

3-2024

New York City Relaxing Environmental Review Rules for Housing Construction

Michael B. Gerrard
Columbia Law School, michael.gerrard@law.columbia.edu

Follow this and additional works at: https://scholarship.law.columbia.edu/faculty_scholarship



Part of the [Environmental Law Commons](#), and the [Housing Law Commons](#)

Recommended Citation

Michael B. Gerrard, *New York City Relaxing Environmental Review Rules for Housing Construction*, N.Y.L.J., MARCH 13, 2024 (2024).

Available at: https://scholarship.law.columbia.edu/faculty_scholarship/4428

This Article is brought to you for free and open access by the Faculty Publications at Scholarship Archive. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Scholarship Archive. For more information, please contact scholarshiparchive@law.columbia.edu.

ENVIRONMENTAL LAW

New York City Relaxing Environmental Review Rules for Housing Construction

By Michael B. Gerrard

March 13, 2024

Faced with a severe housing shortage, New York City is exempting the construction of much new housing from the environmental review processes and taking many other steps to encourage such construction throughout the city. Several of these moves will also help the transition away from fossil fuels to renewable energy.

Context

Over 53% of the city's residents are rent burdened, meaning they spend more than 30% of their income on rent. Vacancy rates for units costing less than \$1,500 per month are below 1%. One city document declares, "Almost every hardship of the city housing market can be traced back to an acute shortage of housing. The housing shortage drives up prices for everyone." Among the many factors that have inhibited the construction of new housing are the time-consuming and expensive City Environmental Quality Review

(CEQR) rules and the Uniform Land Use Review Procedure (ULURP).

CEQR is New York City's rules for implementing the State Environmental Quality Review Act (SEQRA). ULURP is the multi-stop process for various kinds of zoning and other land use approvals. Over

the past 10 years, an average of 350 housing, commercial and infrastructure projects per year were subject to the CEQR process. All of them went through the first step, the preparation of an Environmental Assessment Statement (EAS). This typically takes six to eight months and can cost hundreds of thousands of dollars. About 12 then required a far longer statement, an Environmental Impact Statement (EIS). The Citizens Budget Commission estimates that the costs added by the CEQR and ULURP processes



Michael B. Gerrard of Columbia Law School.

Courtesy photo

MICHAEL B. GERRARD is Andrew Sabin Professor of Professional Practice and founder and faculty director of the Sabin Center for Climate Change Law at Columbia Law School. He is co-author with Daniel A. Ruzow and Philip Weinberg of "Environmental Impact Review in New York" (LexisNexis).

to a new building increase monthly rents by \$430 for an average apartment.

To address the housing shortage and related problems, in June 2022, Mayor Eric Adams announced his “City of Yes” campaign and created the Building and Land Use Approval Streamlining Task Force (BLAST). It issued multiple recommendations in December 2022 in a report called “Get Stuff Built.” Based on this, the city is now proposing changes that it estimates will cut these costs in half, resulting in over \$2 billion per year in savings and unlocking another approximately 50,000 units of additional housing production over the next 10 years. These and other changes, the city hopes, would add up to 100,000 new units over the next 15 years.

Under the proposed NYC rules, projects with up to 250 dwelling units in mid- and high-density residential zones and up to 175 units in low-density zones would be on the Type II list.

CEQR Regulation Changes

The most important proposed changes to CEQR would be to add to the Type II list in the regulations—the list of actions that are entirely exempt from the CEQR process, and that therefore do not need an EAS or an EIS. The city is calling this the “Green Fast Track for Housing.” The New York State Department of Environmental Conservation’s regulations under SEQRA contain their own Type II list of 46 items, including residences of no more than three units, but allow other agencies and municipalities to create their own lists.

Under the proposed New York City rules, projects with up to 250 dwelling units in mid- and high-density residential zones (R5-R10) and up to 175 units in low-density zones (R1-R4) would

be on the Type II list. There would be specified limits on the amount of space that could be provided for commercial or community uses in these residential buildings.

Buildings are eligible only if they do not burn fossil fuels to supply heat or hot water. This furthers the city’s climate goals. Precautions are imposed to help make sure the building would not: disturb contaminated soils or archaeological or historic sites; be very close to a major air pollution source; be subject to undue train, subway or airplane noise; be within a Special Coastal Risk District; or be adjacent to an arterial highway or a vent structure for a tunnel. A height limit of 250 feet will usually apply.

The City Planning Commission held a public hearing on the proposed changes on Feb. 7 and accepted written comments until Feb. 17. The final rules may be adopted this summer. Among the supporters of the proposed changes were the American Institute of Architects New York; the Building Congress; the American Council of Engineering Companies; Open Plans; and the Association for a Better New York. WE ACT for Environmental Justice and the Municipal Art Society generally supported it but suggested some changes. The New York Landmarks Conservancy expressed concerns but did not come out for or against. The Association for Neighborhood & Housing Development, several community planning boards and neighborhood groups and a number of individuals opposed it.

The Office of the Mayor, the Department of Housing Preservation and Development and the Board of Standards and Appeals—all of which play a role in approving new housing—have proposed similar changes to their regulations and are, like City Planning, nearing completion of the administrative process to adopt them.

CEQR Technical Manual

The Mayor's Office of Environmental Coordination has created and from time to time updates the CEQR Technical Manual. Now exclusively online, it contains extremely detailed guidance on how environmental review is to be conducted. The BLAST group recommended numerous changes to the Manual. They are now under consideration within the city government, and may be implemented by the end of 2024. The recommended changes include, among many others:

- Restructuring the method of traffic analysis in a way that takes much less time
- Creating standard templates for EASs
- Streamlining reasonable worst case development scenario guidance
- Updating methodology for socio-economic analysis and community facility analysis

In July 2023, the Landmarks Preservation Commission voted to streamline the process for installing solar panels, HVAC upgrades, bioswales and certain other kinds of work within historic districts.

Other reforms suggested by BLAST involve new initiatives that will require additional staffing. Whether the necessary budgetary allocations will become available remains to be seen. Some of these involve establishing a CEQR mitigation tracking system; establishing a training program for consultants; creating a CEQR data hub and a noise sampling information database; and modifying travel demand factors.

ULURP, Buildings, Landmarks

The ULURP process operates under a clock that takes no more than seven months. However, there is a pre-application process that can take more than a year before the clock starts. The Get

Stuff Built report recommends various ways to shave time off the pre-application process, and to move some actions so that they merely require certification from the City Planning Commission and not the full ULURP process.

Once any needed land use approvals are in place, the processes to obtain the necessary building and other construction permits can also consume a good deal of time. Consideration is now being given to creating a centralized "one-stop shop" portal for construction approvals; facilitating remote inspections; transferring some responsibilities among agencies; streamlining the issuance of temporary certificates of occupancy; and other measures.

Many of these changes would speed the construction, not only of housing, but of other projects. Some of these changes themselves need to go through the ULURP process and require approval of the city Council.

In July 2023, the Landmarks Preservation Commission voted to streamline the process for installing solar panels, HVAC upgrades, bioswales, commercial signage and certain other kinds of work within historic districts. Several of these now can be approved by the Commission's staff without having to undergo a public review process.

Carbon Neutrality Amendments

In December 2023, City Council enacted several "City of Yes for Carbon Neutrality" amendments to the zoning text. Several of these are designed to make it easier for building owners to comply with Local Law 97 of 2019, which requires buildings to lower their greenhouse gas footprints. Among the items included were:

- Removing zoning impediments to solar panels on rooftops and parking canopies
- Easing the approval of community solar and of energy storage systems

- Providing greater flexibility for the approval of heat pumps and other equipment to help electrify buildings
- Encouraging more electric vehicle charging stations
- Expanding bicycle and e-mobility storage
- Accommodating permeable paving, raingardens and street trees to help with stormwater control
- Allowing non-residential rooftop greenhouses as-of-right

Housing Opportunity Amendments

In September 2023, the City Planning Commission proposed a set of changes to the Zoning Resolution called “City of Yes for Housing Opportunity,” with the subtitle “A little more housing in every neighborhood.”

One former City Planning official, Eric Kober, has written that “the proposed changes overturn, in part, the effects of the city’s 1961 comprehensive rezoning, which increased zoned densities in parts of Manhattan but greatly diminished the amount of new housing allowed in the other four boroughs. The changes are also a direct repudiation of the policies of recent past mayoral administrations, in which affluent, high-opportunity neighborhoods were ‘downzoned’ (reduced in terms of permitted built densities) and new housing construction was focused on a handful of neighborhoods, mostly onetime industrial areas or commercial districts with little legacy population.”

The proposals would, among many other things, increase the permitted size of new buildings in mid- and high-density parts of the city if the increased density is used for affordable housing. They would eliminate the requirement that new

residential buildings have off-street parking. They would allow development rights to be transferred more easily from designated landmarks and over a broader area. They would legalize new development of accessory dwelling units (sometimes called granny flats or mother-in-law suites), single room occupancies, and small units in places with good transit access. Housing would be easier to build above existing commercial strips. It would become easier to convert some empty office buildings to residential use.

The CEQR process for these amendments has begun. They will ultimately require the approval of City Council. Parts are already controversial, especially in some communities where most residents do not want greater density, and the outcome in City Council is uncertain. Some of the changes will achieve their full potential only if the state Legislature revives the property tax exemption program known as Section 421-a, which is also uncertain.

Economic Opportunity Amendments

Finally, the city has proposed “City of Yes for Economic Opportunity.” It is designed to provide businesses with greater flexibility to grow by removing outdated restrictions, simplify rules on which types of businesses are allowed in commercial areas, update rules on loading docks, allow more types of businesses to locate on ground floors, and make other modifications. It would also permit dancing and live entertainment like comedy shows at venues where music is allowed. It would allow some businesses to expand in residential neighborhoods.

This set of proposals is now undergoing the ULURP process and will be voted on by the City Council this spring.