

PROPOSED AMENDMENTS TO THE NYC ZONING RESOLUTION RELATED TO PARKING IN THE MANHATTAN CORE (COMMUNITY DISTRICT 1-8)

I. Introduction and Summary

The Department of City Planning ("DCP") is proposing to make far-reaching changes to Article I, Chapter 3 of the Zoning Resolution, which governs permitted parking in the Manhattan Core, which is defined as Manhattan south of 96th Street on the East Side and south of 110th Street on the West Side[1]. This memorandum describes the most significant of the proposed changes, and identifies our recommendations for modifying and amending DCP's proposal.[2]

The proposed changes would eliminate the distinction between public and accessory parking. DCP has concluded that parking should be viewed as a community resource; spaces will be available to people living or working on the site on which the garage is located, and to visitors. The amount of permitted parking will not increase. Special permits for parking in excess of the permitted amounts and those tied to "Special Generators", such as medical or cultural institutions, major non-residential facilities, and Large Scale Developments would focus on evidence of a parking shortfall in the area.

We have prepared a list of Recommendations (see Section V., below) which we believe will improve DCP's proposal. DCP's proposal is laudable in that it recognizes that the distinction between accessory and public parking is unworkable, but it is still unnecessarily restrictive in terms of the amount of parking permitted and the parameters for the design and layout of the parking facilities. The proposal goes backward by eliminating permitted spaces for retail, eliminating the FAR exemption for accessory parking and eliminating as-of-right surface parking lots. We look forward to working with REBNY on behalf of our clients to advocate for the Recommendations listed at the end of his memorandum and others which our clients may suggest.

II. Background

The Zoning Resolution of the City of New York ("Zoning Resolution") distinguishes between "accessory parking," which serves a particular development and "public parking", which is available to any vehicle. In residence districts, public parking is not permitted (except as a non-conforming use or by variance), while in commercial and manufacturing districts, public parking is permitted, either as-of-right or by special permit. However, many parking facilities that are "accessory" as a matter of law are operated as public facilities.

In 1982, in response to the requirements of the Federal Clean Air Act, the Zoning Resolution was amended to institute special parking regulations for the Manhattan Core. These special parking regulations eliminated required accessory parking and restricted permitted parking within the

Manhattan Core, as part of an effort to combat pollution by discouraging vehicular trips to and from the Manhattan Core. (Zoning Resolution, Article I, Chapter 3)

Except in the Special Hudson Yards District, or for public or publicly-assisted housing developments or enlargements, there is currently no minimum required accessory parking for new development in the Manhattan Core. There are maximum levels of permitted accessory parking, as follows:

- South of 59th Street, the maximum amount of accessory parking permitted as of right is equal to 20 percent of the dwelling units in the development;
- North of 59th Street, the maximum amount of accessory parking permitted as of right is equal to 35 percent of the dwelling units in the development;
- No new accessory parking is permitted as-of-right for existing buildings, but up to 15 spaces may be provided by authorization of the City Planning Commission ("CPC");
- Office, retail, and manufacturing uses are permitted to have 1 space for every 4,000 square feet of new development;
- Hotels are limited to no more than 15 percent of the number of rooms in a development; and
- A mixed-use development may not have more than 225 spaces.

Special permits are required in order to provide additional accessory parking in excess of the permitted maximum numbers. Public parking garages are only permitted by special permit in commercial and manufacturing districts. New surface parking lots are permitted by authorization in limited areas in commercial and manufacturing districts; they are not permitted in midtown, lower Manhattan, and portions of the West Side. In general, the findings required for special permits and authorizations are related to traffic safety and congestion on local streets. Over the past four years, DCP has required additional evidence supporting the need for the new facility.

III. Proposed Changes

A. Remove distinction between "public" and "accessory" parking.

The distinction between public and accessory as-of-right parking will be eliminated in the Manhattan Core. A new building will be permitted to provide parking equivalent to 20 or 35 percent (depending upon location) of the units; these spaces may be rented to building occupants or the public. This reflects DCP's determination that a parking facility should serve the surrounding community and not only the occupants of a building. Recent DCP studies indicate that car ownership has increased in Manhattan since 1980, but DCP's proposal does not increase the number of parking spaces permitted on an as-of-right basis.

1. Any existing accessory facility operating as a public garage under a DCA license will be permitted to operate as a conforming use.
2. As-of-right maximums would remain the same for most uses - 20 to 35 percent of units for residences; 1:4000 square feet for commercial space (with certain restrictions), depending upon location.
3. The current restriction on as-of-right parking for conversions of existing buildings would remain unchanged.

B. New Special Permits

Parking in excess of the permitted maximums would continue to require a special permit. The special permit text would be amended to create new findings that link the provision of parking above as-of-right levels to evidence that there is an imbalance between existing parking supply and new housing that generates new parking needs within a 1/3 mile area. Other new findings will be related to urban design considerations such as streetscape character and the potential for conflicts with pedestrians (e.g., near transit hubs or schools).

Two new special permits will be created. The first permit would be for a "Special Generator Facility" such as a medical or cultural institution, or a major investment in non-residential new buildings or conversions that are important to the local economy. Applicants will need to demonstrate that operation of the "Special Generator" requires additional parking, and that measures to limit parking demand will be implemented, such as shuttles and car sharing.

The second permit would be for Large Scale Developments with a 1.5-acre minimum size that would "transform a community," i.e., they would engender a substantial increase in parking demand.

Parking garages not associated with a new development would continue to be permitted by special permit, based on new findings, with the most important being evidence of an area-wide parking shortfall.

C. Other changes in the Zoning Resolution related to parking

DCP is proposing to make a series of additional changes to the Zoning Resolution; some of these may have significant effects on the financial viability of new developments:

1. Remove the as-of-right exemption of floor area for accessory parking facilities up to 23 feet above grade. DCP's intent is to encourage below-grade parking. There may be an exemption for properties located within flood zones.
2. Prohibit new surface parking lots except by special permit due to their impact on streetscape.
3. Remove existing parking requirements for public or publicly assisted housing. Affordable units would be treated in the same manner as other residential developments with permitted maximums of 20 or 35 percent, depending on location.
4. Allow pre-1982 required parking to be reduced or removed by CPC authorization.
5. Remove as-of-right parking allowances for retail uses (1:4,000 s.f.) in order to encourage pedestrian-related retail.
6. Add detailed requirements for layouts for all new facilities. As-of-right and small (fewer than 25 spaces) facilities may be exempted from some of the requirements. There will be changes in the way the number of reservoir spaces is calculated, and in their location. Curb cuts would be required to be within 70 feet of a corner, rather than current 50 feet.
7. DCP expects to propose changes to address new technologies, such as automated garages.

IV. Timeframe for Modifications

Currently, DCP staff is presenting the proposed changes to interested organizations, such as the Real Estate Board of New York as well as other civic and professional groups and transit advocates. We are told that their intent is to begin environmental analysis of the proposed changes in the fall of this year and to begin public review of the changes in late 2011 or early 2012. These text amendments will undergo a review process that is similar to ULURP, but without mandated timeframes.

V. Recommendations

- As-of-right parking should be increased above the current ratios in light of DCP's own findings as to increases in vehicular ownership.
- The City should allow new as-of-right parking for residential conversions of existing buildings, since these conversions also generate new auto-owning households.
- The allowance for accessory spaces for retail use should not be eliminated.
- The FAR exemption for parking above grade should not be eliminated, since it may reduce the development potential of a property or may force the construction of costly below-grade garages. At minimum, the exemption should be retained if the above-ground garage space is "wrapped" by a floor area-generating use.
- As-of-right surface parking lots should continue to be permitted; their elimination will impede assemblages. To address DCP's concerns about aesthetics, surface lots could be allowed for a term of years based on a certification of compliance with design standards
- Reservoir space requirements should be analyzed to determine if increases are justified by operational needs.
- The current restriction on the location of curb cuts to no less than 50 feet from an intersection should not be increased to 70 feet, as proposed. This will unduly restrict the location of new as-of-right parking facilities.
- The regulations should more clearly reflect and encourage the use of new technologies, such as automated parking.
- These proposals should be coordinated among DCP, DCA and the Fire Department for regulatory consistency.
- We recommend that the City defer CEQR Scoping until there is an opportunity to discuss these, and any other, recommendations.

[1] Although the parking regulations contained in Article I, Chapter 3 also apply to portions of Long Island City and downtown Brooklyn, the proposed modifications only apply to parking within the Manhattan Core.

[2] We note that DCP has not yet issued a report with respect to these proposals; our descriptions of the proposals are based on several presentations by DCP attended by members of the Kramer Levin Land Use Department.

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If you have any questions or need additional information about this Alert or any land use topic, please contact:

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This memorandum provides general information on legal issues and developments of interest to our clients and friends. It is not intended to provide legal advice. Readers should seek specific legal advice before taking any action with respect to the matters we discuss here. Should you have any questions or wish to discuss any of the issues raised in this memorandum, please call your Kramer Levin contact.

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