

## Newsletter Winter 2008/2009

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### A Foreigner's Guide to New York City Land Use Law

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Foreign parties seeking to purchase real estate in New York City are well advised to consult with legal counsel before deciding to go forward with a purchase. Real estate brokers know the economics of the market, but few of them know the subtleties of the zoning that can be crucial to whether or not a property can be used as planned or developed with a new building of a desired size. Special land use counsel can advise other law firms or their clients regarding the land use controls applicable to a particular site.

New York has some of the most comprehensive land use controls in the United States. Its Zoning Resolution is almost 900 pages long, and it has a landmarks preservation law that gives great power to the Landmarks Preservation Commission. The Landmarks Preservation Commission has jurisdiction over hundreds of individual landmarks and thousands of

buildings in 91 historic districts. Many other laws also affect the use of land and buildings in the City.

Following is a list of some of the questions that potential buyers should ask counsel in evaluating whether a particular property will meet their objectives:

- Does the property have a certificate of occupancy?
- Does the certificate of occupancy describe the current and/or intended use of the property? If the certificate of occupancy does not permit the planned use of the property, is the use permitted by the zoning?
- If the existing use of a building is not permitted by the zoning, is it "grandfathered" under the zoning so that it may be continued? This is a factual question that often requires considerable research.
- Are there restrictions on the location of a planned use within a building? Generally, in zoning districts where commercial and residential uses are permitted, the commercial uses must be located below the residential uses.
- Is parking required in connection with the proposed use?

- Is the property an individual landmark or is it located in a historic district? In either case, changes to the property are subject to approval by the Landmarks Preservation Commission.
- What is the extent of the zoning lot? Is the property offered for sale part of a larger zoning lot? If that is the case, there is probably a zoning lot development agreement that places restrictions on the development of the property.
- Does the property have unused development rights that it can sell, or, conversely, do adjoining properties have development rights that can be purchased in order to construct a larger building on the property? “Development rights” are the right under the zoning to develop the property with a building of a specified size. In New York, unused development rights may be transferred to adjacent properties, or in some special zoning districts, to remote properties.
- Is a building of the intended size permitted by the zoning? This is not as simple a question as it sounds. The basic control on a building’s size is the floor area ratio, commonly known as the FAR. In some cases, because a zoning lot has an unusual configuration, building “envelope” requirements (governing the outer dimensions of a building) may not allow a building that uses all of a property’s FAR. Your land use counsel can work with an architect to determine whether a building can use all of its FAR.
- Is the city government planning changes in the zoning that would affect, positively or negatively, the prospective buyer’s plans for the property? Your land use counsel will be aware of such plans.
- If a proposed use is not permitted by the zoning, are there procedures, such as a variance or City Planning Commission special permit to allow the use?

Prospective buyers of New York City real estate must work their way systematically through these questions. The circumstances vary building by building, lot by lot. So look before you leap.

**About the Author:**

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