

## Expert Analysis

# The Practitioner's Guide to the Powers of the Zoning Resolution

By Neil Weisbard

This is the first in a series of articles focusing on how to utilize the Zoning Resolution of the City of New York to increase the development potential of a particular parcel. Recently, there has been an influx of articles discussing zoning, whether it is in regards to Mayor Adams' "City of Yes," opinions denouncing zoning regulations as an onerous obstacle to free market development, or discussions on a reduced role of the public's and political authority in the land use process. This series does not take a position on the effectiveness of zoning, although there is no doubt that a zoning framework must be in place.

The Zoning Resolution, with its accompanying 126 Zoning Maps, is a voluminous yet

concise organic document, amended continually since its adoption on Dec. 15, 1961, and it has intrigued me ever since I first laid eyes on it. I try to be a creative and innovative lawyer, and the Zoning Resolution continuously inspires me. Within its chapters are processes that can be effectuated to not only assist clients in maximizing their profits, but also allow a practitioner to shape the landscape of the City itself.

This series begins with a discussion of rezonings, as an amendment to the Zoning Map encompasses a broad spectrum of land use processes and is the most effective means to maximize development potential without a NYC agency maintaining jurisdiction of a site. Unlike a variance, discussed later in this series, to which amendments must be approved by the Board of Standards and Appeals (the BSA), once a rezoning (an amendment to the Zoning Map) is adopted, a proposed



design that conforms (to use) and complies (with bulk) with the rezoned regulations may be constructed as-of-right.

Although the City itself is an extremely active participant, seeking to craft the Zoning Resolution in step with current City initiatives, individual private actors may initiate and undertake changes to zoning. These private development actors are represented by a land use attorney, who not only acts as legal counsel and prosecutor of the rezoning application, but as a project manager to all parties involved, which may include architects, environmental consultants, planners and lobbyists. A successful practitioner

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is one who allows these parties to work in concert in visualizing a project that is not be permitted as-of-right under the current regulations, and paints a picture of how a proposed development is in context with, and advantageous to, the surrounding neighborhood and, therefore, the City as a whole.

As a land use practitioner, my proudest moments are when one of my applications is formally adopted and the Zoning Map or Zoning Resolution text is changed. There is a true sense of accomplishment, as our team played an integral part in amending the new law. How incredible is that—an attorney writing the law!

Since the mid-2000s, NYC has supported hundreds of rezonings that allowed residences (where they were once not permitted) and/or increased the amount of square footage that may be constructed on a site (floor area ratio or FAR). Indeed, the trend continues. Between September 2021 and September 2022, the New York City Planning Commission (CPC) approved 65 rezoning applications, with a large majority of such rezonings being brought by private applicants, which involved upzonings (changing one zoning district to another with a higher permitted FAR) or new districts permitting residences.

So how does a rezoning process work? The New York City

Charter establishes the CPC and the Uniform Land Use Review Procedure, known as “ULURP,” which lays out statutory timeframes for public review and approval of amendments to the Zoning Map. The CPC is comprised of 13 members—seven appointed by the Mayor, including the Chair; one appointed by each Borough President; and one appointed by the Public Advocate. The CPC is made up of a diverse group of individuals including former New York City Councilmembers, agency

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directors, chiefs of staff and commissioners, as well as attorneys, architects, planners, urban and policy experts, financial analysts, and civic and business leaders who are responsible “for the conduct of planning relating to the orderly growth, improvement and future development of the city.”

ULURP does not occur until the Department of City Planning (DCP), the administrative and technical arm of the CPC, “certifies” that review of the application is complete (i.e., the

application has been through an intensive environmental, technical and urban design review by the DCP and other involved agencies). Once ULURP commences, the application goes through an approximately seven-month public review process, with recommendations from the local community board and borough president and required approvals from the CPC and the City Council (and subject to a Mayoral veto).

How should you proceed as a practitioner? The good news is that the rezoning process can be undertaken gradually, prior to requiring that your client expend substantial expenses on legal, environmental, architectural and other consultant fees.

The first step is to ensure that there is a land use justification for a proposed rezoning. Opening up a map of the surrounding zoning districts, land uses and as-built conditions of the area (see DCP’s ZoLA mapping platform), is there a zoning district near the site that could be extended to facilitate the proposed development? Are there older large buildings that are out of context with the existing zoning, which would be brought into greater compliance under the proposed rezoning? If you are seeking a rezoning permitting residences, are there grandfathered residences near the site? Would a mixed manufacturing/residence district

make sense? Are there major throughfares or mass transit servicing the site? This is where creativity comes into play—another reason I enjoy being a zoning practitioner.

Once you have determined that there is a land use justification, or even prior to, it is important that your client is made aware that the City requires that any rezoning permitting residences be mapped as a Mandatory Inclusionary Housing Area, where, generally, a percentage of the floor area (between 20 to 30%) be dedicated to households averaging between 40 and 80% of the Area Median Income.

If this proposal makes financial sense to your client, I recommend proceeding next with the DCP, who generally is very gracious with their time on proposed rezonings. An informational meeting will be conducted with DCP staff of the borough the property is located to determine if the proposal is amenable to the agency.

If DCP is amenable, I recommend next meeting with the land use committee of the local Community Board (there are 59 Community Boards in NYC). Community Boards are also very gracious about scheduling informational meetings on a proposed rezoning. I have found that involving the local community prior to filing a formal application is of upmost

importance, as obtaining the community's input and support ensures a greater likelihood of success in having the rezoning adopted. It may dissuade certain developers from proceeding in this manner, but it is the local Community Board's neighborhood, and my belief is that it is imperative from the outset to listen and work with the Community Board to create a rezoning that will be advantageous for the local community.

Subsequent to the Community Board, I recommend meeting with the local City Councilmember. If it is understood that the councilmember is averse to a rezoning, it may be wise to hire a seasoned lobbyist to engage the councilmember. However, a land use practitioner is perfectly capable of acting as a lobbyist in discussions with a councilmember (indeed, land use attorneys are required to register as lobbyists with the City in regards to ULURP and certain other actions). Getting to wear so many different hats is another reason I enjoy being a land use attorney.

Be advised that right up front, a councilmember may ask for a community benefit in order to support the project. Sometimes, the fact that affordable housing is required may be sufficient, but be prepared to discuss a community space within the building or donations for public improvement.

If all goes well up to this point, the client can decide if they are ready to fully engage in the process, which includes meeting with DCP's various divisions, and preparing and revising application and environmental material towards "certification." The timeframe for this pre-ULURP process typically runs 6-18 months (depending on complexity).

Once ULURP commences, the land use practitioner will present the formal application back to the Community Board (including its full Board), as well as to the borough president for their formal recommendations (non-binding); and to the CPC and City Council for their formal approval or modification. If the Mayor does not veto the approval of the application by CPC or the Council, the Zoning Map underlying the site is officially redrawn with the new district. Your client may now proceed with the construction of any building that conforms and complies with the new zoning. Congratulations, you and your team have changed the law!