

NEW YORK

STATE OF OPPORTUNITY.

Division of Local Government Services

Zoning: An Introduction

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Why enact zoning?

To keep conflicting uses separate

To preserve community character

To channel growth and economic development

To maintain affordability for farmers



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Why not?

Stifles growth?

Invasion of privacy and property rights?

Too much government?

Not having zoning is a good way to keep things the way they are?




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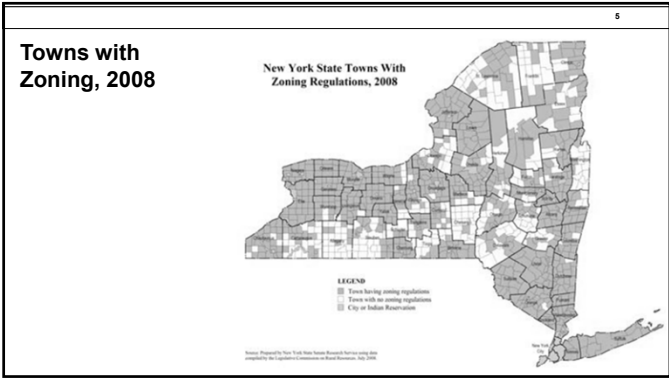
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78% of all Local Governments in New York have Zoning

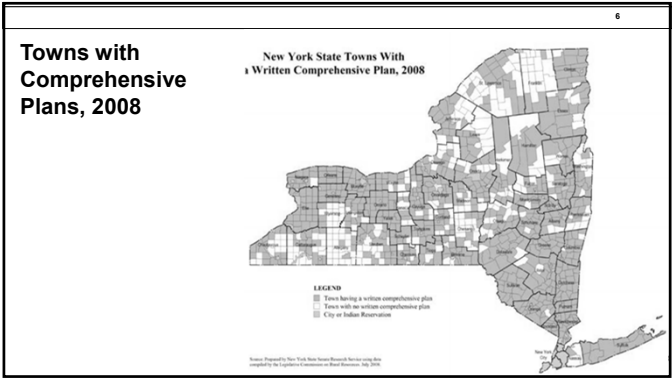
	2004	2008
Cities	100%	100%
Villages	88%	89%
Towns	70%	71%



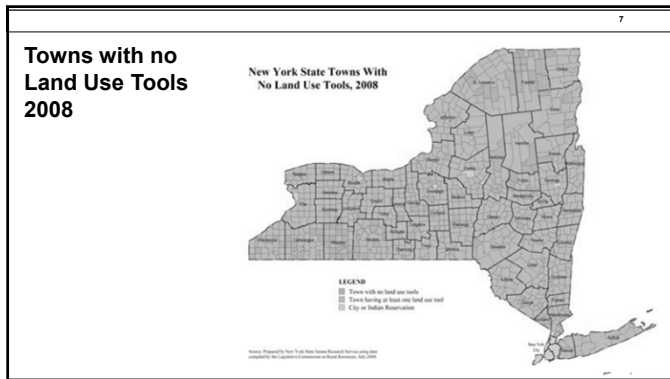
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SEQR – Mitigation of impacts, needs trigger

- Agency proposes action or receives application
- Action classified*
- Lead agency established
- Significance of action determined*
- Environmental Impact Statement (EIS), if needed
- Findings and agency decision*

***SEQR process can conclude at any of these points**

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County referral

- GML 239 m and n (for subdivisions)
- County Planning Agency:
 - Approval
 - Approval with modification
 - Disapproval
 - **No significant county-wide or inter-community impact**
- County must include reasons for recommendation

GENERAL MUNICIPAL LAW SEC. 239 m

DEFER:

- ADOPTION
- AMENDMENT
- VARIANCE
- SPECIAL PERMIT

500'

MUNICIPAL BOUNDARIES

COUNTY OR STATE:

- PARKS
- HIGHWAYS
- DRAINWAYS
- STREAMS
- INSTITUTIONS
- BUILDINGS

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Other Land Use Tools

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Subdivision

The division of a parcel of land:

- Into lots, blocks or sites (with or without streets)
- For sale, transfer of ownership, or development

Purpose: to oversee land division in an orderly manner and avoid creation of lots that can't be used.

General City Law §32 & §33

Town Law §276 & §277

Village Law §7-728 & §7-730

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Site Plan Review

Rendering, drawing, or sketch with project's proposed design and layout on a single parcel

May apply to many uses, from single family home to shopping mall

Zoning not necessary to enact site plan review

Purpose: to improve physical design and layout of development proposals

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What Subdivision and Site Plan Review Don't Do

- Establish minimum lot size
- Provide for maximum lot coverage
- Set height limits
- Standardize setbacks
- Regulate density
- Determine permitted uses
- Restrict unwanted uses






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Zoning

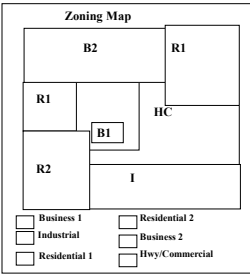



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Zoning

- Regulates use, density, and placement of structures on a parcel
- Each district has a list of as of right and special uses and bulk and area regulations
- Original intent: To separate incompatible uses to protect public health, safety, and welfare







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Common contents

- Text with intent for zones and definitions
- Map
- Schedule of uses
- Bulk and area standards
- Illustrations or diagrams






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General text provisions

- Statutory source of power and intent
- Definitions
- Summary of uses permitted in each district
- Reference to official zoning map and establishment of district boundaries
- Relationship to other regulations
 - NYS Uniform Fire Prevention & Building Code
 - Site plan or subdivision review (easiest to administer when combined into one law)
- Administration and enforcement
- Application and permit fees
- Saving or severability clause



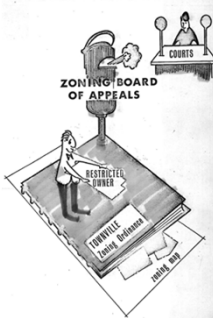
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Zoning requires a safety valve

Municipalities with zoning must have a **zoning board of appeals**

ZBA is a “buffer” for aggrieved applicants between decisions of the zoning enforcement officer and the State supreme court

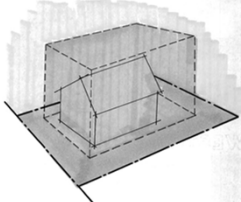


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Regulating Setback and Height = Zoning

If standardized setbacks, height, and lot coverage are part of a local law or ordinance, even if it's not *called* zoning, a board of appeals is necessary as a means of possible relief.



STANDARD ZONING
FUNCTION CONTROL
BULK AND USE


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Regulating dimensions of signs = Zoning

If standardized setbacks, height, and other design criteria are part of a local law or ordinance for signs, a board of appeals is necessary as a means of possible relief.



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Regulating Use = Zoning

Example: sale of used tires in a hamlet

Property Maintenance Code can help but alone can't restrict use



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Regulating Use = Zoning

Example: go kart track

Noise regulations, site plan review, SEQR can mitigate impacts, but without zoning won't prevent use from locating close to residences



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Regulating Use = Zoning

Example: Short-term rentals

Noise law can help but won't alone stop the activity



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Regulating locations = Zoning

Distribution centers

If one were proposed in your town, where would it be most appropriately be located?




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Simple zoning

- Agricultural
- Rural residential
- Hamlet residential
- Commercial
- Industrial
- Hamlet business
- Institutional




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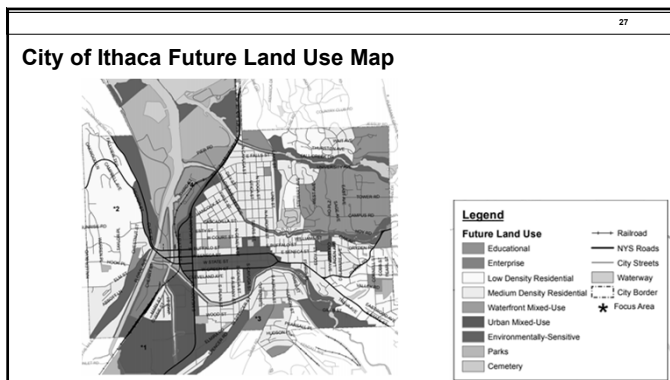
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Town of Greenwich Zoning

- Rural Ag
- Residential
- Hamlet/Mixed Use
- Commercial
- Industrial



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Town of Red Hook

- Waterfront Conservation
- Limited Development
- Rural Development 5
- Rural Development 3
- Residential 1.5
- Residential 1
- Hamlet
- Hamlet Business
- Institutional
- Business 1
- Business 2
- Agricultural Business

- Traditional Neighborhood Development
- Residential Neighborhood
- Commercial Center
- Office-Industrial
- Flood Fringe Overlay
- Historic Landmarks Overlay
- Environmental Protection Overlay




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Form-Based Zoning


Conventional Zoning

Density use, FAR (floor area ratio), setbacks, parking requirements, maximum building heights specified



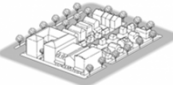
Zoning Design Guidelines


Conventional zoning requirements, plus frequency of openings and surface articulation specified



Form-Based Codes

Street and building types (or mix of types), build-to lines, number of floors, and percentage of built site frontage specified.






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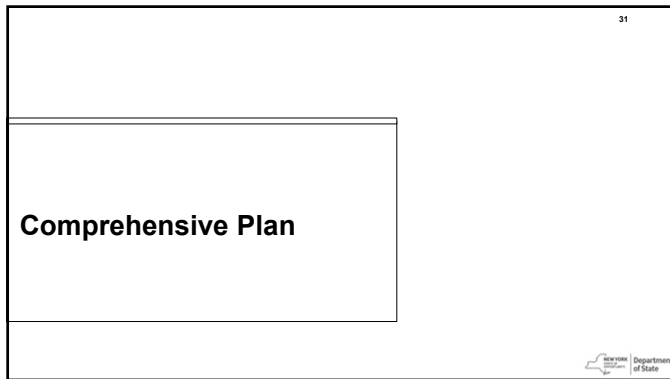
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Conventional vs. Form-Based

Conventional	Form-Based
<ul style="list-style-type: none"> • Use is primary • Segregated <ul style="list-style-type: none"> – Single-use • Auto-centric • Reactive & development led • Uses dimensions and definitions with deliberative process 	<ul style="list-style-type: none"> • Physical form is primary • Mixed-use • Urban-centric <ul style="list-style-type: none"> – Walkable & compact • Proactive & community led • Prescriptive <ul style="list-style-type: none"> – Regulates to create places



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Comprehensive plan purpose


- Statement of community vision : An expression of a municipality's goals and recommended action to achieve those goals.
- Provides strategies for achieving expressed goals, often in the form of new or revised land use regulations
- Serves as a framework and defense for land use regulations which focuses on immediate and long-term protection, enhancement, growth and development of the municipality.
- An outline for orderly growth, providing continued guidance for decision-making.

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Zoning implements goals of the plan

- Current land uses and regulations
- Growth patterns
- Economic development
- Housing
- Priorities for preservation




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Preparation of plan and amendments to zoning

- Governing board, planning board or special board, oversees preparation
- Public hearings must be held by both board preparing plan and governing board
- Governing board adopts plan and zoning amendments



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Moratorium

Temporary suspension of development approvals, pending completion of more permanent regulations:

- May be enacted to gather information for and/or adopt a plan or new regulations
- Development that might occur without a moratorium could undermine the ultimate value of a plan in progress

Time periods:

- Fixed period of time, with a specified termination date
- No longer than reasonably necessary to adequately address the issues (generally not longer than 6 months)


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Municipal Home Rule Law

Section 10

"Every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government"



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Adopting zoning for the first time

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Zoning Commission

Appointed by Village Board of Trustees or Town Board

Membership:

- Planning Board
- “Fresh” group of citizens, with at least one Planning Board member
- Number of members is a local option

**Town Law §266
Village Law §7-710**

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Zoning commission duties

- Prepare draft map (or description) of proposed zoning district boundaries
- Prepare draft regulations to be enforced within districts
- Hold at least one public hearing on preliminary zoning map & text
- Prepare final report to local governing board, taking public comment and subsequent investigations into account

When local governing board accepts final report, zoning commission ceases to exist

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Public participation

- All meetings of zoning commission are open to public
- Obtain public input at public hearings held by
 - zoning commission
 - local governing board
- Obtain informal public input by
 - surveys
 - public Information sessions or workshops

Zoning cannot be subject to a referendum

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Zoning commission hearing notice

- Publish in official paper;
 - No notice period set by law, but 10 days prior to hearing is recommended
 - Post on municipal website
 - Post in conspicuous places
- Multiple hearing dates is an option
- Send copy of notice, draft text & draft map to local governing board

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Procedures for zoning revisions and adoption


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Drafting Revisions

- Governing Board
- Planning Board
- Appointed Advisory Board
 - Number of members is a local option
 - At least one member of the planning board
- Possible resources
 - Municipal attorney
 - County planners
 - Consultant



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SEQRA

- Type I Action is more likely to require EIS (positive declaration)
 - Initial zoning local law or ordinance adoption is
 - Zoning amendment affecting 25 or more acres
- Governing board makes "determination of significance"
 - Positive or negative declaration

As part of its final report, Commission could be directed to prepare:

- EAF; or
- Draft EIS

GEIS

- Potential to reduce SEQRA review for specific actions
- Encourages thorough analysis of proposed changes


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General Municipal Law §239-m

No final action on adoption until County Planning Agency makes recommendation on referral




- Municipal boundary
- Boundary of state or county park or recreation area
- R-O-W of state or county road
- R-O-W of county-owned stream or drainage channel
- Boundary of state or county land on which a public building is located
- Boundary of a farm operation that is in a state agricultural district

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Governing board public hearing



- Notice must be published in newspaper at least:
 - 10 days prior in villages
 - 5 days in towns & cities
- Hold only after DEIS is complete OR negative declaration is made
- Written notice at least 10 days prior when 500' from:
 - Housing authority
 - Adjacent city, village or town
 - County boundary
 - State park or parkway

NOTICE

Should give average reader reasonable warning that land in which he or she has an interest may be affected by proposed regulations

Town Law §264 Village Law §7-706

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Public hearing

- Ensure access to all wishing to participate
- Provide general review of proposed revisions
- Determine method by which public comment will be taken
- Keep detailed record of proceeding

Record can be used in by ZBA for future interpretations

- If recording, take notes to go with recording
- Written record does not have to be verbatim


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Procedural compliance

- Requires majority vote of full board
- Must be entered into legislative board's minutes
- Must file zoning map
- If FEIS exists, board must make written findings prior to adopting zoning regulations



Majority plus one vote needed to act contrary to county's recommendation

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Expect Revisions!

Once the new zoning is adopted and effective, expect to revise it again as the new regulations are applied in practice:

- **Common, don't be surprised or discouraged**
- May need to be tweaked to address an unexpected scenario or offer a more or less stringent standard for a specific use or category
- For efficiency, collect revisions and amend and adopt as a group, not individually



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Nonconforming uses "grandfathered"

Legally existed prior to current zoning
Don't need use variances to continue

Use variances on properties with nonconforming uses must prove no reasonable return on allowed uses & nonconforming uses

"Grandfathered" not necessarily permanent (abandonment, amortization)



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Zoning runs with the land, not the owner

The purpose of zoning is to regulate the use of land, irrespective of who may be the owner of the land - *Matter of Weinrib v. Weisler, 1970*

While it is proper...to impose appropriate conditions and safeguards in conjunction with a change of zone or a grant of a variance or special permit, such conditions...must be reasonable and relate only to the real estate involved without regard to the person who owns or occupies it. - *Dexter v Town Board of Gates, 1975*




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The power to regulate land is with local government

- Most sensitive natural resources are not regulated by the federal or state governments
- Even if a permit by a state or federal agency is needed, that doesn't preclude the alteration of a sensitive area



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518-473-3355

localgov@dos.ny.gov

<https://dos.ny.gov/training-assistance>

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ZONING

190 Attachment 1

Town of Greenwich

Table 1
Use Regulations
[Amended 5-12-2009 by L.L. No. 1-2009;
7-13-2010 by L.L. No. 1-2010; 9-6-2012 by L.L. No. 3-2012;
12-28-2016 by L.L. No. 1-2017]

KEY:

PP = Principal permitted use.

SPR = Use allowed by site plan review.

SUP = Use allowed by special use permit.

Use	Rural Agricultural District	Residential District	Hamlet/ Mixed-Use District	Commercial District	Industrial District
Adult day care	SUP	SUP	SUP	SUP	
Adult use					SUP
Agricultural structure or use	PP	PP	PP	PP	PP
Airstrip	SUP				
Auction facility	SUP				
Automobile sales and repair	SUP			SPR	SPR
Bank			SPR	SPR	
Bar/tavern			SUP	SPR	
Bed-and-breakfast	SPR	SUP	SPR		
Boat and machinery sales and repair	SUP			SPR	SPR
Business incubator	SUP			SPR	SPR
Campground	SUP		SUP		
Cemetery	SPR		SPR		
Child day-care center	SUP	SUP	SUP	SUP	SUP
Child day care, exempt	PP	PP	PP	PP	SPR
Child day care, family	PP	PP	PP	PP	PP
Child day care, group	SUP	SUP	SUP	SUP	SPR
Child day care, small	PP	PP	PP	PP	PP
Co-location	PP	PP	PP	PP	PP
Composting facility	SUP				
Contractors yard	SUP				SPR
Convenience store			SUP	SPR	
Crematorium	SUP				

GREENWICH CODE

Use	Rural Agricultural District	Residential District	Hamlet/ Mixed-Use District	Commercial District	Industrial District
Cultural building/use	SPR	SPR	SPR	SPR	
Drive-in theater	SUP				
Drive-through				SPR	
Educational building/use	SPR	SPR	SPR	SPR	
Farm worker housing	PP	PP	PP	PP	PP
Farmstand	SPR		SPR	SPR	
Fast-food restaurant				SPR	
Forestry use	PP	PP	PP	PP	PP
Funeral home	SPR		SPR	SPR	
Game farm	SUP				
Gas station			SUP	SUP	SUP
Grocery store				SPR	
Home occupation Type 1	PP	PP	PP	PP	PP
Home occupation Type 2	SUP	SUP	SUP	SUP	SUP
Horse farm	PP	PP	PP	PP	PP
Horse-riding stable	SPR				
Hospital/medical building/use	SUP		SPR	SPR	
Indoor recreational use			SUP	SPR	
Industry, heavy					SPR
Industry, light	SPR			SUP	SPR
Junkyard	SUP				SUP
Kennel	SUP			SUP	
Large-scale solar energy system	SUP				
Livery	SUP				SPR
Manufactured home park	SUP		SUP		
Marina	SUP		SUP		
Membership club	SPR		SUP	SPR	
Mining	SUP				SPR
Mixed-use development			SPR	SPR	
Motel/hotel/inn	SUP		SPR	SPR	
Multifamily house		SUP	SPR	SPR	
Municipal building/use/service	SPR	SPR	SPR	SPR	SPR
Nursery	SPR		SPR	SPR	

ZONING

Use	Rural Agricultural District	Residential District	Hamlet/ Mixed-Use District	Commercial District	Industrial District
Nursing/convalescent home	SUP	SPR	SPR	SPR	
Office	SUP		SUP	SPR	SPR
Outdoor recreational use	SUP		SUP	SUP	
Park	PP	PP	PP	PP	PP
Personal service establishment			SUP	SPR	
Private utility building, use or service	SUP	SUP	SUP	SUP	SUP
Public utility building, use or service	SPR	SPR	SPR	SPR	SPR
Religious building/use	SPR	SPR	SPR	SPR	SPR
Residential treatment facility	SUP				
Resort	SUP				
Restaurant	SUP		SUP	SPR	
Retail use	SUP		SUP	SPR	
Self-storage facility	SUP		SUP		
Shooting range	SUP				
Shopping center				SPR	
Single-family house	PP	PP	PP		
Slaughterhouse/rendering plant	SUP				
Solid waste processing	SUP				SUP
Telecommunications tower	SUP	SUP	SUP	SUP	SUP
Theater				SPR	
Two-family house	PP	PP	PP		
Veterinary establishment	SPR		SPR	SPR	
Warehouse				SPR	SPR
Zoo	SUP				