

City of Canandaigua

A User's Guide to the Development Review Process

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INTRODUCTION

All referenced applications and standards are available online at:
www.CanandaiguaNewYork.gov
(under the tab “Planning and Zoning”)
Hard copy can be obtained at the Office of Development & Planning in City Hall.

Establishing a new business can be daunting. Beyond the economic considerations of the business plan itself, the approvals required by the City of Canandaigua may seem complex. And depending on the nature of the project and its location, and whether the project involves new construction or interior renovations, there may be multiple approvals needed before you can open your business. Some of these approvals may be required even when you are simply taking over an existing storefront.

These approvals may include:

- Zoning Compliance
- Special Use Permit
- Site Plan Review
- Architectural Review Signage
- Historic Zoning Approval
- Zoning Variance
- Building Permit
- Certificate of Occupancy
- Sire Safety Inspection

This guide is intended to provide an overview of the process so that you will have a better sense of what to expect and how to get through the approval process as efficiently as possible.

GETTING STARTED

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The best way to start off any project is to meet with the city’s Director of Development and Planning to discuss your project in concept.

The Director of Development is the Zoning Officer and works closely with all the approving agencies. They will be able to provide you with an overview of the review process.

Understand that every project is different and that every property is different. Depending on the complexity of the project you may also need to seek the advice of an architect or engineer as well.

At this initial meeting you should expect to cover the following topics:

- Zoning compliance and whether other approvals are required.
- Building code issues that may be applicable, even for existing commercial spaces.
- Timelines, review boards, meeting dates and deadlines.
- Application requirements and fees.

Staff will try to help you identify any particular challenges that may be associated with your project. Although this meeting can be very conceptual, you will get better feedback if you provide better information about your project and the property you are considering. This might include:

- Description of your business and your business plan. This can be a single paragraph or several pages. You may want to include business ideas that you hope to add at a later date.
- Property survey and site plan indicating, with dimensions, all existing and proposed structures and parking areas,

property setbacks, fencing, landscaping, and site lighting.

- Existing floor plans and proposed floor plans, including the location and the dimensions of hallways, doors and windows, bathrooms. Also, the location of electrical outlets, plumbing fixtures, the location of shelving and equipment.

If you are not prepared with these for this initial meeting, you can develop your submittal as your project progresses.

PART 1: ZONING OFFICER

The Director of Development and Planning serves as the Zoning Officer. The director is a full-time employee of the city and works directly for the City Manager. The director works with the City Planning Commission, the Zoning Board of Appeals, and supervises the Code Enforcement Office.

Zoning Compliance

The City of Canandaigua's Zoning Ordinance is fairly complex and covers a variety of topics related to land use. The initial question is whether or not the use you propose is permitted at the property you are considering. Because of how zoning changes over the years, you cannot assume that it is permitted simply because a similar use is operating at that location.

A Certificate of Zoning Compliance is required for all new tenants or occupants of commercial properties. You do not have to be the property owner to request Zoning Compliance. In fact, you may want this compliance certificate before entering into a

lease or closing on a property.

An application for Zoning Compliance is a simple one-page application that describes the proposed use and identifies the property in question. Certain supporting information, like a detailed use description, site plan and floor plan, may be necessary. The Zoning Officer will review the proposal against the local Zoning Ordinance and make a determination regarding compliance.

In a simple project, this might be the end of the process. However, in reviewing your application for Zoning Compliance it may become evident that other approvals are required before a you can open your new business.

Appeals

If you disagree with the determination of the Zoning Officer, you may seek an appeal. See "Appealing the Decision of the Zoning Officer" under: Part 2: Zoning Board of Appeals

PART 2: ZONING BOARD OF APPEALS

The City of Canandaigua Zoning Board of Appeals is made up of seven volunteer city residents who are appointed by the City Council to serve up to three, 3-year terms. The Zoning Board is required to have annual training and is supported by the Director of Development and Planning. They meet on the third Wednesday of each month at 7 PM.

Zoning Variance

If the Zoning Officer determines that any aspect of a proposed project does not comply with the Zoning Ordinance, the owner may apply for a variance to that requirement. These requests are heard by the city Zoning Board of Appeals (ZBA). The actions of the ZBA and the standards for granting a variance are strictly regulated by NYS law.

Area Variance

If a project does not comply with the dimensional requirements of the Zoning Ordinance, the applicant may seek an Area Variance. This might include setbacks to a property line, building height, or the number of parking spaces required.

The standard for an Area Variance is intended to be relatively easy for an applicant to achieve, while protecting the general welfare of the community. By state law this standard is as follows:

“In making its determination, the Zoning Board of Appeals shall 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”.

The majority of Area Variance applications are granted.

Area Variances require public notification, a legal notice, and a public hearing. Therefore, applications are due two weeks prior to the meeting and there is an application fee of \$100.

Use Variance

If an owner wants to use the property in a manner that is not allowed by the Zoning Ordinance, they may seek a Use Variance. For example a commercial use in a residential zone district.

As set by state law, the standard for a Use Variance is intended to be very high and a variance is only to be granted when the Zoning Ordinance causes unreasonable financial hardship to a property owner and that owner provides substantive evidence, to the ZBA’s satisfaction, of the following:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
2. 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. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
4. The alleged hardship has not been self-created

The granting of Use Variances is quite rare.

Use Variances require public notification, a legal notice, and a public hearing. Therefore, applications are due two weeks prior to the meeting and there is an application fee of \$200.

Interpretations: Appealing the Decision of the Zoning Officer

Although the local Zoning Ordinance is lengthy, not every term and circumstance is clearly defined, so there is still room for interpretation. The Zoning Officer is charged with making these interpretations and an applicant may appeal that interpretation to the Zoning Board of Appeals. For example, if a Zoning Compliance Certificate states that a use is not permitted, an applicant might disagree with the Zoning Officer’s reading of the law and seek an interpretation instead of a Use Variance.

In these applications the ZBA will review the information that was presented to the Zoning Officer decide to either uphold or overturn that decision. Unlike Area Variances and Use Variances, there is no prescribed “test”. Often a decision will hinge on the meaning of a single, undefined term.

Interpretation appeals also require public notification, a legal notice, and a public hearing. Therefore, applications are due two weeks prior to the meeting and there is an application fee of \$100.

Appealing the Decision of the ZBA

There is no provision under local law to appeal the decision of the ZBA. If you believe the ZBA acted outside their legislated authority, or acted in an arbitrary or capricious manner, you may seek to appeal their decision in state court under the provision of an Article 78. The city will not provide assistance in helping an applicant prepare an Article 78 appeal.

Should I hire an Attorney?

There is no requirement for legal representation at the ZBA or other local board. The process is intended to be handled by the layman. However, some applications, especially Use Variances, can have significant financial ramifications for your project and the preparation of a compelling application may be complex. In these cases, legal assistance might be helpful. If at any time in the process, even at the ZBA meeting itself, you feel the need for legal assistance, you can ask that your application be tabled.

PART 3: CITY PLANNING COMMISSION

The Canandaigua City Planning Commission is made up of seven volunteer city residents who are appointed by the City Council to serve up to three, 3-year terms. The Planning Commission is required to have annual training and is supported by the Director of Development and Planning. They meet on the second Tuesday of each month at 7 PM.

Special Use Permit

Special Use Permit is a land use regulation tool established by New York State law. Local municipalities can designate whether certain uses are permitted “as of right” (permitted in all cases without discretion) or subject to a case-by-case review. Common Special Use Permits include home occupations, restaurants, and night clubs. Simple retail sales in a commercial zone district does not require a use permit.

The City Planning Commission meets once per month to consider applications, including those for Special Use Permits. There are specific standards in the Zoning Ordinance established for each type of Special Use Permit (Article X of the Zoning Ordinance).

Special Use Permit applications require public notification, a legal notice, and a public hearing. Therefore, applications are due two weeks prior to the meeting and there is an application fee of \$100.

Typically, the Planning Commission makes their decision on Special Use Permits at a single meeting.

Site Plan Review

All new construction, except single-family and two-family homes, requires Site Plan Review. For commercial projects, this includes additions and accessory structures as well. The City Planning Commission conducts Site Plan Review and considers the arrangement of the structures on the site, as well as parking, traffic, drainage, landscaping, exterior lighting, buffering, etc. A professional engineer or architect is usually required to prepare a site plan.

Site Plan Review applications require public notification, a legal notice, and a public hearing. Plans are also referred to other agencies like the Department of Public Works, the Fire Department, and the Police Department for comment. Therefore, applications are due two weeks prior to the meeting and there is an application fee of \$100.

Typically, the Planning Commission makes their decision on Site Plans at a single meeting. However, significant new construction may require more extensive plans such as a stormwater management plan, a landscape plan, a lighting plan, or even a traffic study. The need for these studies is determined on a case-by-case basis by the City Planning Commission.

Architectural Review and Signage

New construction or reconstruction that requires a building permit and changes the exterior appearance of a structure, requires Architectural Review. However, all work done on single-family and two-family homes is exempted from review.

This includes all new commercial signage, including portable “A-frame” signs. Re-

facing or changing the design of an existing sign constitutes a new sign and is subject to Architectural Review. Flags that include a commercial message are regulated as signs. Signs displayed inside windows are not regulated.

Painting, siding, or replacement windows (without modifying the openings) does not require a Building Permit and therefore is not subject to Architectural Review.

In reviewing applications, the Planning Commission will adhere to the adopted ***Architectural Standards***.

There is no notice or public hearing for Architectural Review, therefore there is no fee and applications are due one week prior to the meeting. Fees will be charged when the Building Permit or Sign Permit is issued.

Historic Zoning

Significant portions of the City of Canandaigua, including the downtown area, are designated Historic Districts and are listed on the National Register of Historic Places. Within these districts, all exterior alterations subject to public view, must be approved by the City Planning Commission. "Alteration" is defined as a change to the design, material, or outward appearance of the feature, including change of color. Repair or even replacing existing features with matching materials is not an alteration and is not subject to review.

In reviewing historic zoning applications, the Planning Commission will adhere to the ***Secretary of the Interior's Standards for Rehabilitation***. There is no notice or public hearing for Historic Zoning, therefore there is no fee and applications are due one week prior to the meeting.

Multiple Planning Commission Approvals

It is not uncommon for a project to require multiple approvals from the City Planning Commission, but these are almost always grouped as a single application and considered at a single meeting. One fee (the largest of the multiple application fees) is charged.

If a variance is required, it must be granted prior to application to the City Planning Commission. The Planning Commission is only authorized to consider projects that conform to the Zoning Ordinance.

Appeals

There is no provision under local law to appeal the decision of the City Planning Commission. If you believe the Planning Commission acted outside their legislated authority, or acted in an arbitrary or capricious manner, you may seek to appeal their decision in state court under the provision of an Article 78. The city will not provide assistance in helping an applicant prepare an Article 78 appeal.

PART 4: COUNTY PLANNING BOARD REFERRAL

The Ontario County Planning Board is made up of one representative from each of the thirteen municipalities in the county and is supported by the staff of the Ontario County Planning Department. They meet on the second Wednesday of each month at 7 PM.

By state law, specific applications must be referred to the County Planning Board for a recommendation before they can be acted on by the local board. These referrals are intended to evaluate projects that might have countywide or intermunicipal impacts. This includes Special Use Permits, Site Plan Review and Use Variances on properties within 500 feet of municipal boundaries, state or county roads, or state or county facilities. The Zoning Officer will determine if a County referral is required.

Although the County Planning Board typically acts at a single meeting, the timing of these meetings may delay a project approval.

The County Planning Board may make simple recommendations or may actually recommend that an application be approved or denied. If the County Planning Board recommends that an application be denied, the local board can only override this referral with a supermajority, or five approving votes of their seven-person boards.

Applicants do not have to apply or present to the County Planning Board. Technically the correspondence is between the county and the local government. However, you may wish to attend these meetings to make sure your project is properly understood by the board and to hear their deliberations.

PART 5: ENVIRONMENTAL REVIEW (SEQR)

The New York State Environmental Quality Review act, or SEQR, requires that all local boards consider the potential environmental impacts of their decisions. This includes not only potential impact on water, air, plants and animals, but also considers issues like traffic, noise, aesthetics and community character.

The Zoning Officer will determine how SEQR applies to each project. Simple projects may require no evaluation. Other projects may require the applicant to complete of a 2-page Environmental Assessment Form (EAF).

More complicated projects may require a significantly longer EAF, although this is still something that can typically be completed by a layperson.

For the large majority of projects, after reviewing the EAF a board can issue a “Negative Declaration”—the finding that the project will not have an adverse impact on the environment.

However, for very large projects this simple determination may not be possible and an extended environmental analysis could be necessary, with further studies being required of the applicant.

PART 6: BUILDING PERMIT

The Code Enforcement Officer (previously referred to as the “Building Inspector”) is a full-time employee of the City of Canandaigua. However, their primary duty is to administer the New York State Uniform Fire Prevention and Building Code (referred to herein as “NYS Building Code”). This same code applies to all municipalities in New York and across the county.

Once all other approvals have been granted, and very often no other approvals are required, a project can apply for a Building Permit.

Applicants should meet with the Code Enforcement Officer early on to determine if a Building Permit is required. A building permit is typically required if a project involves new construction, additions, or renovations that include structural, plumbing, or electrical work as part of the renovation. Building Permits are issued for the installation of roofing, storage sheds, structural decks, fences, furnaces, hot water heaters, hot tubs, fireplaces, and backup generators. Even grading or land clearing projects that do not include new buildings may require a “Development Permit”, especially projects that alter the drainage patterns.

The Code Enforcement Officer will determine what documents are required for a Building Permit. Construction documents for a simple project may be prepared by a layman or a contractor, while larger, more complex projects will require drawings prepared by a licensed architect or engineer. Understand that the Code Enforcement Officer’s duty is to review plans. They cannot design your project for you. The City of Canandaigua cannot provide copies of the

NYS Building Code for applicants—the entire code consists of nine, large volumes. But more importantly, every building has unique characteristics based on size, construction materials, adjacencies, etc. Also, different uses have different structural and functional requirements under the NYS Building Code and these requirements can often be met by employing various construction strategies. Because of this complexity, new construction or significant renovations, especially those involving a change of use, will likely require the services of an architect or engineer.

After reviewing the submitted construction documents, the Code Enforcement Officer may require changes be made to the plans in order for the project to comply with the NYS Building Code.

Simple Building Permits might be issued within 24 hours, while more complex projects may take a longer review period. Typically, a Building Permit can be issued within one week unless the project is unusually large and complex. There is a detailed fee schedule for various Building Permits, but simple projects are a minimum of \$50 and larger projects, involving new construction are \$0.30 per square foot with a \$500 minimum.

Appeals

Because the Code Enforcement Officer is applying New York State law, not local law, there is no local provision for appealing the determination of the Code Enforcement Officer. However, there is a state appeals board that can offer variances to some aspects of the NYS Building Code. The city cannot provide assistance in applying for a state variance.

PART 7: CERTIFICATE OF OCCUPANCY

The Code Enforcement Officer will inspect the construction periodically in accordance with the schedule issued at the time of the Building Permit. The applicant should notify the city when they are ready for each inspection and give the Code Enforcement Officer 24-hour notice to schedule that inspection.

When the project is complete, the Code Enforcement Officer will issue a Certificate of Occupancy (or “C of O”) to certify that the project was completed in compliance with the Building Permit.

Change of Use

Even projects that do not involve construction activities may require a Certificate of Occupancy if there is a change of use from the previous occupancy. “Change of Use” is defined by the NYS Building Code, not the local Zoning Ordinance, so there may be some confusion. Do not assume that, because a project complies with local zoning, that it meets the requirements of the NYS Building Code. For

example, a retail storefront might be converted to a place of assembly without the need for a use permit. However, the NYS Building Code requirements for this new use may specify that improvements be made to the structure, possibly with regard to egress, bathroom facilities, or fire suppression before a Certificate of Occupancy can be issued for that new use. For this reason, the Zoning Officer should direct you to the Code Enforcement Officer even in cases where a Certificate of Zoning Compliance is issued without the requirement for other approvals.

Changing the use in an existing building might result in unexpected delays and unforeseen construction costs. The Zoning Officer may advise you to seek the advice of an architect even as part of a conceptual discussion. You may want to get an estimate of construction costs before proceeding with other local approvals, certainly before closing on the property or entering into a lease agreement.

PART 8: FIRE SAFETY INSPECTION

The City of Canandaigua Fire Department has certified Code Compliance Technicians who conduct Fire Safety Inspections. By state law, every commercial establishment must be inspected once every three years and every place of assembly is inspected annually.

Prior to opening your new business, you will need to contact the Fire Department to schedule a Fire Safety Inspection. An inspection is required even if there are no other approvals, even if there is no requirement for a Certificate of Occupancy. The Fire Inspector will still want to see how shelving and tables are arranged to provide adequate aisle ways, how exits are marked, and if fire extinguishers are in working order.

PART 8: PROCESS OVERVIEW

