

REFERRAL OF ZONING ACTIONS TO THE ESSEX COUNTY PLANNING BOARD

(General Municipal Law, Article 12B, Section 239, Paragraphs L and 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.

Essex County Planning Board
C/o Clerk of the Board
7551 Court Street
Elizabethtown, NY 12932
Phone: 518-873-3350
FAX: 518-873-3356

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 Essex 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.)

If there are any questions or uncertainties regarding whether a zoning action needs referral, feel free to contact the County Planning Department 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.

1) Complete an "Essex County 239M Referral Form" form.

2) Make a copy of all materials required by and accepted as a complete application by your local board. No additional information is required, however, please keep in mind that the County Planning Board must make a decision from the information provided. If the package does not provide enough information to make an informed decision, the Board may deny the application based on a potential countywide impact that has not been properly addressed in the application.

Important information to provide includes a sketch drawn to scale of the proposed project, with important dimensions included, preferably on 11x17 size paper or larger. Without this information, the application may be impossible to determine as a local issue.

3) Determine what the deadline date is for sending the referral to the County. Referrals must be received at least 10 days prior to the next County Economic Development Committee meeting. If a local public hearing is required, the referral must also be made at least 10 days prior to the hearing. Please send the referral materials to:

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

OR hand deliver to: Essex County Clerk of the Board, 7551 Court Street, Entrance #3, Elizabethtown

The Essex County Planning Board, as permitted by General Municipal Law, has established an official receipt date for the review of referrals as 10 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. Referrals must be received at least 10 days prior to be considered for the regular meeting, which is a Friday. Items postmarked prior to this date will be accepted. For example, a referral postmarked on the Wednesday or Thursday before the required receipt date of Friday will be accepted regardless of the time received.

LATE REFERRALS

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

A referral received after the Friday deadline, (either hand delivered or postmarked after Friday), but which is received prior to Wednesday, will be brought to the County Planning Board meeting for a possible review. However, the referring municipality will be required to make 12 copies of the project for the Board, which will be handed out at the meeting. The referral will not be brought to the board unless the referring municipality has provided 12 copies. The referral will not be considered officially received at this point, and the County Planning Board will decide by vote at the meeting whether the referral will be reviewed at the meeting. The Board may decide to review the project at the next regular meeting. The 30 day clock does not begin until the board votes to review the late referral, or until the next regularly scheduled meeting.

4) Your municipality 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.

5) 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 Essex County Planning Board generally provides their decision approximately 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.

6) Notify the County Planning Board of your decision: The local municipal board must notify the County Planning Board within 7 days after making a final decision. A form is included in this package for providing notification, which may be mailed or faxed to the County.

INCOMPLETE REFERRALS

The County Planning Board members generally do not have the time or ability to travel to each and every project site prior to the meeting, especially since the sites can range all across the County. This makes the written information all the more important, as many of the board members may not be familiar with the actual 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 Local Issue or of Approval, and must often act to Disapprove 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). Most of the time the 30 days will 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 municipalities' 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.

Thus, the only safe response the County can make to an application that does not provide the information needed is to disapprove 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..) 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 another

month if a resubmittal to the County is made.

Municipalities are encouraged to require from the applicant adequate sketches, photos, and written information on 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.

IMPACT OF DECISIONS OF THE COUNTY PLANNING BOARD

The Essex County Planning Board must approve, approve with modifications, deny, or consider as a local issue a submitted referral within 30 days of the receipt of a complete application.

APPROVAL: If a referral is approved, the County Planning Board has determined that the proposed action has either a positive or not objectionable countywide or inter-community impact. An approval 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 approved 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 disapproved, 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 make a decision to approve, disapprove, or modify the proposal with a majority vote of the full membership.

COMMENTS: The 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. 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.

NOTIFICATION TO COUNTY PLANNING BOARD OF LOCAL DECISION: The local municipal board must notify the County Planning Board within 7 days after making a final decision. A form is included in this package for providing notification, which may be mailed or faxed to the County.

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 County Planning Department Staff to discuss the modifications, in order to determine if the project requires another referral to the County. Major modifications or additional information may require resubmitting of the project. Some modifications may result in a change in the County decision.

OTHER QUESTIONS? Please feel free to call the Planning Department at any time to discuss the referral process (873-3452). We strive to make the procedure as workable and efficient as possible.

REFERRAL NUMBER

(ECPB OFFICE USE)

ESSEX COUNTY 239M REFERRAL FORM

Municipality _____ Applicant: _____

Referred from: Zoning Board of Appeals Planning Board Legislative Board

Request for: Area Variance Use Variance Special / Conditional Permit
(check all that apply) Site Plan Review Zoning / Planning Law / Amendment Other

Physical Site Location/Address: _____

Project Description: _____

This zoning matter is forwarded to the County Planning Board for review because the real property affected is located within 500 feet of the following (check all that apply):

- County or State Right-of-Way** of any County or State road, thruway, expressway, parkway, highway or other right-of-way - County / State Highway Name _____
- County or State Owned Land with Public Building / Institution Name:** _____
- Municipal Boundary** of your Town, Village, or City
- Farm operation** located within an Agricultural District, which includes any land used in agricultural production
- State or County Owned Public Land** / Park / or recreation area.
- Zoning or Comprehensive Plan**, new law or amendment
- Right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines.

REQUIRED ENCLOSURES: one copy of all materials required and accepted by the local board must be forwarded to the County Planning Board.

Tax Parcel ID: _____ Zoning District: _____

Minimum Lot Size: _____ Public Mtg / Hearing Date: _____

Required Setbacks: Front yard: _____ ft. Side yard: _____ ft. Rear yard: _____ ft.

Sign Regulations Size/Number: Free Standing _____ Building Sign _____

OTHER: _____

Referring Officer for Local Municipality _____

Date _____

OFFICIAL NOTICE OF ACTION

239M MUNICIPAL ZONING ACTION

TO: Essex County Planning Board

FROM: _____

DATE: _____

SUBJECT: _____

In compliance with Article 12-B, Section 239 of the General Municipal Law of New York State, this serves as official notification to Essex County of the action taken on the following petition:

_____ Zoning Amendment
_____ Variance
_____ Conditional Use / Special Permit
_____ Site Plan Review

DATE OF PUBLIC HEARING: _____

DATE OF ACTION TAKEN: _____

ACTION TAKEN: _____ APPROVED
_____ APPROVED WITH MODIFICATION
_____ DENIED

VOTE RECORDED: _____ YES
_____ NO
_____ ABSENT
_____ ABSTAIN

Modifications or Conditions Attached: _____

Attach official decision if possible.

DATE

SIGNATURE AND TITLE