

NEW YORK STATE GENERAL MUNICIPAL LAW 239-M GUIDANCE

Fulton County Planning Department



Introduction

Under New York State General Municipal Law (GML) Article B §239-m, the Fulton County Planning Board reviews certain developments throughout the county for inter-municipal and county-wide impacts. This guide explains why the Fulton County Planning Board must review certain applications, specifically what the county is looking for during the review of these applications, what municipalities need to know, and what to expect during the review/referral process. This guide can serve as a reference for municipalities when asking if an application needs a referral or to reference the procedure that should be followed when referring a planning action for county review.

What is a county referral?

GML 239-m requires that municipal boards refer certain planning actions to the county for review. The purpose of the law is to encourage local board members to consider the countywide and inter-municipal impacts of their local land use decisions.

The Fulton County Board of Supervisors has determined that the Fulton County Planning Board evaluate referrals to review and respond on regional impacts. More information about GML 239-m can be found in the New York State Department of State Division of Local Government Services *Guide to Planning and Zoning Laws of New York State*.¹

Who needs to be aware of this process?

This guide is for municipal officials who handle applications for use and area variances, site plan reviews, special use permits, and subdivisions. Officials who work on comprehensive plans, zoning adoption, amendments to zoning maps, or zoning ordinances will also benefit from this guide.

¹ <https://dos.ny.gov/system/files/documents/2023/01/guide-to-planning-and-zoning-laws-in-nys.pdf>

What triggers county referral?

GML 239-m requires that local municipalities forward the following actions to a county planning agency for review, comment, and recommendations. However, according to the Fulton County Board of Supervisors, Subdivisions and Use Variances² **DO NOT** need to be referred to the county for a review.

- Site Plan
- Special Use Permit
- Zoning Amendment (Code/Map)
- Comprehensive Plan
- Land Use Moratoria
- Other authorizations that the board may issue under zoning provisions
- Area Variance

Any of the actions that involve property within 500 feet of any one of the following must be sent to the county for review:

- A municipal boundary
- A county or state existing or proposed road
- A county or state existing or proposed park or recreation area
- A county or state-owned property, existing or proposed, on which a public building or institution is located
- A farm operation located in a designated agricultural district (does not apply to area variances)

Submittal and review process

Applications are due to the Fulton County Planning Department no later than the second Tuesday of each month to planning@fultoncountyny.gov. If it is deemed that a physical copy will be necessary during the meeting, the Fulton County Planning Board will coordinate with the referring municipality. The Fulton County Planning Board meets on the third Tuesday of every month at 8:45 am at the Fulton County Planning Department. An application for a GML 239-m Review can be found by visiting the Fulton County Planning Board website.³

What is the county looking for during referral review?

Under NYS General Municipal Law Section §239-m, the Fulton County Planning Board must review certain planning and zoning actions before any final decision is taken at the municipal level. The Board is responsible for examining the inter-community and countywide or regional impacts of a proposed project and recommending approval,

² Amended May 19, 2015

³ <https://www.fultoncountyny.gov/planning-board>

modification, or disapproval of the proposed action pursuant to GML §239-l which may include by not limited to:

1. Compatibility of various land uses with one another;
2. Traffic-generating characteristics of various land uses in relation to the effect of such traffic on other land uses in relation to the effect of such traffic on other land uses and to the adequacy of existing and proposed thoroughfare facilities;
3. Impact of proposed land uses on existing and proposed county or state institutional or other uses;
4. Protection of community character as regards predominant land uses, population density, and the relation between residential and nonresidential areas;
5. Drainage;
6. Community facilities;
7. Official municipal and county development policies, as may be expressed through comprehensive plans, capital programs, or regulatory measures; and
8. Such other matters as may relate to the public convenience, to governmental efficiency, and to the achieving and maintaining of satisfactory community environment.

What does the County need in addition to the review form?

GML 239-m required the local board to submit a “full statement” as defined below:

All materials required by and submitted to the referring body as an application on a proposed action, including a completed environmental assessment form and all other materials required by such referring body in order to make its determination of significance pursuant to the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations. When the proposed action referred is the adoption or amendment of a zoning ordinance or local law, “full statement of such proposed action” shall also include the complete text of the proposed ordinance or local law as well as all existing provisions to be affected thereby, if any, if not already in the possession of the county planning agency or regional planning council.

Therefore, a “full statement” typically will include:

- Referral coversheet available on the Fulton County Planning Board website⁴
- All materials required by the municipality and submitted as part of the application
 - A completed Part I of the Environmental Assessment Form (EAF) required by the State Environmental Quality Review Act (SEQRA) and any other environmental information required to make a determination of significance. All other materials required by the municipality to make its determination of significance pursuant to the SEQRA

⁴ <https://www.fultoncountyny.gov/planning-board>

- For adoption or amendment of a zoning ordinance or zoning local law, the complete text of the proposed ordinance or local law and all existing affected provisions
- For area and use variance appeals: an explanation that justifies the need for a variance

How does a referral to the county fit into the local review process?

The objective of the zoning referral process is improved planning. Many communities find the referral process useful, especially when dealing with uncooperative developers. Suggestions made by the County are often similar to those that will be brought up by the boards, but there are incidents when the County, due to the information available and having a county-wide perspective, brings up new issues.

What types of recommendations can the Planning Board give?

After reviewing the application, the Fulton County Planning Board can make a recommendation to the referring body with authority over the approval of the application. The Fulton County Planning Board is not a regulatory body and therefore has no authority to make the final decisions. The following are the types of responses the county can give.

1. **Approval** - The proposed project will not create negative major inter-municipal or regional impacts; the project may create a positive impact regionally and at times, an endorsement may be included. A recommendation for approval is not binding on the local board. No majority plus one vote is needed to disapprove/reject a project for which County Planning approval has been given. At times the Planning Board will endorse a project as part of their recommendation.
2. **Approval with Modification** - The proposed project will require certain conditions to be met before approval is given. Some examples include:
 - Landscaping and screening around a solar array
 - NYSDOT to review for traffic implications
 - For the municipality to review the County's Development Strategy or Hazard Mitigation Plan for any county or geographic impacts.
3. **No Recommendation** - A review of the proposed project has not revealed any significant inter-municipal or countywide regional impacts and the decision of the local board should be based solely on their findings in the facts of the case.
4. **Disapproval** - The proposed project is in direct conflict with Fulton County policies, the local master plan, and/or sound planning principles, and will have

an adverse effect / regional impact on the county. It recommends that the board not grant approval and may include reasons why it not be approved.

How long does the review take?

According to New York State law, the Fulton County Planning Board has 30 days from receiving the application to review. If it is determined that the nature or scale of the proposal requires more time to review, the 30 days may be extended upon written mutual consent of the referring body to the County.

The referring board is not legally permitted to make a final decision regarding an application until either it has received a response from the County or 30 days (or the agreed-upon extended timeframe) have passed since the County received the application.

If the Fulton County Planning Board fails to respond within 30 days, the local board may proceed with its action. However, if the Fulton County Planning Board issues a Conditional or Denial recommendation at any time up to 2 days before the vote by the referring body, regardless of the original timeframe, the board is bound by law to consider the County's recommendation.

Supermajority Vote

If the Fulton County Planning Board issues a denial or conditional recommendation, the municipality must then abide by the recommendation unless the municipality overrides the conditions or denial with a majority plus one vote of the full board.

What are the consequences if a referral is not made?

Neglecting to refer a land use action to the Fulton County Planning Board pursuant to New York State General Municipal Law Section 23-9 may constitute a "procedural or jurisdictional error" that could legally invalidate the local municipality's land use decision. In a court challenge, the local decision on an application may be nullified. To clarify these issues the municipal board may want to consult their attorney.

Questions???

Should you have any questions or concerns regarding the Fulton County Planning Department's process on GML 239-m, please contact call 518-736-5660 or e-mail, planning@fultoncountyny.gov.