION OF THE PROPOSED CHANGE

The proposed zoning change is drafted into bill form by the municipal attorney. The zoning law or ordinance is introduced at a meeting of the Legislative Body.

In a city, if owners of 50% or more of the frontage in any district shall present a petition requesting an amendment, the council must vote upon the petition within 90 days after the filing of the petition. [General City Law §83]. **Time:** No later than 90 days

STEP 2: ENVIRONMENTAL REVIEW

The Legislative Body must comply with the State Environmental Quality Review Act (SEQRA) by completing an environmental assessment form (EAF) in order to determine the environmental significance or non-significance associated with the adoption of the zoning amendment. **Time:** Submit EAF up to 30 days to establish lead agency.

If it is determined by the Legislative Body that the proposed action of adopting zoning is not significant, a Negative Declaration shall be completed and filed according to §617.12 of the State Environmental Quality Review Act Regulations. **Time**: Up to 20 days from establishment of lead agency.

If it is determined that the proposed action of adopting zoning will have a significant effect on the environment, a Positive Declaration must be issued and circulated in the same manner as a Negative Declaration. Information on how to proceed with a draft environmental impact statement is available from the Department of Environmental Conservation. http://www.dec.ny.gov/

Time: Up to 20 days from establishment of lead agency. See SEQRA regulations.

STEP 3: PUBLIC HEARING BY LEGISLATIVE BODY OF THE MUNICIPALITY

Prior to amending zoning, the Legislative Body must hold a public hearing. At a Legislative Body meeting a resolution is required to establish a date for the public hearing.

Notice must appear in a newspaper of "general circulation" at least ten days prior to the date of the hearing. The notice must be reasonably sufficient to inform the public of the content of the proposed zoning change. **Time:** Notice 10 days before hearing.

Written notice of the public hearing must be given personally or by mail if property affected by the zoning change falls within 500 feet of the following:

- municipal boundary
- housing authority property
- county boundary
- state park or parkway

[Town Law §264, Village Law §7-706

Time: At least 10 days prior to the hearing

STEP 4: REFERRAL BY LEGISLATIVE BODY
The proposed zoning change must be referred to the county planning agency for review if it triggers the thresholds established in General Municipal Law §239-m. If there is no county planning agency, referral should be made to the regional planning agency. The referral must contain the proposed zoning language in its final form. The Legislative Body may not act on the proposed zoning change until 30 days have passed following receipt of the referral by the county, or until the county planning agency has reported its recommendations to the Legislative Body, whichever occurs first. **Time:** At least 10 days prior to the hearing. Up to 30 days from date county receives referral.
In the event that a "substantial change" is made in the proposed zoning after the public hearing has been held, it is essential that SEQRA findings be made on the changes, public notice be repeated, referral of the changes be made to the county, and an additional public hearing be held. **Time:** See previous public hearing and referral time frames.
STEP 5: ENACTMENT PROCEDURES
Villages may adopt zoning changes by local law only. (Village Law §7-706) Town Boards and City Legislative Bodies may adopt zoning by local law or ordinance. While Town Law §264 only refers to adoption of zoning by ordinance, courts have held that towns must comply with §264 even when adopting zoning by local law.
In addition to the hearing notice period, there is another time period which must be observed when a municipality adopts zoning via local law. The local law must be in its final form and "on the desks" of the members of the governing board at least seven days prior to adoption (exclusive of Sundays), or must be mailed to each of them at least ten days prior to adoption (exclusive of Sundays). This time period -- either the seven or ten days -- may run concurrently with the notice period for the public hearing. **Time:** On desk 7 days prior to adoption OR mailed 10 days prior to adoption.
The vote to adopt the proposed zoning change must be by an affirmative vote of the majority of the fully constituted membership of the Legislative Body, regardless of absences or vacancies.
If the county planning agency disapproves, or recommends modification of the zoning proposal, the Legislative Body may adopt it nonetheless. However, in such case the vote to adopt must be by a majority plus one in favor. A report of the Legislative Body's final action must be filed with the county planning agency, including if applicable, any reasons why the county's recommendations were disregarded. **Time:** Within 30 days after final action.
If a zoning change is adopted by local law, the law and any map must be filed by the municipal clerk with the Secretary of State (SOS) within twenty days after adoption. **Time:** Within 20 days after adoption
The municipal clerk shall maintain a separate file or filing cabinet for each map adopted in connection with zoning.
Every zoning law or ordinance adopted must be entered into the minutes of the Legislative Body. The minutes shall describe and refer to any map adopted in connection with zoning.

STEP 6: PUBLICATION AND POSTING
Village Law requires that a copy of the zoning law and a summary or abstract of the zoning map shall be posted conspicuously at or near the main entrance to the office of the village clerk. (Village Law §7-706)
A summary or abstract of the zoning law/ordinance must be published once in a newspaper printed in the Town or in general circulation in the Town, or in the case of a Village, the official newspaper of the Village. An affidavit of publication must be filed with the municipal clerk.
In a village, a zoning law shall take effect upon its filing with the SOS, and immediately as against individuals who are personally served with the zoning law and zoning map, certified by the village clerk and showing the date of passage's entry into minutes.
In a city, a zoning law shall take effect as specified by the city, which may be on or after filing with the SOS. (If the law says "effective immediately," it becomes effective upon filling with the SOS.) If no effective date is mentioned, the zoning law becomes effective 20 days after adoption, provide it has been filed with the SOS.
In a town, a zoning ordinance shall take effect ten days after publication, or immediately as against individuals who are personally served with the zoning ordinance and zoning map. (Town Law §264) A town zoning law that has been filed with the Secretary of State consistent with §27 of the Municipal Home Rule Law shall not become effective until 20 days after publication, or immediately as against individuals who are personally served with the zoning ordinance and zoning map consistent with Town Law §264. It is recommended that the Town Board establish an effective date within the zoning law.