ZONING AND PLANNING LAW REPORT

JULY 2019 | VOLUME 42 | ISSUE 7

STREAMLINING THE PROJECT REVIEW AND APPROVAL PROCESS TO BE OPEN FOR BUSINESS

Jessica Bacher and Meg Byerly Williams*

Communities have been processing applications for land use approval for decades, encountering new challenges and difficulties, and crafting solutions to each one when encountered. Because of this, many communities have developed their land use approval processes, standards, and forms incrementally over years, resulting in an inefficient process. In many municipalities, the land use review and approval process has become hard to understand, time consuming, and expensive, in some cases preventing developers from undertaking priority economic development projects.

Typically, the basic local project review and approval process must adhere to several requirements defined by state law. The decisions of local land use boards generally must be made in an open and fair manner, by impartial board members, and must be based on reliable evidence that is contained in the record of the board's deliberations. This record should be detailed enough to ensure that board decisions are not arbitrary, capricious, or an abuse of discretion, and local boards should allow public access both to their meetings and to governmental records, such as reports and files. Many community planning boards and commissions simply enforce the required standards and follow the legally prescribed steps in their review and approval process, but this may not prevent a review board from asking an applicant to accomplish something the standards do not require if given appropriate policy approval. If authorized by state law, review boards may streamline required process steps by including informational sessions with applicants, preapplication workshops, and technical assistance. In addition, municipalities can remove unnecessary steps in the process, simplify and clarify applicant materials, and reduce process length.

When municipalities streamline their land use review and approval processes, they save applicants time and money and help expedite priority development projects. A locality with streamlined approval process earns its reputation with local residents, property owners, businesses, and large-scale developers as a community that minimizes the time and costs of land use approval application and a go-to location for economic development projects. Municipalities are increasingly recognizing the importance of streamlining the approval process. In Michigan, the Redevelopment Ready Communities Program implements a voluntary, no-

cost certification program for Michigan municipalities that integrate transparency, predictability and efficiency into their daily development practices through a set of streamlining strategies.[1] Similarly, the Westchester County Association, an economic development and business advocacy organization in New York State, recently developed a policy playbook that features process streamlining strategies to help Westchester County municipalities implement economically viable smart growth development.[2] This article draws on the process streamlining lessons from that playbook.

Below, this article describes the steps municipalities can take to streamline their review and approval processes. The article first describes how localities can assess their current process to identify problems. It then presents steps municipalities can take to systematically simplify, consolidate, clarify, and automate their project review and approval processes. The article then describes how municipalities can implement pre-application consultations to better assist applicants, adopt fast-track processes for priority projects, and ensure local board members are properly trained. To illustrate these streamlining strategies, the article presents local examples from across the country.

Editorial Director
Michael F. Alberti, Esq.
Contributing Editors
Patricia E. Salkin, Esq.

Zoning and Planning Law Report (USPS 013-890), (ISSN 0161-8113), is published Monthly except August, 11 times per year, by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. Periodicals Postage is paid at Twin Cities, MN.

POSTMASTER: send address changes to Zoning and Planning Law Report, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.

©2019 Thomson Reuters.
ISSN 0161-8113
Editorial Offices: 50 Broad Street East, Rochester, NY 14614
Tel.: 585-546-5530 Fax: 585-258-3774
Customer Service: 610 Opperman Drive, Eagan, MN 55123
Tel.: 800-328-4880 Fax: 800-340-9378

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Assessing the Current Process

To streamline its review and approval process, a municipality should begin by examining the current process to identify common delays, unnecessary redundancies, and any difficulties applicants have understanding or navigating the process. The municipality should discuss the current application requirements and land use review and approval process with involved staff to determine whether they or applicants are frustrated with any inefficiencies in the system. Additionally, the municipality should meet with each permit-issuing and advisory board to determine any steps, standards, or other aspects of their work that seem unnecessary or that unnecessarily frustrate the application process. Boards can identify and share legitimate complaints from applicants appearing before them. Working with staff and board members, the municipality also can identify several applicants who represent a variety of application types and interview those applicants to uncover any complaints about inefficiencies they may have. Based on this assessment, the municipality should complete a set of preliminary recommendations for revising its review and approval process to eliminate inefficiencies. The following sections outline the types of strategies municipalities have undertaken to streamline the land use development process.

Simplifying the Review Process

To reduce complexities in the review and approval process, a municipality can simplify its application requirements, coordinate board reviews, engage the public early in the review process, and allow administrative approvals when appropriate. Municipalities should begin simplifying the review process by reducing application requirements to require an appropriate level of detail. Municipal staff should review all application forms and remove unnecessary or cumbersome requirements, especially for projects that are exempt from requirements, such as non-material or non-visible changes to a structure in a historic district.

Municipalities can simplify the review process by coordinating board reviews as well. A locality can amend its schedule of meetings for all local boards to ensure the smoothest possible sequence of most

applications and, whenever possible, allow for concurrent, not additive or sequential reviews. Simultaneous reviews allow different steps in an application to be reviewed together as a package or at least during the same timeframe, reducing review time. In the City of White Plains, New York, if an application requires more than one concurrent site plan or special permit approval that would otherwise be within the jurisdiction of more than one approving agency, the City appoints one board to approve such concurrent approvals. The City's common council serves as the approving agency when it would be responsible for any of the approvals. In all other circumstances, the planning board serves as the approving agency.[3]

Early public engagement also helps simplify the review and approval process because building public support paves the way for smoother approvals. For appropriate projects, a municipality can hold public meetings before project approval to involve the public early, foster community engagement, and build support for projects.

Finally, municipalities can simplify review procedures through administrative approvals. A locality can modify the approval process to allow municipal staff or a board secretary or chair to handle more objective decisions administratively if these decisions do not require full review. Municipalities could also authorize self-certification of plans and inspections by engineers as appropriate. For example, consent agendas allow boards to approve relatively routine applications as a group without applicants' attendance at a board meeting. Eligible applications could adhere to defined guidelines, such as pre-approved exterior paint colors in a historic district. Applications are initially screened to identify those that are appropriate for board approval, as submitted, without a need for discussion before the vote to approve. Then they are placed on the consent agenda, which the board considers and approves collectively.

In Montgomery County, Maryland, the planning board adheres to a consent agenda that allows administrative approvals of amendments to previously adopted plans if the proposed amendment is supported by the planning staff and not opposed by any party; resolutions to take an action that the planning board previously adopted in substance; and plats for certain qualifying subdivisions.[4] These consent agenda approvals do not require a public hearing. The City of Birmingham, Michigan provides an online guide that explains what administrative approvals are, why they are necessary, when they are allowed, how they are approved, and how they may be appealed. The guide includes an online application for administrative approvals.[5]

Consolidating the Review and Approval Process.

Municipalities can further simplify the review and approval process by consolidating process steps to avoid backtracking to boards and to create one-stop permitting. Process consolidation involves forming a central permitting desk, developing a consolidated application form, consolidating administrative staff and boards as appropriate, creating an interdepartmental review committee, and cross-training staff on the consolidated process.

A municipality should begin consolidating the process by creating a central permit information desk or office that manages all permit applications and approval processes. A process manager in the centralized office should handle the intake of all applications, manage any pre-application meetings or workshops, guide sequencing of approvals, schedule and manage cut-off dates and public meetings, and guide applicants through each stage of the approval process. The process manager should ensure that this central process incorporates all required federal, state, and local processes into pre-application steps, sequencing, and scheduling. Randolph County, North Carolina has a central permitting office where cross-trained technicians guide applicants through the review process. At this office, applicants can obtain and submit zoning, building, electrical, plumbing, and other specialized zoning permits, such as flood permits and special use permits.[6]

To ensure different permit applications are not duplicative and do not require applicants to submit the same information multiple times, a municipality should consolidate all permit and approval applications into one form or fewer forms as appropriate. The consolidated application form

© 2019 Thomson Reuters

should collect all the applicant and project information the planning board, zoning board, and other local boards will require for all review and approval processes.

To break down informational silos, a locality should consolidate, as appropriate, the roles of municipal officials and staff, local boards' secretarial staff, and boards with overlapping or related functions. Consolidating staff who enforce building and zoning codes makes it easier to track a project for the duration of its life, ensures that administrative staff are aware of each project's building code and zoning issues and can address these issues in context, and frees remaining staff to focus on other important roles. Consolidated secretarial staff for local boards saves money, ensures projects are tracked properly as they shift between board reviews, and reduces miscommunication. The same staff can support all land use boards, shepherding an application between reviews. Additionally, consolidating local boards that share functions also helps speed the approval process. Some municipalities have achieved efficiencies by combining related boards like a shade tree commission, conservation advisory council, and waterfront advisory committee into a single environmental advisory board.

Municipalities can further consolidate the review process through an interdepartmental review committee and cross-trained staff. A locality can create an interdepartmental review committee with a designated coordinator to help coordinate reviews by multiple departments and boards and work out discrepancies between reviews. Cross-trained staff reduce specialization, ensure all staff understand how different approvals work together, and improve coordination. Additionally, staff training helps expedite the approval process while increasing the number of employees who can staff a central permit desk.

Clarifying the Review Process.

The local review and approval process can be complicated and difficult for applicants to understand. Local governments can clarify the process for applicants by creating clear guidelines, developing a road map for them, revising application materials, ensuring transparency throughout the process, and proactively educating the public about the process.

Municipalities should provide applicants with clear guidelines that present an overview of the permit process and provide tips for navigating this process. Helpful guidelines for applicants may include:

- A short, descriptive guide to project review.
- A list of all permits and approvals with short descriptions.
- A table listing which office applicants should go to for various permits and services, along with anticipated timelines.
- How-to instructions for the most frequent approvals.
- Checklists for each approval that describe what applicants must include in each application, the materials and information they must gather to undertake the process, how to calculate permit fees, and how to record and file approvals after they are obtained.
- A list of regularly scheduled meetings for land use boards, committees, and commissions that includes meeting times, addresses.
- Contact information for each department and board.
- Frequently asked questions.

The Town of Woodstock, Connecticut offers applicants a building permit checklist. This checklist uses laymen's terms to describe what must be included in the building permit application and provides instructions on how to calculate estimated building permit fees. Woodstock also provides applicants with a subdivision flowchart that describes the steps applicants must take to obtain the approval.[7] Similarly, the City of New Rochelle in New York offers an online developer's guide to facilitate development in the City's Downtown Overlay Zone (DOZ). The guide helps developers determine DOZ eligibility requirements and provides step-by-step guidance for developing a parcel in the DOZ. Guided steps include verifying project location in the DOZ, determining the relevant DOZ develop-

 © 2019 Thomson Reuters

ment standard, determining street type, and relevant parking requirements.[8]

To further clarify the project review and approval process, a municipality can create a clear "road map" for approvals of various project types. The road map should feature process flowcharts showing specific steps applicants must take for each approval and demonstrating the most efficient approval sequence for applicants who must obtain more than one permit. Flowcharts should feature optional, but recommended, steps that further assist applicants and should explain the process responsibilities of all agencies and governmental bodies involved in the approval processes. Flowcharts also should include relevant county, state, and federal processes; mandatory timeframes as necessary for certain steps; and steps for recording and filing approvals after they are obtained.

In addition, municipalities should also offer clear application materials that define key terms using simple, direct language in layman's terms and that clearly state submittal requirements, as well as where to submit applications. Applications should also be available in languages other than English as applicable. To work more efficiently with many of its applicants, Houston, Texas has begun to offer several permit applications in Spanish. Translated forms and applications exist for inspections, sidewalk installations, building permits, earth removal, zoning, and more.[9]

Finally, municipalities should clarify the review process by offering online resources, making the process as transparent as possible, and educating the public about the process. To ensure ease of access, municipal websites should provide links to all application materials and resources, as well as information related to board meetings and answers to frequently asked questions regarding the approval process. Additionally, municipal staff should ensure transparency by documenting everything during review and approval procedures for each application and making these records publicly available in real time. Once the land use approval process is streamlined, municipalities should proactively reach out to landowners to educate them about the process. The City of Portland, Oregon offers the "ABCs of Land Use," which is a free workshop designed to teach neighborhood activists, business association members, and land use volunteers how the City develops its land use policies and plans, how the development review process works, and how community members and neighborhood/business associations can take action.[10]

Automating the Process

Municipalities can further streamline the submission and progress of applications by automating the permitting system and making it as user friendly as possible. Expanding the municipal website to include an online permitting system and a computerized tracking system helps automate the process.

Online permitting systems provide electronic permit applications and submittals for applicants, as well as easy-to-access guidelines and helpful information. Online systems can receive applicants' required plans and other documentation electronically and can facilitate board coordination and communication by alerting boards immediately to newly submitted applications and providing internal results for projects that come before boards. Municipalities should also invest in universal computerized tracking systems that enable staff to communicate application status to applicants and identify coordination problems between departments and boards.

Arlington County in Virginia maintains ePlan Review, an online portal for reviewing and approving plans for building permits, land disturbing activity and stormwater permits, and civil engineering plans. Applications are submitted via the portal, which includes tips and guidelines for applications, accepts credit card payments for required fees, and allows external and internal application tracking.[11]

Pre-application Consultations

Pre-application informational reports, workshops, and roundtables help get all parties on the same page early in the process, avoiding conflict and confusion later. Municipalities can offer applicants a range of pre-application services based on project type. Upon an applicant's request, a municipality should prepare an informational report for a potential new development project. The report should indicate whether a proposed use is permitted under

© 2019 Thomson Reuters

current zoning, note existing certificates of occupancy, and describe necessary approvals, process steps, and requirements that the applicant must achieve and meet to obtain permits.

For complicated projects like commercial developments, subdivisions, or projects that involve more than one board, workshops or work sessions with staff are very useful. During pre-application workshops, staff should review relevant code and application requirements with applicants to ensure proposed projects comply. In addition, staff should help applicants identify and map the sequence of required approvals and may provide applicants with technical assistance for complicated application requirements. Workshops may be mandatory or voluntary as appropriate. Washoe County, Nevada offers a pre-development meeting twice a month with developers, design professionals, owner-builders, and contractors to address permit issues related to their projects prior to application submission. The roundtable discussions include municipal staff from the planning, building, engineering, fire, health, parks, utilities, and air quality departments, as well as the regional transportation commission. Attendees are asked to fill out a questionnaire before attending a meeting.[12]

Finally, municipalities can offer monthly roundtables or informationals for smaller project applicants and other interested landowners. Monthly roundtables should offer general information and advice regarding development permits, requirements, and incentives to multiple applicants at one time and help familiarize attendees with the locality's approval processes. Roundtables should include municipal staff and members from all boards, and staff could require applicants to submit completed questionnaires prior to attending a roundtable.

Adopting a Fast Track Process

Municipalities can speed the approval process by creating a fast track process for priority projects. Local governments should adopt board resolutions that commit to a firm review process and timeline for certain economic development projects. The fast track process should result in final action on applications within a fixed period, subject to developer cooperation, place priority projects first on all board meeting agendas, and avoid re-opening settled issues. Once the fast track process is in place, the municipality should create a system for consistently evaluating and improving the process and advertising the fast track process to developers.

Sarasota County, Florida has created a fast-track permitting process for Developments of Critical Concern (DOCC) by adopting a green development incentive resolution. DOCCs include amendments to sector plans, rezone and special exception petitions, site and development plans, and building permit applications that meet green buildings or development standards.[13] Similarly, Berkeley, California adopted a green pathway ordinance that offers expedited permitting for certain development projects within the City's Commercial Downtown Mixed Use District (C-DMU).[14] Under the Green Pathway ordinance, development projects qualify for expedited review if they exceed C-DMU green building requirements and provide additional public benefits, such as affordable housing and street façades that enhance the pedestrian realm.[15] Reviews for qualified projects must conclude within 90 to 210 days of application date, depending on project type.

Training Local Boards

Finally, municipalities should ensure local board members receive proper training to further smooth the review and approval process. Some states require training for local boards, including New Jersey and New York. New Jersey requires local board members to attend a land use law course that provides a basic understanding of board roles and duties and their relationship to neighboring municipalities, regional planning entities, counties, and state agencies.[16] The law encourages board members to receive training beyond this basic course. The New Jersey Planning Officials association provides basic courses that fulfill this requirement, as well as training sessions for more experienced board members.[17] New York State law requires all local board members to attend four hours of similar training annually.[18] New York municipalities can find training resources for their local board members from a variety of sources. The New York Planning Federation offers a range of trainings for local zoning and planning board members,[19] and the

 © 2019 Thomson Reuters

Westchester Municipal Planning Federation directs municipalities to a variety of training resources.[20]

In addition to trainings required by state law, all municipalities should ensure board members receive training to understand their boards' unique functions within the overall system and should teach members the rules for approvals, public participation, and ethics. Trainings should also ensure that local board members are familiar with any new clarified and expedited development review process and their roles in it. Municipalities should organize trainings for board members internally or identify and approve specific trainings that cover appropriate topics. For example, the Land Use Law Center at Pace Law School presents the Land Use Leadership Alliance Training Program which trains local leaders on both foundational and cutting-edge information related to their priority land use issues.[21] Finally, municipalities should develop tracking systems that log required trainings for individual board members, as well as completed trainings, and certify that each serving board member has completed the training program satisfactorily.

Evaluating the Process

Municipalities should review their process annually to identify successes and weaknesses in the project review and approval process.[22] To assist this evaluation, municipal staff should distribute surveys to applicants to collect feedback on the process and suggestions for improvement. The interdepartmental review committee and cross-trained staff can then review surveys, identify appropriate process modifications, and implement changes as appropriate.

Conclusion

The streamlining steps outlined above will help local governments simplify, consolidate, clarify, and automate their local processes. By streamlining the land use review and approval process, a municipality minimizes the time and costs associated with land use approvals and communicates to residents, property owners, businesses, and developers that the community is open for business.

ENDNOTES:

*Jessica Bacher is executive director of and adjunct professor at the Land Use Law Center at Pace Law School and clinic lecturer at the Yale School of Forestry and Environmental Studies. Meg Byerly Williams is in-house counsel at Skeo Solutions, Inc., in Charlottesville, Virginia, where she frequently works with the Land Use Law Center on technical assistance projects for municipalities, including those related to streamlining the local approval process.

[1]Redevelopment Ready Communities, miplace, https://www.miplace.org/programs/redevelopment-ready-communities/.

[2]Westchester County Association, Policy Playbook (2018), https://www.westchester.org/wp-content/uploads/2018/12/PolicyPlaybook-12.2018-SINGLE_NEW.pdf.

[3]City of White Plains, NY, Zoning Code § 4.1.3, available at https://www.cityofwhiteplains.com/DocumentCenter/View/1682/Official-Zoning-Ordinance-City-of-White-Plains-Amended-through-January-31-2016?bidId.

[4]Montgomery County, MD, Planning Board Rules of Procedure § 4.13.1.

[5]Administrative Approval, City of Birmingham, MI, https://www.bhamgov.org/government/departments/planning/historic_preservation/administrative_approval.php.

[6]Central Permitting, Welcome to Randolph County!, http://www.randolphcountync.gov/Your-Government/Central-Permitting.

[7]Zoning Enforcement Documents, Town of Woodstock, CT, http://www.townofwoodstock.com/index.php/downloads/category/48-documents.html.

[8]Developing in the DOZ, City of New Rochelle, NY, http://newrochelleny.com/1205/Developing-in-the-DOZ.

[9]Publications, Welcome to Houston, https://www.houstonpermittingcenter.org/code-enforcement/publications.html.

[10]ABCs of Land Use, Portland, OR, https://www.portlandoregon.gov/civic/66053.

[11]ePlan Review Overview, Building Arlington, https://building.arlingtonva.us/resource/eplan-review/.

[12]Washoe County Community Services Department, Pre-Development Meeting Questionnaire, https://www.washoecounty.us/csd/planning_and_development/applications/files-planning-development/application_files/Request%20a%20Predev%20Meeting.pdf.

[13]Sarasota County, FL, Resolution No. 2006-174, available at http://www.myfloridagreenbuilding.info/pdf/Sarasota_Resolution_174-clean.pdf.

[14]City of Berkeley, CA, code §§ 23B.34, 23E.68.

[15]City of Berkeley, CA, Ord. No. 7229-N.S, available at https://www.cityofberkeley.info/uploadedFile

© 2019 Thomson Reuters

s/Clerk/Level_3_-_City_Council/2012/04Apr/2012-04-03_Item_02_Ords_7229-7232.pdf.

[16]N.J.S.A. 40:55D-23.3; N.J.A.C. 5:87-1.3.

[17]Seminars, NJPO, https://njpo.org/NJPO_Seminars.php.

[18]NY Town Law §§ 267, 271; NY Village Law §§ 7-712, 7-718; NY General City Law §§ 27, 81. For more information about the NYS training requirement, visit Annual Training Requirement Information, NYS DOS, https://www.dos.ny.gov/lg/lut/mandatory_training.html.

[19]NYPF Training, NYPF, http://nypf.org/nypf-training/.

[20]Links to Training Resources, WMPF, http://www.wmpf.org/education/links-to-training-resources.

[21]Land Use Leadership Alliance Training Program, Land Use Law Center at Pace Law School, https://law.pace.edu/land-use-leadership-alliance-training-program.

[22]Redevelopment Ready Communities, Best Practices 12 (2019), https://www.miplace.org/49a85d/globalassets/documents/rrc/rrc-best-practices.pdf.

https://legal.thomsonreuters.com/

 © 2019 Thomson Reuters