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INSIDER'S OUTLOOK

Finding clarity on the legal definition of what constitutes a hotel

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What is a hotel? That would seem to be a question easily answered. Yet, under New York City zoning, the answer is not as straightforward as might be expected. Recent events have added some clarity. Broadly speaking, a building will be considered a transient hotel if the period of occupancy is less than one month.

The Zoning Resolution distinguishes between transient hotels, on the one hand, and residential buildings and apartment hotels, on the other hand. The distinction has significant practical consequences. A transient hotel is not a permitted use in a Residence zoning district, but unlike apartment buildings and apartment hotels, is a permitted use in certain Manufacturing zoning districts. Transient hotels are not subject to certain zoning density regulations.

They are also not subject to the maximum floor area limits for residential buildings in New York City set by the New York State Multiple Dwelling Law. The unique status of transient hotels has the potential for abuse:

If a building intended for long-term residential use, i.e. an apartment building, were described as a transient hotel in a permit application to the Department of Buildings, it could be located in M1 (Manufacturing) zoning districts where apartment buildings are prohibited but which are attractive because there is generally a greater availability of building sites in those districts. In certain commercial zoning districts, characterizing the intended use as a transient hotel when residential use was contemplated might allow a building to exceed the permitted size of residential buildings in those districts.

Conversely, a transient hotel wrongly characterized as a residential building or apartment hotel could be located in a

Residence zoning district. It would also not be subject to hotel occupancy taxes and would avoid more stringent, and costly, life safety measures.

Prior to the enactment of New York's Zoning Resolution, which took effect in December 1961, the zoning did not distinguish between transient and apartment hotels. In 1961, however, the two were separately defined, and transient hotels were barred from Residence zoning districts. The Zoning Resolution defines a transient hotel as follows:

A transient hotel is a building or part of a building in which: living or sleeping accommodations are used primarily for transient occupancy, and may be rented on a daily basis; one or more common entrances serve all such living or sleeping units; and, twenty-four hour desk service is provided, in addition to one or more of the following services: housekeeping, telephone, or bellhop service, or the furnishing or laundering of linens.

Permitted accessory uses include restaurants, cocktail lounges, public banquet halls, ballrooms, or meeting rooms. The Zoning Resolution definition of an apartment hotel is as follows: An apartment hotel is a building or part of a building in which: the dwelling units or rooming units are used primarily for permanent occupancy; one or more common entrances serve all such units; and; one or more of the following services are provided: housekeeping, telephone, desk, or bellhop service, or the furnishing of laundering of linens.

Restaurants, cocktail lounges, or indoor swimming pools are permitted accessory uses, provided that in Residence Districts, such facilities shall be accessible only through the lobby and there shall be no signs except as permitted by the applicable district regulations. Public banquet halls, ballrooms, or meeting rooms are not permitted accessory uses.

The word "transient" in "transient occupancy," is not defined. Likewise,

in the definition of "apartment hotel", "permanent" is not defined, and in both definitions the permanent or transient occupancy is modified by "primarily," also not defined.



In the absence of clearly-defined time limits in the Zoning Resolution, the Department of Buildings has looked to the Building Code, the New York State Multiple Dwelling Law, the New York City hotel

occupancy tax law, and the definition of residency in the Rent Stabilization Code, as well as federal and state tax laws.

The Building Code contains occupancy classifications for, among other things, fire safety purposes. Until 2008, when the Code was revised, Occupancy Group J-1 was for "...buildings and spaces that are primarily occupied for the shelter and sleeping accommodation of individuals on a day-to-day or week-to-week basis."

That has been changed in the new code to Group R-1, "Residential buildings or spaces occupied, as a rule, transiently, for a period of less than one month, as the more or less temporary abode of individual or families who are lodged with or without meals..." This category includes transient hotels. Occupancy group J-2 was "... buildings with three or more dwelling units that are primarily occupied for the shelter and sleeping accommodation of individuals on a month-to-month or longer basis."

Under the new Building Code Group R-2 is "... buildings or portions thereof containing sleeping units or more than two dwelling units that are occupied, as a rule, for shelter and sleeping accommodation on a long-term basis for a month or more at a time." Apartment hotels and

apartment buildings are included in this category.

The New York State Multiple Dwelling Law defines a "hotel" as "... an inn having thirty or more sleeping rooms." It defines a Class A multiple dwelling as "... a multiple dwelling which is occupied, as a rule, for permanent residence purposes and includes apartment houses and apartment hotels. "Permanent" is not defined. The Multiple Dwelling Law defines a Class B multiple dwelling as "... a multiple dwelling which is occupied, as a rule, transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals..." and includes "hotels."

Based on the foregoing definitions, as well as the hotel occupancy tax law, the Rent Stabilization Code and New York and federal tax laws, the Department of Buildings has determined that the cutoff between transient and permanent occupancy for zoning purposes is 29 days. This was affirmed by the Board of Standards Appeals in a case decided May 8, 2008 (BSA Case No. 247-07-A). The Department of Buildings further has determined that all rooms designated as transient hotel rooms are subject to this limit.

In other words, the terms in the zoning definition, "building or part of a building" and "used primarily for transient occupancy" cannot be read together to mean that some of the hotel rooms may be used part of the time for permanent occupancy. Those rooms that are classified as transient hotel rooms are all subject to the 29-day limit.

Lastly, although some hotel units are now held in individual ownership as condominium units, that has no bearing on their status as transient or apartment hotel units.

The Department of Buildings looks at the actual use, not the ownership, to determine whether a building or part thereof is a transient hotel. ■