

VILLAGE OF UPPER NYACK  
LAND USE BOARD APPLICANT GUIDE

NOTICE TO APPLICANTS

\*This notice is provided for convenient reference only; it is not a substitute for reviewing the applicable laws in full. If there is a conflict between any applicable law and this guidance document, the terms of the law control. \*

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CONTACT INFORMATION

For general information regarding Land Use Board schedules, meeting agenda, meeting minutes or copies of the Village's local laws regulating land use, please visit the Village's Website at: <https://www.uppernyack-ny.us/>

If you have any additional questions, please contact the Secretary to the Land Use Boards at [boardsecretary@uppernyack-ny.us](mailto:boardsecretary@uppernyack-ny.us) or 845-358-0084 x23.

# **VILLAGE OF UPPER NYACK LAND USE BOARD APPLICANT GUIDE**

## **A. WHAT ARE THE VILLAGE OF UPPER NYACK LAND USE BOARDS?**

The Village of Upper Nyack has three Land Use Boards: the Planning Board, the Zoning Board of Appeals, and the Architectural Review Board.

### **1. Planning Board:**

The Planning Board is a 5-member board that has been authorized to review and decide applications for site plan approval, special use permits, subdivisions and certain tree removal permits within the Village of Upper Nyack. The Planning Board generally meets once each month (no meeting in August). The Planning Board's meeting and submission calendar is available on the Village's website,

The legal authority for the Planning Board to review and decide applications can be found in the following laws (all as they may be from time to time amended): The Village's Zoning Law, Subdivision Law, Planning Board Law, Stormwater Management Law and Tree Preservation Law. Other relevant laws to consult include, but are not limited to, the Village of Upper Nyack Architectural Review Board Law, the Village of Upper Nyack Uniform Code Enforcement Law, the New York State Village Law and the New York State Environmental Quality Review Act and its implementing regulations.

### **2. Zoning Board of Appeals (ZBA):**

The ZBA is a 5-member board that has been authorized to: (1) review and decide applications for use and area variances applying the New York State statutory standards; (2) interpret the Zoning Law of the Village of Upper Nyack; and (3) hear appeals from determinations of the Zoning Inspector in the application and interpretation of the Village of Upper Nyack Zoning Law. The ZBA generally meets once each month (no meeting in August). The ZBA meeting and submission calendar is available on the Village's website.

### **3. Architectural Review Board (ARB):**

The ARB is a 5-member board. It has advisory review authority for all applications for site plan approval in which new buildings or modifications to existing buildings are proposed. The ARB hears such applications on referral from the Planning Board. The ARB's jurisdiction involves reviewing the architecture of the proposed building or building modification.

The ARB also has authority to review and approve, approve with conditions or modifications or deny the following types of applications: (1) building permits to construct, modify, or alter the exterior of any building or structure (other than those that require review by the Planning Board); (2) permits to demolish any building constructed on or before January 1, 1970; (3) permits to install or replace most permanent, non-residential signs; (4) fence permits if the proposed fence requires a variance from the ZBA and such variance has been granted; and (5) certain applications for a permit to install a collocated wireless telecommunication facility.

The ARB generally meets once each month (no meeting in August), and its submission deadline and meeting schedule is available on the Village's website.

## **B. WHEN IS REVIEW AND APPROVAL BY THE LAND USE BOARDS REQUIRED?**

### **1. Applications That Require Planning Board Review and Approval**

#### SITE PLAN APPROVAL (Zoning Law §10):

Generally, site plan approval from the Planning Board is required: (i) before a building permit may be issued for the construction of any new building or structure on a lot in the Village; (ii) before a building permit for the alteration of any building or structure that changes its footprint, development coverage, or floor area may be issued; (iii) before a demolition permit for most buildings or structures may be issued; (iv) in connection with any application for a special use permit pursuant to Upper Nyack Zoning Law §9; and (v) before a lot owner may begin certain changes of use or land disturbances that do not involve the construction of a building or structure. For a detailed description of when site plan review is required, see Zoning Law §10.1.1.

#### SPECIAL USE PERMIT APPROVAL (Zoning Law §9):

Generally, special use permit approval from the Planning Board is required prior to the establishment of any use designated as a special permit use in the Zoning Law's Use Table (§4.1.1). Special use permits require renewal from the Planning Board on a periodic basis and certain modifications of such uses require review and approval by the Planning Board.

#### SUBDIVISION APPROVAL (Subdivision Law).

Subdivision approval from the Planning Board is required before any plat can be filed in the Office of the Rockland County Clerk which would affect any existing lot line on any lot in the Village. For example, subdivision approval from the Planning Board would be required to divide one existing lot into two or more lots, to combine two or more lots into fewer lots, or to adjust the boundary lines between lots.

#### TREE REMOVAL PERMIT (Tree Preservation Law).

The Tree Preservation Law provides detailed guidelines regarding the removal of regulated trees from lots within the Village. Generally, if a property owner wishes to remove more than 2 healthy regulated trees and 3 regulated trees that are dead or dying from their lot in any 2-year period, review and approval by the Planning Board is required. For more information on the Tree Preservation Law including the tree removal permit application, see the Village's website at: <https://www.uppernyack-ny.us/building-department/pages/tree-preservation-law-2021>.

## **2. Applications Requiring ZBA Approval:**

### USE VARIANCES:

The ZBA has the authority to grant use variances. A use variance is permission from the ZBA to use land for a purpose which is otherwise prohibited by the Village's Zoning Law. When considering an application for a use variance, it is the applicant's burden to demonstrate that it meets each of the following four criteria: "(1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created. NYS Village Law § 7-712-b(2)(b); Upper Nyack Zoning Law §12.3.3.1. If a use variance is granted, the ZBA must ensure that it is granting the minimum variance necessary to address the applicant's hardship.

### AREA VARIANCES:

An area variance is permission from the ZBA to configure property in a manner that does not strictly comply with the bulk or dimensional requirements of the Village's Zoning Law. When deciding an application for an area variance, the ZBA must "take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance." NYS Village Law § 7-712-b(3)(b); Upper Nyack Zoning Law §12.3.3.2. If an area variance is granted, it must be the minimum variance necessary to achieve the benefit sought by the applicant.

### APPEALS/INTERPRETATIONS:

The ZBA may hear and decide appeals from decisions of the Zoning Inspector interpreting or applying the Zoning Law. When considering an appeal from a decision or interpretation of the Zoning Inspector, the ZBA essentially steps into the shoes of the Zoning Inspector and has the same authority to make any decision, interpretation or determination as in its opinion ought to have been made by the Zoning Inspector. The ZBA is only authorized to hear and decide appeals related to the interpretation and application of the Village's Zoning Law; it lacks jurisdiction to hear appeals concerning, among other things, decisions made applying the New York State Uniform Fire Prevention and Building Code.

### 3. **Applications Requiring ARB Review**

As stated above, all applications for site plan approval which involve the construction or modification of a building must be referred to the ARB for review and recommendation by the Planning Board. The ARB also has jurisdiction to review applications for a variety of Building Department permits.

#### **C. HOW DO I MAKE AN APPLICATION TO THE PLANNING BOARD OR ZBA?**

To make an application to the Planning Board or ZBA, please submit **two (2)** complete sets of application materials, including **ALL** materials on the appropriate Submission Checklist to the Zoning Inspector. Land Use Board application forms, which include the relevant Submission Checklists, are available on the Village's website. The Zoning Inspector will review the submission and advise if changes or modifications are needed to have a complete application for Board review.

Once the Zoning Inspector determines that an application is complete for review, a full submission can be made to the Secretary to the Land Use Boards. The Zoning Inspector will advise how many copies of submission materials are required (this may vary based on referral requirements and other factors). A determination that the application is complete for review does **not** constitute an approval or any assurance that an approval will be issued; it is only a determination that all the required elements are present in the application package to enable the review process to begin.

If you would like to schedule an informal pre-application review, please contact the Village's Zoning Inspector. Informal pre-application meetings are strongly encouraged for all subdivision applications.

#### **D. HOW DOES THE PLANNING BOARD AND ZONING BOARD OF APPEALS REVIEW AN APPLICATION?**

Most applications for land use review will involve site plan approval from the Planning Board and therefore this narrative assumes such Planning Board review will be needed. Once the Zoning Inspector has authorized the applicant to make the application to the Planning Board, and the applicant has made a complete submission to the Secretary to the Land Use Boards, the application will be scheduled on a Planning Board agenda for a public hearing.

Where appropriate or required, the Secretary to the Land Use Boards will send the application to referral agencies including, but not necessarily limited to, the Rockland County Department of Planning, the Town of Clarkstown, the Village of Nyack, the New York/New Jersey Trail Conference, the Palisades Interstate Park Commission, the Rockland County Department of Health, Army Corps of Engineers, the New York State Department of Environmental Conservation or the New York State Department of Transportation. The Secretary to the Land Use Boards will also publish notice of the public hearing in a local newspaper and provide the applicant with the information that it needs to mail and post notice of the public hearing. For more information about hearing notice requirements, see Zoning Law § 11.5.

At the first session of the public hearing, the applicant and/or its representatives will present the application to the Planning Board. The Planning Board strongly recommends that the design professional who prepared the plan be present at the hearing to explain the plan and answer questions.

The Planning Board members will ask the applicant pertinent questions, members of the public will be heard on the application, and agency and consultant comments will be reviewed. Generally, one of three outcomes may result from the first session of the public hearing:

1. If the Planning Board has all the information that it needs to make a decision and no review referrals to the ARB or ZBA are required, the Planning Board will close the public hearing and adopt a resolution of decision of the application.
2. If the Planning Board determines that it does not have all the information that it needs to make a decision or refer the application to the ARB and/or the ZBA, it may continue the public hearing to a subsequent meeting of the Planning Board.
3. If a referral to the ARB and/or ZBA is required and the Planning Board finds that the review of the application has progressed to the extent that the review of such boards would be appropriate, it may refer the application to the ARB and/or ZBA, keeping the hearing before the Planning Board open for further review following the conclusion of ARB and/or ZBA review.

Upon referral from the Planning Board, the applicant will be asked to make a full submittal for review to the ARB and/or ZBA. If required, the Secretary to the Land Use Boards will refer the application to outside agencies for review and comment. Then the application will be scheduled for a public hearing before the ARB and/or ZBA. The Secretary to the Land Use Boards will publish notice of the public hearing in a local newspaper and provide the applicant with the information that it needs to mail and post notice of the public hearing. For more information about hearing notice requirements, see Zoning Law § 11.5.

Generally, review by the ZBA can proceed concurrently with review by the ARB. However, applicants must understand that if they proceed with the review by these boards concurrently, and the approval of one board requires plan modifications that may affect the approval by the other, modified approvals (and additional appearance before the Boards) may be required.

Following a determination by the ZBA and/or ARB where required, the Planning Board will continue the review of the application. Once the Planning Board determines that it has all the information it needs to make a decision, it will close the public hearing and adopt a resolution of decision of the application.

#### ***E. HOW SHOULD I PREPARE FOR MY PUBLIC HEARING BEFORE THE LAND USE BOARDS?***

To prepare for a public hearing before any of the Land Use Boards, an applicant should, at a minimum: (1) make sure the public hearing notices have been mailed and posted and proof of same has been provided to the Secretary to the Land Use Boards; (2) review and be familiar with the application submission and the relevant laws; (3) review public, agency and consultant comments submitted on the application to the extent that they are available before the hearing (please contact the Secretary to the Land Use Boards to request copies of any comments received by the boards); and (4) confirm which design professionals or other representatives will attend and present materials at the hearing. During the public hearing on a variance application before the ZBA, applicants must be prepared to address each of the factors in the applicable variance test. See Zoning Law § 12.3.3.1 (use variance standard) or Zoning Law § 12.3.3.2 (area variance standard).

During a public hearing on a special use permit application the applicant must be prepared to address the application's compliance with the special use permit criteria in Zoning Law §9.5 and §9.6 as applicable.

If an application is continued to a future meeting, prior to the next hearing date (and by the applicable submission deadline) the applicant should make a written submission addressing the Board's comments. All submissions should include a cover letter describing what is being submitted and how the plan has changed or what new information is being provided from the prior review. Aspects of the plan that have been changed should be marked with a revision cloud and number. The applicant should also be prepared to explain how the comments were addressed at the next session of the public hearing.

#### **F. HOW LONG DOES LAND USE BOARD REVIEW TAKE?**

It is impossible to say with certainty how long review by the Land Use Boards will take. Many factors contribute to the timing, including but not limited to: (1) the quality and timeliness of submissions; (2) the adequacy of materials presented at meetings; (3) the agency referral process; (4) the time required for review and decision by the ARB and ZBA where their involvement is required; (5) public comment and participation; and (6) Board meeting schedules and agenda availability.

Generally, Planning Board applications that require review by the ARB and/or variances from the ZBA take a minimum of four (4) months from the date of the applicant's first appearance at a Planning Board meeting and applications that do not require such review generally take a minimum of two (2) months from the date of the applicant's first appearance at a Planning Board meeting.

Applications to the ZBA that do not require review by the Planning Board or ARB generally take a minimum of two (2) months from the date of the applicant's first appearance at a ZBA meeting.

#### **G. WHAT HAPPENS AFTER THE LAND USE BOARDS HAVE COMPLETED THEIR REVIEW?**

If the Land Use Boards complete their review and grant all of the approvals required to proceed with a development project, the applicant must comply with any applicable conditions. Once all applicable conditions are met, and, where site plan approval has been granted, the final site plan has been signed by the Planning Board chair, the applicant can apply to the Building Department for the necessary building and/or technical permits necessary to complete the proposed work. No work requiring a building permit may be commenced until a building permit is issued.