

REFERRAL OF ZONING ACTIONS TO THE ESSEX COUNTY PLANNING BOARD

(General Municipal Law, Article 128, Section 239, Paragraphs Land M)

Municipalities within Essex County are required to provide certain zoning and planning actions to the Essex County Planning Board for their review, prior to making a decision. This manual provides information on the purpose and procedure for making referrals to the County Planning Board.

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PURPOSE OF GENERAL MUNICIPAL LAW, ARTICLE 12B, SECTION 239

The General Municipal Law (GML), like Town, Village, and City Law, is part of the New York State Enabling Statutes, and authorizes certain actions to be performed by Counties, Cities, Towns, and Villages.

Certain development projects can have countywide or inter-community impacts, affecting a greater area than only the local municipality that the project is actually being established. General Municipal Law, Article 12B, Section 239, establishes a procedure for County level planning review of certain projects that require local zoning and planning approval. The goal of this review is to provide better coordination of planning and development on an inter-community and countywide scale. For example, issues that can easily have countywide impact include traffic, lighting, aesthetics, safety, and drainage.

In Essex County, the Board of Supervisors has given the Economic Development Committee review authority over those zoning actions described in GML Article 12B Section 239M. The County Planning Board has not been given authority to review subdivisions under Section 239N.

ACTIONS REQUIRING REFERRAL

The following zoning actions must be referred to the County Planning Board prior to local decision:

- 1) **COMPREHENSIVE PLANS:** The adoption or amendment of a comprehensive plan (pursuant to section 272-a of town law, section 7-722 of village law, or section 28-a of general city law);
- 2) **ZONING REGULATIONS:** adoption or amendment of a zoning ordinance or local law;
- 3) **SPECIAL PERMITS:** issuance of special use permits or conditional use permits;
- 4) **SITE PLAN REVIEW:** approval or amendment of site plans;
- 5) **VARIANCES:** granting of use or area variances;
- 6) **OTHERS:** authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

The above actions only need referral if the real property they are proposed for is within 500 feet of any of the following features:

- 1) **MUNICIPAL BOUNDARY:** the municipal boundary of any city, village, or town; or
- 2) **COUNTY OR STATE PARKS:** the boundary of any existing or proposed county or state park or any other recreation area; or
- 3) **COUNTY OR STATE ROADS:** the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road, or highway; or
- 4) **COUNTY OR STATE FACILITIES:** the existing or proposed boundary of any county or state-owned land on which a public building or institution is situated; or
- 5) **AGRICULTURAL DISTRICT FARMS:** the boundary of a farm operation located in an agricultural district (a New York State established district, not a local zoning district), as defined by article 25AA of the agricultural and markets law, though area variances are not subject to this

requirement. or;

- 6) **COUNTY DRAINAGE CHANNELS:** the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines,)

On a case-by-case basis, a municipality can request an exemption or waiver by contacting the County Planning Board for minor items that are of a local concern (i.e., lot line adjustments).

If there are any questions or uncertainties regarding whether a zoning action needs referral, feel free to contact the Essex County Department of Community Resources for a determination.

PROCEDURE FOR MAKING A REFERRAL TO THE COUNTY

To refer a zoning action to the Essex County Planning Board, please follow the following procedure:

Referrals are only accepted from the referring municipality; applicants cannot directly submit a referral.

Municipalities are encouraged to require from the applicant adequate sketches, photos, and written information on proposed projects. This also provides adequate information for your boards' review and provides a written record or documentation of exactly what is being proposed, as well as what is being permitted. These same items should be forwarded on to the County as part of the referral process.

- 1) Complete an "Essex County 239M Referral Form" form. Important information to provide, includes a sketch drawn to scale of the proposed project, with important dimensions included.
- 2) Provide all materials required by and accepted as a complete application by your local board. No additional information is required, however, please keep in mind, the County Planning Board only utilizes the information provided to make an informed decision. If the package does not provide enough information, the Board may erroneously provide a recommendation of denial; based on a potential countywide impact that has not been properly addressed in the application.
- 3) Determine what the deadline date is for sending the referral to the County. Referrals must be received at least four (4) business days prior to the next County Economic Development Committee meeting (Wednesday). If a local public hearing is required, the **referral must also** be made at least 10 days prior to the hearing.
- 4) Please email Judith.garrison@essexcountyny.gov or mail the referral materials to:

Essex County Planning Board
C/o Clerk of the Board
7551 Court Street
PO Box 217
Elizabethtown, NY 12932

If the documents file size is too large to e-mail, please mail hardcopies to the above address.

Documents (plans, maps, etc.) must be printed in a scale that is legible. Any documents sent via mail should be posted in plenty of time to meet the deadlines listed above.

Refer to our website for mapping assistance:
<https://www.co.essex.ny.us/wp/community-resources/>

The Essex County Planning Board, as permitted by General Municipal Law, has established an official receipt date for the review of referrals four (4) business days prior to the board's regularly scheduled meeting date. The County Planning Board has regular monthly meetings, established as the second Monday of every month.

Please keep in mind that depending on the project's complexity, a few days may be required for review of a complete application. However, by state law, any report received after 30 days but two or more days prior to final action by the local board, shall be subject to the provisions of 239M.

- 5) The municipality (i.e., town clerk, code enforcer, zoning, or planning board secretary) should inform the applicant, that the action has been referred to the County Planning Board, and the applicant should be notified of the time and place of the Planning Board meeting. The applicant is welcome to attend the County Planning Board meeting, but it is not a requirement. **The applicant is not informed by the County of the meeting.** County Planning Board referral reviews are public meetings, but not public hearings. However, the board has traditionally allowed and encouraged applicants to add / present any information that might make the project clearer to the board.
- 6) **Your municipality is required to wait for the County decision prior to rendering a decision on the matter.** Local decisions cannot be made prior to / contingent upon the decision of the County Planning Board. The County Planning Board may take **up to 30 days** after the official receipt date to provide a decision to the local municipality. The County Planning Board generally provides their decision approximately three (3) days after the meeting. If after 30 days from the official receipt date by the County Planning Board no decision has been provided to the local municipality, the local municipality may act upon the matter.
- 7) Notify the County Planning Board of your decision: The local municipal board must notify the County Planning Board within **30 days** after making a final decision. A form is included in this package for providing notification, which may be mailed or emailed to the County.

LATE REFERRALS

The policy regarding late referrals (received or submitted after the deadline date) is as follows:

A referral received after the Wednesday deadline may be brought to the County Planning Board for review if time allows. The applicant will be notified whether it can be reviewed at the County Economic Development Committee Meeting, upon submission. If not, it will be placed on the following month's agenda.

INCOMPLETE REFERRALS

The County Planning Board members cannot travel to every project site prior to the meeting, especially since the sites can range throughout the County. This makes the written information even more important, as many of the board members may not be familiar with the actual project site. Therefore, at a minimum, applications should include a to scale-accurate sketch of the project, the

applicant or owner name, the tax map identification number of the parcel or a copy from a tax map, and any other information essential to the permit or variance requested.

When this critical information is not provided, the County Planning Board cannot comfortably provide a decision of a recommendation or a Local Issue and must often recommend disapproval of the project. The County Board cannot request to table the project until more information is provided, for three reasons:

- 1) There is a 30-day review period for the County to make its decision within once the referral is received from the municipality (if submitted on time). The 30 days may have expired prior to the next meeting of the board.
- 2) There is no guarantee that the additional information will be provided since the local municipality's submittal to the County is supposed to be a complete application for the local board's purposes. The County cannot force the applicant or the local municipality to provide additional information on the project.
- 3) There is no guarantee that the local municipality will agree that project should be tabled, or that the applicant will want to table the application.

The only response the County can make to an application that does not provide the information needed is to recommend disapproval of the project, on grounds of a lack of information regarding a potential negative countywide or intercommunity impact of the project (such as unsafe driveway entrances, on street parking on major highways, etc.). A recommendation of disapproval will require your local board to either vote with a majority plus one vote of the full board membership (including vacancies and absences) to approve the project or may require the local board and/or applicant to table the project until it can be resubmitted to the County with the additional information. This can cause problems for the local board if there are not enough members present to obtain a majority plus one vote to overturn the county decision (5 yes votes out of a possible 7-member board, or 4 out of a 5-member board, depending on the size of the local board.) It additionally could delay the project an additional month if a resubmittal to the County is made.

IMPACT OF DECISIONS OF THE COUNTY PLANNING BOARD

The Essex County Planning Board will issue one of the four recommendations below:

APPROVAL: If a referral is recommended, the County Planning Board has determined that the proposed action has either a positive or not objectionable countywide or inter-community impact. A recommendation can also indicate that the action is in accordance with countywide planning objectives established by the Planning Board.

Required Local Decision: the local board may approve, disapprove, or modify the requested zoning action with a **majority vote** of the full membership of the local board (same as any other local action).

APPROVAL WITH MODIFICATIONS: If a referral is recommended with modifications, the County Planning Board has determined that the proposed action can have a positive or not objectionable countywide or inter- community impact, but only if the stated modification is made to the action.

Required Local Decision: the local board can only overturn the decision of the County Planning

Board with a **majority plus one** vote of the full membership of the local board. The local board may approve the action with the required modifications by a regular majority vote of full membership.

DISAPPROVAL: If a referral is recommended for disapproval, the County Planning Board has determined that the proposed action has a negative impact and cannot determine a modification which will allow for the action to be approved.

Required Local Decision: the local board can only overturn the decision of the County Planning Board with a **majority plus one** vote of the full membership of the local board. The local board may disapprove the action by a regular majority vote of full membership.

LOCAL ISSUE: If a referral is determined to be a local issue, the County Planning Board has determined that the proposed action has no countywide or inter-community impact.

Required Local Decision: the local board may decide to approve, disapprove, or modify the proposal with a majority vote of the full membership.

The Essex County Planning Board often provides comments to decisions, hoping to provide additional insight on certain aspects of a proposal which the local municipality may or may not have considered otherwise. These comments do not hold any power regarding the requirements for voting on the local decision-making process but may influence aspects of the decision.

MAKING YOUR BOARD'S DECISION: A local municipality must wait for the recommendation of the County Planning Board before it can take official action or the passage of 30 days, whichever comes first. Municipal Law also requires that the referral be made at least 10 days prior to any proposed public hearing. To do otherwise may result in the invalidation of the decision through Article 78 proceedings. The County Planning Board recommends that the local board provide the County Planning Board recommendation during a public hearing (if one is necessary). This allows involved parties such as the applicant, local agencies, and the general public to hear the County's perspective on the project and lodges the County recommendation within the public record of the hearing.

A local decision made contingent upon the decision of the County Planning Board is also **not legal**, in that the matter has been decided upon without prior input from the County. The County decision or comments will not have any influence upon the decision of the local board since it has already been rendered. The County or an aggrieved party would have legal grounds to challenge the local decision in an Article 78 proceeding.

AMENDMENTS OR CHANGES TO A PROJECT AFTER COUNTY REFERRAL: If a project undergoes significant changes during the local board's review, the local municipality is encouraged to contact the Essex County Department of Community Resources' Staff to discuss the modifications, to determine if the project requires another referral to the County. Major modifications or additional information may require resubmitting of the project. For example: alteration of a building more than 10%, a change in use, or a reduction/increase in the intensity of the proposed use, etc. Some modifications may result in a change in the County's decision.

NOTIFICATION TO COUNTY PLANNING BOARD OF LOCAL DECISION: The local municipal board must notify the County Planning Board within 30 days after making a final

decision. A form is included in this package for providing notification, which may be e-mailed or mailed to the County.

LEGAL IMPLICATIONS: Failure to comply with GML 239 can result in legal challenges to approved actions and laws. It is important to ensure that all action required to be reviewed under GML 239M get referred to the County Planning Board. If the municipality fails to refer the application to the County Planning Board, the municipality's decision may be invalidated by the courts based on procedural failure, if an aggrieved party files a lawsuit.

OTHER QUESTIONS? Please feel free to call the Essex County Department of Community Resources at any time to discuss the technical detail (873-3452 or 873-3895). We strive to make the procedure as workable and efficient as possible.