

## Somewhat Plain English ZBA Appeals Process

### 1. Determination of Type of SEQR Action

The board must make a determination of what type of action the application is. Many appeals are “type 2” exempt actions (requiring no SEQR action) or “unlisted” actions (requiring only a short EAF with the application). With an “unlisted action” the board makes its own independent SEQR determination and a lead agency and coordinated review is not necessary. However, the board should consult the SEQR “type 1” list to make sure the action is not on this list. When an appeal is found to be on the “type 1” list, professional assistance with the SEQR process should be sought. A “type 1” action shall require a long EAF with the application, the designation of a lead agency, and a coordinated review.

### 2. Preliminary Acceptance of Application

The board should accept application within 60 days of the filing of a determination by the zoning officer. The board should formally make a determination that the application package is complete EXCEPT FOR SEQR, and that anything not included is waived by the board. Consulting a technical checklist of submission requirements is helpful.

### 3. Agricultural Data Statement

Where the location of a use variance appeal makes it necessary, the agricultural data statement must be sent to affected property owners.

### 4. Request for Planning Board Recommendation

Where the application is for an area variance for a subdivision being reviewed by the planning board, a request for a recommendation from the planning board must be made.

### 5. Completion of SEQR

**Complete EAF** – If the action is not a “type 2” exempt action, the board must review part 1 of the EAF which has been completed by the applicant, and then complete part 2 and part 3.

**Determine significance of action** – The board must make a determination of significance by motion or resolution. In most cases this will be a “negative declaration.” If a “positive declaration” is made, the board should immediately consult professional assistance with the next steps in the SEQR process.

**Filings** – In the case of a negative declaration, the EAF and negative declaration document should be entered into the record of the board. In the rare case that the action is “type 1,” then the positive or negative declaration must be sent to the ENB for publication.

### 6. Acceptance of Complete Application

The board should make a formal motion to accept the application as complete upon making a negative declaration, accepting a draft environmental impact statement, or finding the application exempt from SEQR.

**7. Notice of Hearing**

The board must establish a hearing date by motion of the board. A notice of the hearing must be published in a newspaper in general circulation at least five days before the hearing. Notice must be mailed to the parties at least five days before the hearing. Where the location of the appeal requires, notice must be given to the regional state parks commission at least five days before the hearing. Where the location of a use variance appeal requires, notice by mail or electronic transmission must be made to the clerk of adjacent municipalities at least ten days before the hearing.

**8. County Referral**

Where the location of a use or area variance appeal makes it necessary, notice of the hearing and a full statement of the action must be referred to the county planning board at least five days before the hearing. Only part 1 of the EAF is necessary to refer.

**9. Hearing**

The hearing must be held within a reasonable time of the acceptance of a completed application. The board must act by motion to close the hearing.

**10. Action on Proposal**

Within 62 days of the closing of the hearing, the board must decide upon the appeal. A resolution addressing county referral comments should accompany final action of the board.

**11. Notifications and Filings**

***Applicant*** – A copy of decision must be mailed to applicant.

***Municipal clerk*** – The decision must be filed within 5 business days with the municipal clerk.

***County planning board*** – Final action of any matter referred must be reported within 30 days to the county planning board, including any reasons for contrary action.