

The City of New York
HOUSING AND DEVELOPMENT ADMINISTRATION
Department of Buildings

DIRECTIVE NO. 28 of 1970

To: Borough Superintendents Date: July 20, 1970
From: Thomas V. Burke, Director of Operations
Subject: Section 35 of the General City Law -
Application thereof to Developments
Under the Zoning Resolution

The Department has requested an opinion from the Corporation Counsel as to whether it is proper to continue the present practice of including the bed of a mapped street to the center line thereof, as part of the area of the lot, in calculating the percentage of lot coverage pursuant to the Zoning Resolution for those cases where the plot or acreage is being subdivided and improved; mapped streets exist therein; and taxes were paid on the entire plot or acreage, including the mapped streets, prior to the subdivision and improvement.

The memorandum of Deputy Commissioner Joseph Ferro, dated February 8, 1965 and the memorandum of Borough Superintendent John J. Walsh, dated May 27, 1970, relating to Section 35 of the General City Law are to be superseded, pending receipt of the opinion of the Corporation Counsel.

In 1950, the Department requested an opinion of the Corporation Counsel with respect to an interpretation of Section 35 of the General City Law. The request concerned a proposed street widening in the size of the lot in applying Zoning Resolution requirements.

On November 1, 1950, Opinion No. 101915 was rendered stating that the provisions of Section 35 of the General City Law applied only to buildings to be erected in the bed of mapped streets and should not be extended or distorted to apply to vacant land spaces forming part of a plot on which a structure is erected. This was predicated on the presumption that condemnation proceedings were not pending or contemplated. The opinion further stated that the land located in the street widening may be used in calculating the percentage of lot areas under the Zoning Resolution.

It recently came to the attention of the Department that the Tax Department in certifying the size of the lot, upon the completion of the improvement thereon, does not include the portion of the lot in the bed of the mapped street and thereupon removes the street from the tax rolls. The Corporation Counsel's opinion is being sought to determine whether this affects our present practice.

Pending receipt of the requested opinion from the Corporation Counsel, the following procedure and stipulations shall be made effective immediately:

1. In those cases involving proposed street widenings for which no condemnation proceedings are pending or contemplated, that portion of the land involved in the street widening shall be included in calculating the percentage of lot coverage under the Zoning Resolution.
2. In those cases where streets are mapped in undeveloped plots by the City Planning Commission on condition that these streets be ceded to the City, no part of the mapped street shall be used in applying the Zoning Resolution requirements.
3. In those cases where:
 - (a) the lot is part of the plot or acreage being subdivided and improved and
 - (b) mapped streets exist therein, and
 - (c) the Tax Department certifies that taxes were paid on the entire plot or acreage including the mapped streets, prior to the subdivision and improvement —

the size of the lot may include the portion of the mapped street to the center line thereof in applying the Zoning Resolution requirements. However, any setback required by the Zoning Resolution shall be provided from the street line.


Thomas V. Burke
Director of Operations

TVB:JWS:ASR

cc: Exec. Staff