

Land Use - What You Need to Know if You Own or Plan to Buy or Rent Real Estate in New York City

ROBERT S. COOK, JR., ANDERSON KILL & OLICK, P.C.

Falling real estate prices in New York City are making the prospects of owning or renting commercial property more attractive than they have been in many years. Italian companies that enter the New York City real estate market should understand that the laws relating to the use of land and buildings in the city are extensive and complex. The primary law governing the construction and use of buildings and land is New York's Zoning Resolution. It is long (almost 900 pages, plus maps) and difficult to decipher. The Zoning Resolution and other laws constitute a maze of regulation regarding the use of land and buildings that require professional advice.

Following is a partial list of land-use issues that should be considered when a company already owns or is planning to purchase or lease real estate in New York City. An early review of land-use issues by a lawyer, often working with an architect, may save a buyer money by disclosing information about land-use controls that limit contemplated uses or the size of a building. A land-use analysis of a property prior to purchase and before engineering and marketing studies are undertaken may alert a prospective owner that the property may not be used as planned. Following are questions to ask.

Owners of Buildings

Do the current uses in the building comply with the certificate of occupancy and with the zoning? This can be confusing: An existing use may

not be consistent with what is shown on the certificate of occupancy, but nevertheless may be permitted by the zoning. In that case, the certificate of occupancy can be amended, a process that is relatively simple unless changes to the building are needed to meet fire safety requirements.

Does the property have unused development rights? Development rights are the right created by zoning to develop a property with a building of a stated amount of floor area.

Could those development rights be sold to an adjacent property party, or, conversely, are there adjacent properties that have unused development rights that could be used to enlarge

Falling real estate prices in New York City are making the prospects of owning or renting commercial property more attractive

the building on the property? Development rights may be sold to adjacent properties in a private transaction that does not require government approval.

Has the zoning changed so that the present uses are no longer permitted, but “grandfathered” under the zoning so that they may be continued? Establishing whether a use has been “grandfathered” is a factual question that may require proof that the building has been used,

without an interruption of more than two years, for a purpose that was originally permitted.

Has the zoning changed so that the building is larger (or smaller) than what is currently permitted by the Zoning Resolution? If the zoning now permits a larger building, the building has unused development rights that might be available to be sold.

Is the building either a designated landmark or is it located in a historic district? In either case, changes to the building's exterior must be approved by the Landmarks Preservation Commission. A building's landmark status may also mean that enlargement may not be allowed, even if a larger building is permitted by the zoning.

Prospective Purchasers of Buildings

Is the planned use of the building permitted by the certificate of occupancy and the zoning? If not, could it be permitted by a "special permit" of the City Planning Commission or a variance from the Board of Standards and Appeals.

Is the property located in a special zoning district or urban renewal area?

Is the property part of a larger zoning lot? If it is, the property may be subject to the terms of an agreement which may limit the size and use of a building that can be erected on the property.

Is the property the subject of any government approvals, such as a variance or City Planning Commission special permit? In either case, changes to the building might require returning to the approving agency to amend the original approval, or obtain a new approval.

Are any changes planned for the zoning which would not permit the planned use or

would further limit the size of the building?

Is the building a designated landmark or is it in a historic district?

Does the property have unused development rights that can be sold to nearby properties? Determining whether there are unused development rights usually requires an analysis by a lawyer, who, working in concert with an architect, can also advise whether there are nearby properties that might purchase the development rights.

Renters of Offices or Stores

Is the proposed use permitted by zoning? Is the proposed use permitted by the certificate of occu-

Italian companies that enter the New York City real estate market should understand the laws

pancy? If the proposed use is permitted by the zoning but the certificate of occupancy must be amended, it is important to understand how much time will be required and the estimated cost.

Is the proposed use limited to a certain location in the building? In some zoning districts commercial uses are limited to the first or first and second floors, and they must almost always be located below any residential uses.

Is the building a designated landmark or in a historic district? Some of the better retail store locations, such as parts of Madison Avenue, are in a historic district where changes to store facades must be approved by the Landmarks Preservation Commission.