

Zoning for Hospitals: New York Continues Favorable Treatment

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In late summer 2004, New York City revised its “community facilities” zoning. Community facilities are institutions such as hospitals, schools, colleges, churches, libraries, foundations, and nursing homes that play a vital role in New York, providing needed services and a major source of employment. Since the City’s current zoning resolution took effect in 1961, community facilities have been accorded special status: They may be located in residential zoning districts and often are allowed greater size than straight residential buildings. As these institutions have grown and changed over the years, neighborhood resistance to some of their effects has increased. Communities have objected to the larger bulk of community facility buildings, and their parking, vehicular and pedestrian traffic. These objections led to the recent revisions that have made the community facilities zoning somewhat more onerous and restrictive for certain types of institutions. Hospitals were not the subject of these changes and continue to receive favorable treatment under the zoning.

In New York City, even very large hospitals may be built as-of-right under the zoning. That is, no discretionary approvals are required as long as the proposed building complies with the underlying zoning; construction requires only a building permit. That being said, many hospitals have become so large or have so little land on which to expand that they face zoning problems when they decide to grow or modernize. Sites are too small, the underlying zoning does not permit a building of the size proposed, or the building cannot fit within the required zoning “envelope” (the zoning requirements that define the outer dimensions of the building).

In those instances, a discretionary approval may be required. Discretionary approvals fall into several categories: A variance, where the zoning board is asked to vary the zoning requirement because the property has a condition that makes complying with the zoning difficult; a zoning map change, where the zoning map is amended to put in place a zoning district that allows what is proposed; a zoning text change, where the zoning resolution is amended to allow something otherwise not permitted; and certifications, authorizations, and special permits by the City Planning Commission, which are contained in the



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We hope you have found this issue of the Hospital Construction Newsletter informative. Should you have any questions or concerns, please do not hesitate to contact the Department Chair and Editor, Jim Cullen, at (212) 278-1565 or jcullen@andersonkill.com.

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zoning resolution to permit a particular use or bulk condition, provided that certain pre-stated conditions in the zoning resolution can be met.

Hospitals are also eligible to be treated under the zoning as large scale community facility developments ("LSCFD") under the zoning. A LSCFD may be designated if an institution's property meets a 3-acre minimum size threshold. LSCFD's are particularly useful if an institution's property is divided by streets. Once it becomes an LSCFD, the property is eligible for certain authorizations and special permits that allow it, among other things, to be treated as a single zoning lot. Parking and bulk may be moved around without regard to the fact that the property is divided by a street or streets.

Discretionary approvals have certain procedural aspects in common. With the exception of certifications and certain authorizations, discretionary approvals are all subject to environmental review, known as CEQR ("City Environmental Quality Review"). CEQR requires an initial "hard look" to determine if a proposed project has any "significant" adverse environment impacts ("significance" is determined according to pre-established criteria). If there are significant impacts, then a full environmental impact statement must be prepared.

The other aspect common to almost all discretionary approvals is public review. In New York City that means a public hearing by the local community board, which makes an advisory recommendation. Then, depending on the nature of the approval, the borough president, the City Planning Commission or Board of Standards and Appeals, and, in some instances, the City Council hold hearings. Any hearing is an opportunity for opponents to voice their objections to not only the proposal under review, but to air their accumulated grievances with the institution, some of which have nothing to do with the application before them. ■

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