

Buildings Proposes Zoning Development Challenge Process

The New York City Department of Buildings (“Buildings”) is considering the adoption of a “development challenge process” in connection with the issuance of new building and alteration permits. In its current form, as discussed on Buildings’ website, the proposal is likely to have significant impacts on as-of-right development in the City. As of the date of this article, the proposal is being reviewed internally by Buildings.

To increase public awareness of new development projects, the proposal requires that a “zoning diagram” be filed and posted online as part of a permit application. The diagram must include a site plan and axonometric drawings “so the public can view the size and scale of any development online before the first shovel hits the ground.”

In addition, a formal process would be established for zoning challenges by the public. Currently, there is no process governing the filing and resolution of zoning challenges, which may arise prior to, during, or after construction.

Under the proposal, zoning challenges must be filed within 30 days after an approval is issued by Buildings. Although the term “approval” is not yet defined, Buildings’ intention is to resolve zoning issues prior to issuance of a full building permit.

Each challenge filed within the 30-day period must be reviewed by the Borough Commissioner and a determination posted online. If the challenge is upheld, appropriate enforcement action may be taken. If the challenge is denied, the denial may be appealed to the First Deputy Commissioner within 15 days.

As stated in a Mayoral/Buildings press release, “the 30-day public-challenge process establishes a defined and organized means for the public to challenge zoning decisions by Buildings that they believe are incorrect, and will provide clarity and certainty for developers about when a project can move forward, and when changes to a proposed development need to be made. The current process, which has no formal timeframe, produces confusion and unnecessary and unintended costs for development in New York City.”

Aspects of the new process, such as the requirement for posting a zoning diagram, time limits on the filing of zoning objections, and a requirement that Buildings respond to objections online, are consistent with Buildings’ stated intent.

The most important question is how the proposal will affect the time (and certainty) in connection with obtaining a building permit. While referred to by Buildings as a 30-day process, the proposal merely establishes fixed periods of 30 and 15 days, respectively, for the filing of zoning challenges and appeals. No time periods have been proposed for issuance of determinations by Buildings, leaving the process open-ended.

Based on the City’s experience with the Uniform Land Use Review Procedure (“ULURP”), the risk of additional delay is significant. When adopted in the mid-1970s, ULURP was heralded as a six-month process. However, no time period was established for the period preceding the formal ULURP process. Over the years, the requirements for “pre-certification,” including environmental review, have become increasingly complex and time consuming, to the point that the full ULURP process typically takes two or three years to complete.

The potential to build on an as-of-right basis, in compliance with code and without formal public review, is one of the most important inducements for development in the City. The vast majority of development projects are constructed as-of-right. In contrast, most local governments throughout the nation, including the City’s economic competitors, require discretionary approvals for every project. The injection of public review into the as-of-right permitting process runs the risk of reducing the City’s advantage and deterring developers, lenders, and tenants from doing business in New York.

There is currently no time frame for implementation of the new process, which is under review by Buildings following a public hearing held on March 6, 2009. Additional changes appear likely. Comments can be sent to the Department of Buildings c/o Deborah Glikin, Assistant General Counsel, General Counsel’s Office, 280 Broadway, New York, NY 10007.

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the hospital could be built.

Landmarks Chair Robert B. Tierney expressed support for the amended design, and commented on the inherent complications of reconciling the “preservation point

of view” with the “societal impact.” Tierney stated that he believed the proposal before the Commission had found the appropriate balance, with “careful, thoughtful architecture,” that added to the collection of

contemporary buildings in the area.

Commissioner Christopher Moore reiterated his stance that the preservation of the hospital’s historic mission was the most compelling issue at stake, and that the design