





How Zoning Gets Amended

While most development in the city occurs *as-of-right*, there are a number of discretionary actions that require the review and approval of the *City Planning Commission (CPC)* or the *Board of Standards and Appeals (BSA)* and, in some instances, the City Council.

CPC or BSA *discretionary actions* are mostly zoning-related modifications authorized by the Zoning Resolution. They are termed “discretionary” because they require the exercise of judgment, in contrast to “ministerial” actions that involve the verification of objective conditions, such as compliance with laws or regulations. Discretionary actions can apply to a single, small building or can be as large as a citywide zoning text amendment that affects buildings throughout the city. Some actions that apply to an individual property *include special permits* administered by the CPC or the BSA, *authorizations* administered by the CPC, and *variances* administered by the BSA. See the “Other Zoning Fundamentals” section of Chapter 1 for more information.

In addition to the actions authorized by the Zoning Resolution, a number of other land use decisions are subject to public review. Most of these are triggered when the City intends to either sell or acquire property, or intends to put its property to a new use. This includes instances when the City is looking to site new facilities such as sanitation garages, fire houses and libraries. Changes to the *City Map* – a map that shows the locations and grades of public parks, streets and certain easements – are also subject to public review. City agencies are frequently the applicant for these kinds of actions.

While discretionary actions vary in scale and scope, all are subject to some form of public review to ensure that the public can voice their opinions on the proposed action. These actions are all also subject to environmental review, which requires that adverse environmental effects which are considered likely to stem from the action are described and considered by decision makers.

Discretionary actions are reviewed by bodies that are able to solicit and consider local as well as citywide perspectives, as appropriate to the nature of the project. Actions before the CPC, for instance, are open to comment from the general public, and frequently involve formal review by *community boards*, Borough Presidents, the CPC and the City Council.

Most of these discretionary actions are subject to a formal public review process, where they must ultimately be approved by the CPC and then adopted by the City Council. This process, the *Uniform Land Use Review Procedure (ULURP)*, sets timeframes for public participation and decision making. ULURP as it exists today was established in 1989, and is set out in the City Charter. The various steps of the formal process and those leading up to it are the basis for the first section of this chapter.

However, some actions, including zoning text amendments, CPC authorizations and BSA special permits and variances follow different processes which are described separately at the end of this chapter.

ULURP

Before ULURP Begins

Even before the formal public review process begins, a significant amount of research, analysis and discussion are often required to determine which types of actions are needed and to prepare the land use and environmental review applications. In addition, applicants often engage in outreach to the community so that area residents can help shape or understand a proposal.

Preliminary Outreach

While the public review process itself lays out a formal process for public input directed toward decision makers, applicants are encouraged to reach out to the affected community and to elected officials before initiating this process. For example, a property owner considering a rezoning to allow higher density development, or a special permit to allow a specific use not permitted as-of-right, will often speak first with the local community board and council member to understand potential concerns and consider how they can be addressed while the proposal is being developed.

When the Department of City Planning (DCP) is itself considering proposing a zoning change, it will communicate with elected officials and hold public information sessions, workshops or other types of outreach meetings to solicit early input and help shape the proposal. DCP also shares information in the Plans/ Studies section of its website so that members of the public can get more details and participate in the process.

DCP has created a formal process, with downloadable documentation, to help applicants put together and finalize their land use application and to undertake the necessary environmental review.

Environmental Review

Discretionary actions are subject to the *City Environmental Quality Review (CEQR)* process. Pursuant to state and local law, CEQR anticipates adverse environmental effects that might reasonably be expected to result from the action, assesses their significance and proposes measures to eliminate or mitigate any significant

impacts. Small applications known as Type II actions, such as actions that would result in a single- or two-family house, are exempt from these review requirements.

A range of environmental topics are examined under CEQR. This includes analyses of the traffic, noise and shadows the action may be expected to create, as well as its effects on public facilities such as sewers or schools. CEQR also assesses how the action would affect socioeconomic conditions and neighborhood character of the surrounding area. The environmental analysis compares what can reasonably be expected to happen if the action is approved (the “future with the action”) with what would be expected in the absence of the action (the “future without the action”). This is done to focus the assessment of impacts on those outcomes that can be attributed to the proposed action itself, rather than to other trends, factors, or projects.

The CPC must take any projected environmental impacts into consideration when it votes to approve, modify, or disapprove an application during the public review

What Goes Through ULURP?

- | | |
|---|---------------------------------|
| City Map Changes | Major Concessions |
| Maps of Subdivisions or Plattings | Non-City Public Improvements |
| Zoning Map Changes | Housing and Urban Renewal Plans |
| City Planning Commission (CPC) | Landfills |
| Special Permits | Disposition of Real Property |
| Revocable Consents and other Franchises | Acquisition of Real Property |
| Request for Proposals (RFPs) | Site Selection |



process. Therefore, the environmental analysis must be largely completed before the formal public review process begins.

Applicants, whether public or private entities, are responsible for preparing the environmental analyses. Guidance for data sources and methodologies is provided in the CEQR Technical Manual, which is available at the Mayor’s Office of Environmental Coordination’s website. This manual assists City agencies, applicants and the public in conducting and participating in environmental reviews subject to CEQR.

CEQR requires a “lead agency” that is undertaking or approving a discretionary action to be responsible for coordinating the environmental review and determining the significance of its potential environmental impacts. The CPC, with DCP as staff, is the lead agency for most discretionary land use actions, including those subject to the Uniform Land Use Review Procedure (ULURP).

The first step in this process is completing an Environmental Assessment Statement (EAS). The EAS provides an initial analysis of likely effects of the proposed zoning change on the environment. It includes sufficient analysis to enable the lead agency to determine whether the potential exists for adverse effects on the environment.

Based on information in the EAS, and utilizing guidance provided in the manual, the lead agency determines whether or not the analysis suggests that adverse environmental impacts are possible. If none are anticipated, the agency issues what is termed a “negative declaration,” signaling completion of the CEQR process and allowing the public review process to begin. A conditional negative declaration may be issued if significant impacts are identified but a private applicant agrees, at this stage, to restrictions that would prevent the anticipated impacts as part of the land use action. In all other instances, if the potential for one or more significant impacts is identified, a positive declaration is issued which

requires completion of a Draft Environmental Impact Statement (DEIS) before the land use application can begin the public review process.

If the need for a DEIS is identified, the lead agency must first issue a draft *scope of work*, which details the topics to be addressed in the *Environmental Impact Statement (EIS)*, the methods of analysis to be used and possible alternatives to the proposal that would reduce or eliminate significant impacts. A public scoping meeting, normally the first formal public meeting for the project, must be held to solicit public comments on the draft scope. A notice stating when and where the meeting will be held is circulated to all affected and interested agencies, community boards, advocacy groups and elected officials and is posted to the lead agency’s website. Comments are solicited at these meetings on the scope of the analysis and any changes needed to ensure appropriate and thorough assessment of potential impacts. Written comments may be submitted up to 10 days after the public meeting. After updating the scope based on the public comments



received, as appropriate, the lead agency issues a final scope of work. Both the draft and final scopes of work are posted on its website.

The purpose of an EIS is to help the public and decision-makers understand the nature of the action's anticipated effects on the environment and, if necessary, how to avoid or mitigate those impacts to the maximum extent practicable. Although the precise content and format of an EIS depends on the type of action and its impacts, it must include a project description, technical analyses, a section describing any mitigation measures and an assessment of reasonable project alternatives that would also meet project objectives while reducing or eliminating identified impacts. The draft EIS must be completed before the public review process can begin. It is issued in draft form to allow for public comment on the analysis and findings during that process. A public hearing is required; for most actions before the CPC, the Commission's public hearing (described below) serves this purpose. The EIS must be finalized before the CPC can vote on the proposal. EIS documents are available on the lead agency's website.

If the environmental review indicates that development on a property may be adversely affected by noise, air emissions or hazardous material contamination, then a special zoning label – an *E-Designation* – may be placed on the property. This designation requires that these issues be addressed before a new building is constructed or the use of the land changes. The E-Designation rules are found in the Zoning Resolution ([ZR 11-15](#)) and the individual properties that have received these designations are listed in Appendix C by individual “E” number, along with the related ULURP number, CEQR number and block and lot number. Designations can also be found on individual lots through the ZoLa web application. The requirements to satisfy E-Designations (satisfaction of a noise designation, for example, may necessitate the installation

of soundproofing windows) are administered by the Office of Environmental Remediation; more information is available on their website.

Waterfront Revitalization Program

Projects located within the designated Coastal Zone must also be reviewed by DCP or another lead agency to assess the consistency of a proposed activity or project with a set of 10 policies that form the Waterfront Revitalization Program. More information on this can also be found on DCP's website in the Applicant Portal.

Preparing an Application

Every discretionary action subject to ULURP requires filing a formal application with DCP that clearly describes the proposal and any potential development stemming from it. Maps showing the extent and type of zoning change, as well as a draft of any amended zoning text are often included. The Applicant Portal on DCP's website has downloadable forms and guidelines on the materials necessary for different types of applications, and specifies required fees (waived for government agencies and local non-profit organizations).

Each individual land use action is given a specific application number (ULURP number) that begins with a six-digit designation that starts with the fiscal year followed by a number noting the order in which each application was filed. For example, 160035 would be the 35th filed application in fiscal year 2016. These numbers are followed by a three-letter designation. The first two letters identify the type of application. For example, “ZM” is used for zoning map changes and “ZR” for zoning text amendments. The last letter will designate the borough or citywide applicability of the application. Hence, a ZMK designation will be for a zoning map amendment in the borough of Brooklyn.

DCP's team of technical land use review experts review each application for completeness and technical accuracy. Once DCP determines that an application is complete (and the CEQR lead agency determines that the necessary environmental review has been completed), the formal public review process can begin.

During ULURP

The length of time a project takes to travel through the ULURP process is approximately seven months. During the process, proposals can be modified based on comments from the public, community boards or elected officials. The various steps of the process are described below.

Certification

DCP is responsible for certifying that an application is complete and ready to begin the ULURP process. This is formally done at one of the CPC's public Review Sessions, which typically occur twice monthly on Mondays. At these sessions, DCP staff members give an overview of the application and answer questions from the Commissioners. Certified applications are sent within nine days to the affected Community Board, Borough President and the City Council. If a project spans more than one Community District, copies are sent to all affected Community Boards and also to the respective Borough Board. For DCP-sponsored actions, application materials are on its website.

Community Board

Within 60 days of receiving a certified application, the *Community Board* is required to hold a public hearing and adopt and submit a written recommendation to the CPC to either approve or deny an application. While the Community Board's action is advisory, its recommendation becomes part of the public record and is carefully considered at subsequent stages of the process. Community Board recommendations often

include proposed conditions or suggested modifications that the Board believes would improve the application. A Community Board may waive its right to act on an application, and then it proceeds to the next level of review.

Borough President/Borough Board

Within 30 days of receipt of a Community Board recommendation, or at the end of its review period, the Borough President may hold a public hearing, and is required to submit a written recommendation to the CPC to approve or deny an application. These recommendations may include comments and suggestions on the application. As with the Community Boards, a Borough President's recommendations are advisory but are considered at subsequent stages of review. If an application involves land in more than one Community District, the Borough Board may also review and submit a recommendation to the CPC within the Borough President's review period. Even if the Borough President does not issue a recommendation within the prescribed time limit for an application, it moves on to the CPC.

“(A)” Applications

During the early stages of the public review process, recommendations or suggestions may be submitted that warrant making substantive changes to the original application. This can be addressed through what is often called an *(A) application*. The CPC must hold a public hearing on both the original, certified application and the (A) application at the same time, so the deadline for filing the (A) application is dependent on the date of the scheduled CPC public hearing to allow sufficient time for public notice of the CPC's hearing.

City Planning Commission

After the Borough President's review period, the CPC must hold a public hearing to either approve, approve with modifications or disapprove an application within 60 days.

CPC public hearings are generally held on Wednesdays, twice a month. They provide a forum for public officials, community groups and individual citizens to testify in favor of or in opposition to an application. This testimony is then logged as part of the official public record. Under the City Charter, the CPC is responsible for considering all of this input, including local and neighborhood views, as well as broader perspectives and citywide needs. A calendar listing the location, starting time, and items to be heard at each public hearing is posted on the DCP website, along with the annual schedule of CPC public meetings. Anyone wishing to speak is asked to sign up, and speakers are each allotted a limited amount of time for their remarks, after which the Commissioners may ask questions. Written comments can also be submitted by speakers at the hearing or by those who are unable to attend; details on this can be found on the DCP website.

Following the hearing, the CPC considers whether to approve, approve with modifications or disapprove the application, taking into account the recommendations received from the Community Board, the Borough President (and, where relevant, Borough Board) and testimony at the public hearing. Any modifications have to be “within the scope” of the originally proposed action, or of the (A) application. This means that a modification must remain within the subject matter of the application, and can reduce the amount of change proposed, but cannot introduce new subject matter or increase the degree of change under the zoning. For example, if a zoning amendment was proposing to change a Manufacturing District to an R8A District, the CPC could not modify the proposed zoning designation to a higher-density R10 District, but could modify the zoning designation to a lower-density R6A District. This limitation is in place to ensure that members of the public have adequate notice to understand the implications of a proposal and a chance to testify to the CPC.

For projects requiring an EIS, a Final EIS (or FEIS) must be issued 10 days before the CPC can vote on the land use action. The FEIS includes a summary of public comments on the environmental analysis and agency responses to these comments as well as any revisions or additional analysis necessary to support the responses to the received comments. The conclusions of the FEIS help inform the CPC's decisions about the approval, modification, or denial of an application. The CPC must also adopt a formal set of findings indicating that it has taken a close look at the impacts, mitigations and alternatives. These findings conclude the CEQR process.

Adoption of a CPC Report approving, modifying or disapproving an application requires an affirmative vote from a majority of at least seven of the Commissioners. When the report is favorably adopted, the CPC then files copies of its decision with the City Council. Disapproval of an application by the CPC is final and concludes ULURP.

The CPC Report for any action since 1938 can be found on the DCP website. With the inclusion of project descriptions, summary of testimony at different phases of review and insight into the Commission's deliberation, these Reports provide a historic record of land use actions in the city.

City Council Review

The City Council automatically reviews many ULURP actions that are approved by the CPC. For others, the Council may elect to review an application. For example, the Council is required to review zoning map changes, but may elect to review City Map changes (if it does, this is commonly known as Council “call-up”). If the Council decides to or is required to review an application, it has 50 days from receipt of the CPC Report to hold its own public hearing and either approve, approve with modifications or disapprove the decision of the CPC.

If, during the course of its review period, the Council decides it wants to approve an application with a modification, the proposed modification is referred back to the CPC for it to determine whether the modification is within the scope of the original application, based on the same criteria that apply to the CPC's modifications, or is beyond the scope and therefore would require additional review. The CPC has 15 days to make this determination, and during this period the City Council's 50-day clock is stopped. If no additional review is needed, the Council can then adopt the application with the modification.

A City Council action that approves, approves with modifications or disapproves zoning changes requires a majority vote of the Council. In addition, if the Council fails to act within its review period, the Council is deemed to have approved the decision of the CPC.

Mayoral Review

Mayoral approval is not required for a zoning change. A decision by the City Council to approve or disapprove a land use application is considered to be final unless the Mayor decides to veto a Council action within five days of the vote. The Council, by a two-thirds vote, can override a Mayor's veto within 10 days.

After Approval

After approval by the City Council, the land use action becomes effective immediately. For example, if a zoning amendment changes the applicable zoning district for a property, the owner can file plans and receive approval from the Department of Buildings under that new designation once the Council has voted to approve the action.

Other Public Review Processes

For CPC actions, the Applicant Portal on DCP's website lays out the forms and standards to follow for the variety of different application types. The BSA website includes information on the actions the Board is responsible for, as described below.

Zoning Text Amendments

When a zoning text amendment is part of a set of related actions that include a zoning map amendment or other action subject to ULURP, the actions travel together on the ULURP timeline, to enable comprehensive review of the overall project. However, when a zoning text amendment is not attached to such an action, it follows a similar but more flexible timeline.

Zoning text amendments come in a wide range of shapes and sizes – some may simply tweak a few words in the Zoning Resolution in a limited way, while others may run to hundreds of pages and modify regulations in districts throughout the city. The review process for zoning text amendments differs from the ULURP process in two significant ways. The review periods for Community Board and Borough President (and Borough Board, if necessary) run concurrently and the timeframe for their review is set by the CPC at the time an application is certified. Applications are usually sent out for review for 30 to 60 days, depending on the text amendment's complexity. The CPC review period is also not limited to the 60-day period set forth in ULURP. Instead, the CPC can take more or less time to finalize its consideration. The City Council is required to review text amendments and is bound by the same 50-day time limit as in the formal ULURP process. As with ULURP, the public review process for zoning text amendments is set out in the City Charter.

CPC Authorizations

CPC authorizations modify specific provisions of the zoning, limited in their scope and extent, if certain findings have been met. Authorizations do not require public hearings and are not subject to ULURP. However, the CPC informally refers applications to affected Community Boards for comment before acting on them. There are no fixed time frames for review.

BSA Special Permits

The Zoning Resolution delegates to the BSA the granting of special permits for the modification of certain zoning regulations that are generally more limited in scope or impact than those reviewed by the CPC, or which require expertise particular to the BSA. Unlike CPC special permits, BSA special permits are not subject to ULURP. However, they are subject to environmental review. Applications must be sent to the local community board, councilmember, borough president and DCP. The BSA must hold a public hearing before it can act on an application.

BSA Variances

As with BSA special permits, variances are not subject to ULURP but are still subject to environmental review and public notice requirements, and the BSA must hold a public hearing before it can act on them. See the "Other Zoning Fundamentals" section of Chapter 1 for more information about variances.

