

Zoning for Hotels and Motels in New York State

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You want to build a hotel or motel in New York State. Even before purchasing the property, the first question you must answer is: Is this hotel or motel permitted by zoning at the proposed location?

Zoning ordinances are local laws which govern the use of land and the size and configuration of buildings (generally referred to as “area” regulations outside of New York City) on the land. The zoning map for a municipality shows what uses and building configurations are permitted at what locations (zoning districts). Most zoning districts separate, at the very least, commercial and industrial uses from residential uses. As commercial uses, hotels and motels are likely to be limited to a narrow range of locations, which are shown on the local zoning map. Depending on the municipality, the local zoning office or planning department will have zoning maps and can advise you as to whether your location is acceptable for a hotel or motel. Be sure to ask whether changes to the zoning are contemplated that would no longer permit a hotel or motel at the location you’re considering.

The next question to ask is whether the proposed hotel or motel is permitted as-of-right or by discretionary approval. “As-of-right” means that a construction permit will be issued for the proposed building as a ministerial act because it meets the criteria in the zoning both as to use and area requirements. Some zoning laws may require that any hotel or motel (as well as other commercial uses) obtain a discretionary approval from the local planning board. A “special use permit” may be required, a process in which the local officials must find that certain criteria stated in the zoning have been met. A special use permit differs from a variance (see below) in that the use is permitted, provided that the local board determines that the criteria are met. Local

law may also require “site plan review”, a process in which the arrangement and layout of the proposed development of the property is reviewed by a local agency even if the use is permitted as-of-right.

A variance, on the other hand, may be required if the proposed use is prohibited, but certain physical conditions (steep slope, subsurface rock, high water table, etc.) make it impossible to comply with the use, or area restrictions. Variances, particularly use variances, are more difficult to obtain than special use permits, and a purchaser is well advised to make the purchase of a property contingent on obtaining a variance.

Both special use permits and variances are subject to SEQRA, the New York State environmental quality review process. SEQRA has the potential to consume significant time in the approval process.

Lastly, who should represent you in the event that a discretionary approval is required? The answer depends on the community. In some places, lawyers traditionally represent applicants for land-use approvals. In others, architects or engineers may handle the process. Zoning is a local matter, so it is best to hire someone who knows the process and the players in a particular community.

This article applies to locations outside of New York City. The City’s zoning rules are somewhat complicated, and any party intending to construct a transient hotel or convert a building to transient hotel use in New York City is advised to consult with a New York-based land use attorney.

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