

Adirondack Park Agency Policy, Procedures & Guidance System	LOCAL SERVICES - 1
Topic: Review of Variances referred to the Agency from Agency-Approved Local Land Use Programs	
<hr/> Co-Chairs James Townsend and Frank Mezzano	Date: December 13, 2001

I. Purpose

The purpose of this policy is to provide procedures for the Agency and its staff for the review of variance applications and approvals referred to the Agency from Agency-approved local land use programs.

This policy is intended to set forth a process only and may at a future time be amended to incorporate substantive guidance.

II. Background

Variances to local zoning standards are governed by provisions of Town Law or Village Law, the General Municipal Law, the Municipal Home Rule Law, the State Environmental Quality Review Act (SEQRA), The Executive Law (APA Act) and the applicable local laws or ordinances. A local land use program, once approved by the Agency pursuant to the APA Act Section 807(1), has the authority to grant variances from its provisions; however, certain variances are subject to Agency review pursuant to APA Act Section 808 (3) and Section 582.6 of the Agency's Regulations. This review jurisdiction exists outside of Hamlet areas and includes four types of variances: area variances from the shoreline restrictions and from intensity guidelines; use variances for uses not included on the compatible use list; and other variances involving the Land Use and Development Plan.

The APA Act and the Agency Regulations require that the local government give written notice to the Agency within fifteen days of receipt of an application and provide pertinent information to the Agency. For those variances subject to Agency review, following decision by the Town, the decision and full record must be forwarded to the Agency. There is a thirty day waiting period after the granting of a variance during which the Agency may reverse or modify the variance; if no action is taken by the Agency within thirty days from the receipt of a full record, the variance shall take effect.

The Agency has had many years of experience with approved local land use program variances and will advise towns at the application stage, or as soon as feasible, whether the

local approval of the variance would be subject to Agency review as provided herein.

III. Notice of a Variance Application

The minimum information necessary to determine whether a Variance application received by a Town or Village will involve the Adirondack Park Agency Act shall be: 1) the name of the landowner (and applicant if other than the landowner), (2) the tax parcel identification number, (3) a plot plan or other map, (4) photos or other information clearly describing the site, and (5) a complete description of the relief requested.

Agency staff shall develop appropriate notice forms and procedures consistent with each approved local land use program in consultation with the local code administrator. Many local land use programs call for a copy of the application to be referred to the Agency as formal notice of the application. Some local code administrators provide notice with detailed Zoning Board of Appeals agendas to facilitate discussion and review with Agency staff.

Agency staff will advise whether any proposed variance involves the Adirondack Park Agency Act within five business days of receipt of notice of an application or as soon as feasible. The application will be logged into the Agency Master Action Data Base as a pending variance to an approved local land use program. Any request for advice or other action on the application will be noted in the log and concurrently communicated via e-mail to appropriate Planning, RASS and Legal staff.

IV. Agency Review of the Record for Variance approvals in towns with approved local land use programs

Once a town approves a variance reviewable by the Agency, the town must send a complete copy of the Town's record of approval. On receipt, the record will be logged in the Master Action Data Base and a file opened with a copy prepared for staff review transmitted to the Local Government Services Unit. Local Government Services will promptly acknowledge, ordinarily within five business days, the receipt of a record of a local land use program variance approval, noting with specificity the contents of the record received. The acknowledgment will specifically identify any missing but essential part of the record, and may ask for an explanation of the materials received. Copies of the acknowledgment will be provided to the Chairman of the Zoning Board of Appeals and local code administrator, or such other local officials as may be formally indicated by the local code administrator in the transmittal.

Within twenty days of receipt of the record, a staff recommendation will be prepared with guidance from the Director of Planning and assigned counsel, which will be presented to the Executive Director, along with a draft letter to the Chairperson of the Zoning Board of Appeals advising of the Agency's disposition of the matter. In the event staff recommend reversing the local determination, the basis for the recommendation will be discussed with the local code administrator prior to finalizing the formal letter, if possible. The Agency will finalize its formal response to the Chairperson of the Zoning Board of Appeals as soon as

possible thereafter, with copies to all local officials receiving a copy of the acknowledgment of the notice of application.

V. Consultation and Advice

It will be the policy of the Agency to provide preliminary advice on a variance application before the Zoning Board of Appeals when appropriate or when requested by the Town, commensurate with the level of information provided. This will include, but is not limited to, natural resource information available at the Agency or planning or legal issues of concern with respect to a particular relief sought by an applicant. The Agency will endeavor to provide such advice within ten business days of a request when appropriate supporting information is available at the Agency. On request from a Town for an appearance at the local proceeding, the Agency would endeavor to attend the meeting. Otherwise, the Agency's role as party to the local variance proceeding will generally be limited to providing formal or informal advice at the request of the local code administrator or Chairperson of the Zoning Board of Appeals.

The Agency staff are available to consult with town officials regarding the development of a complete record. A complete record addressing all the facts, criteria and findings outlined in current Town Law is essential to making the local determination, and for Agency review. An incomplete record is the most common problem with a variance record transmitted to the Agency; for example, a record may not document the fact the ZBA considered whether the application requested the minimum variance necessary.

The Agency and its staff will encourage and support opportunities for workshops and training seminars that explain and facilitate the responsibilities of a local zoning board of appeals for variances, including variances to the Adirondack Park Agency Act.

VI. Legal Effect

This policy is not intended to set forth a fixed, general principle to be rigidly applied to applications for a variance from Agency-approved local land use programs. Rather, its tenets are to be utilized as guidance and should be applied after taking into account the specific facts and circumstances of each particular instance.

The Agency adopted this Policy on Review of Variances referred from Approved Local Land Use Programs effective December 13, 2001.

**ADIRONDACK PARK AGENCY
Local Government Services Committee**

By:

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