



Buildings

NYC Buildings Department
280 Broadway, New York, NY 10007

Thomas Fariello, RA, Acting Commissioner



BUILDINGS BULLETIN 2014-001
Technical

Supersedes: Directive No. 28 of 1970; Departmental Memoranda dated February 2, 1971 and July 10, 1973 regarding Corporation Counsel Opinion Numbers 105,915 and 107,337

Issuer: Thomas Fariello, RA
Acting Commissioner

Issuance Date: January 9, 2014

Purpose: To clarify when privately owned mapped streets can be used for zoning purposes.

Related Code Section(s): ZR 12-10 (definition of "Zoning Lot") ZR 12-10 (definition of "Street Line") GCL 36
ZR 12-10 (definition of "Street") GCL 35

Subject(s): Mapped Street; Street; Street Line; Street Widening Area; Street Setback Line; Zoning; Floor Area

I. REFERENCE

The department will hereafter refer to this bulletin in lieu of Corporation Counsel Opinion Nos. 105,915 and 107,337.

II. DEFINITIONS

**ZR 12-10 (a)
Zoning Lot:**

Refers to paragraph (a) of the definition of zoning lot set forth in section 12-10 of the Zoning Resolution of the City of New York (ZR). Such zoning lot is identified by proof of a tax lot, or other public record showing the metes and bounds of a lot of record, as the zoning lot that existed on December 15, 1961, and such zoning lot has not been subdivided or merged thereafter.

**ZR 12-10(b),
(c) or (d)
Zoning Lot:**

Refers to the zoning lot described in paragraph (b) or (c) or (d) of the "zoning lot" definition set forth in section 12-10 of the ZR.

GCL §35:

Refers to section 35 of the New York State General City Law as relates to the right to build in the bed of a Mapped Street.

- GCL §36:** Refers to subdivision (2) of section 36 of the New York State General City Law as relates to required access from an improved street.
- Mapped Street:** A street that has been duly established on the official map or plan of The City of New York (“the City”). It is not a private road as that term is defined separately in section 12-10 of the ZR.
- Privately Owned Mapped Street:** A Mapped Street, or any portion thereof such as a street widening area, that is privately owned at the time of application for a permit for a new building or enlargement.
- Improved:** Refers to the existing built portion of the Privately Owned Mapped Street that is paved roadway, excluding any curbs and sidewalks.
- Unimproved:** Refers to any portion of the Privately Owned Mapped Street or portion thereof that is not Improved.
- Street Line:** The line that separates a Mapped Street from other land. (This may be a widening line.)

III. USE OF A PRIVATELY OWNED MAPPED STREET FOR ZONING PURPOSES

A. ZR 12-10(a) Zoning Lots

1. Zoning Calculations. A Privately Owned Mapped Street within a ZR 12-10(a) zoning lot shall be included for all zoning purposes, including but not limited to lot area, lot width, lot depth, floor area, lot coverage, density and open space. (SEE EXAMPLES 1, 2 and 4a)
2. Measurement of Required Front Yard, Setback or Open Areas. As a general rule, the front yard, setback or any required open areas including courts must be measured from the Street Line and not include the Privately Owned Mapped Street.(SEE EXAMPLE 2)

Exception 1: The required front yard, setback or open areas including courts shall be measured from the tax lot line, when all the following conditions are met:

- The Privately Owned Mapped Street is Unimproved at the time of application for a permit,
- The Privately Owned Mapped Street is not required to be Improved for any reason, and has received a waiver of all improvements from the New York City Department of Transportation (DOT), and
- The applicant submits a letter from DOT dated no earlier than thirty days prior to the filing of an application for development or enlargement with the department confirming that such Privately Owned Mapped Street is not part of a City capital improvement plan.

(SEE EXAMPLES 1a, 1b, and 1c)

Exception 2: The required front yard, setback or open areas including courts shall be measured from the improved portion of the Privately Owned Mapped Street, when all the following conditions are met:

- The unimproved portion of the Privately Owned Mapped Street has received a waiver of curb alignment from DOT, and
- The applicant submits a letter from DOT dated no earlier than thirty days prior to the filing of an application for development or enlargement with the department confirming that such portion of the Privately Owned Mapped Street is not part of a City capital improvement plan.

(SEE EXAMPLE 4a)

Exception 3: Where the Board of Standards and Appeals (BSA) has granted approval to build in the bed of the mapped street pursuant to GCL §35, and granted a waiver pursuant to ZR §72-01(g), the measurement of a front yard, setback or open area shall be as provided by BSA.

B. ZR 12-10(b), (c) or (d) Zoning Lots

1. Zoning Calculations. A ZR 12-10 (b), (c) or (d) zoning lot by definition must be located within a block, which by definition, does not include a street.

However, a Privately Owned Mapped Street shall be included in the zoning calculations of the zoning lot portion of the tax lot, for all zoning purposes, including but not limited to lot area, lot width, lot depth, floor area, lot coverage, density and open space when:

- a. BSA grants approval to build in a Mapped Street pursuant to GCL §35 as though the street were not there; or
- b. The following conditions are met:
 - The Mapped Street is Unimproved at the time of application for a permit, and
 - The Mapped Street is not required to be improved to satisfy the access requirements of GCL §36

(SEE EXAMPLES 3a and 4b)

A Privately Owned Mapped Street that is Improved and open at the time of application for a permit or that is required to be improved to satisfy GCL §36 access requirements may not be included in any zoning calculations.

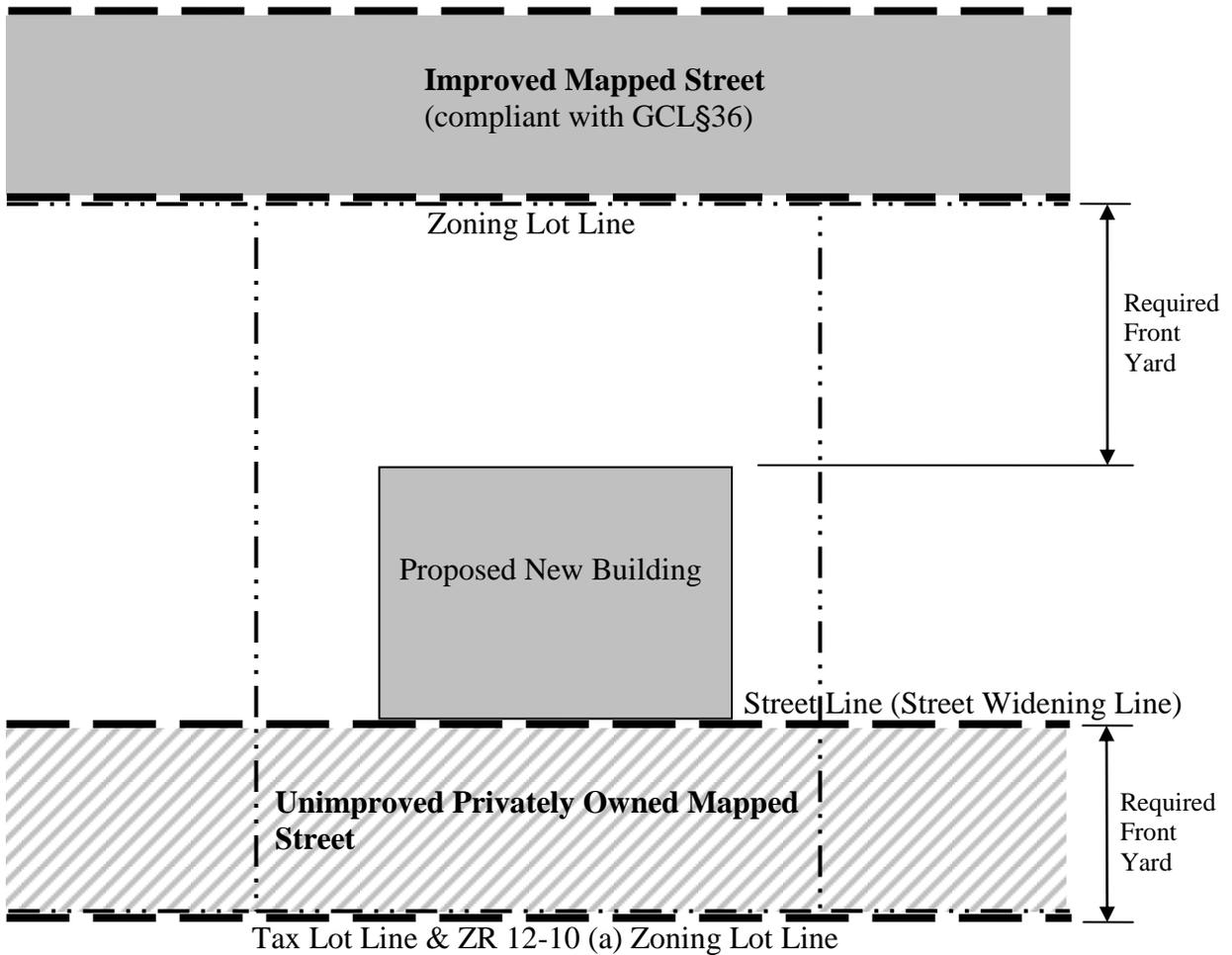
2. Measurement of Required Front Yard, Setback or Open Areas. The required front yard, setback or open areas including courts shall be measured from the Street Line bordering the zoning lot and not include the Privately Owned Mapped Street. (SEE EXAMPLES 3a and 4b)

Exception 1: Where the BSA has granted approval to build in the bed of the mapped street and granted a waiver pursuant to ZR § 72-01(g), the setback shall be as provided by BSA. (SEE EXAMPLE 3b)

Exception 2: Where a building on a ZR 12-10(a) or 12-10(b) zoning lot existed prior to December 15, 1961, the front yard, setback or open area may remain as it existed in the 12-10(a) or 12-10(b) zoning lot, even after a zoning lot merger or subdivision that creates 12-10(c) or 12-10(d) zoning lots. However, any development or enlargement on the 12-10(c) or 12-10(d) zoning lot must comply with the general rule set forth herein.

C. Street Setback Line, where applicable

In accordance with the definition of "street setback line" set forth in Section 12-10 of the Zoning Resolution of the City of New York, where the City Map in the Borough of Staten Island or in Community District 10 in the Borough of Queens shows a street setback line, front yard, setbacks and court regulations must be measured from such street setback line and not from the Street Line or the tax lot line.



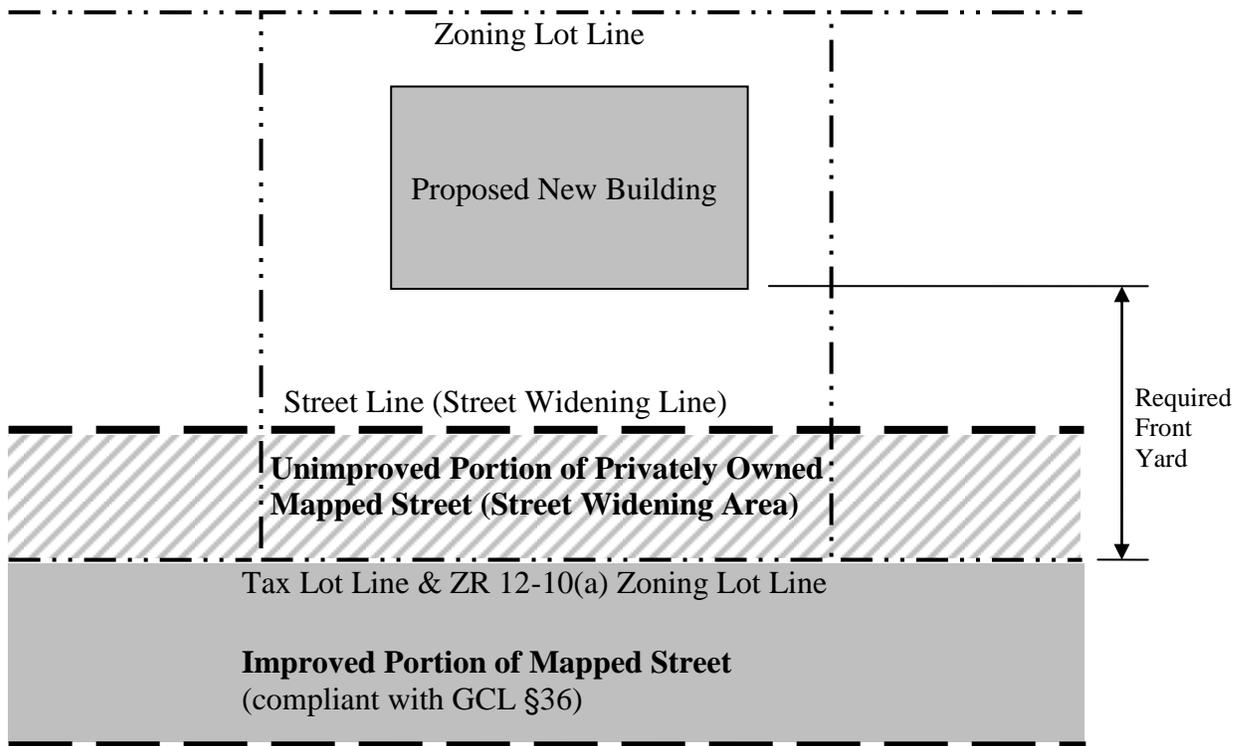
Example 1a: Mapped Street within a ZR 12-10(a) Zoning Lot, Unimproved, with DOT Waiver of All Improvements and not part of DOT Capital Improvement Plan.

Is the hatched area within the zoning lot included in zoning calculations?

Yes.

Where will the measurements for front yard, setback and any required open areas including courts, be taken from?

From the tax lot line because the Unimproved Privately Owned Mapped Street is not needed for GCL §36 access or for any other reason and there is a DOT waiver of all improvements and applicant has a DOT letter confirming that it is not part of a City Capital Improvement Plan.



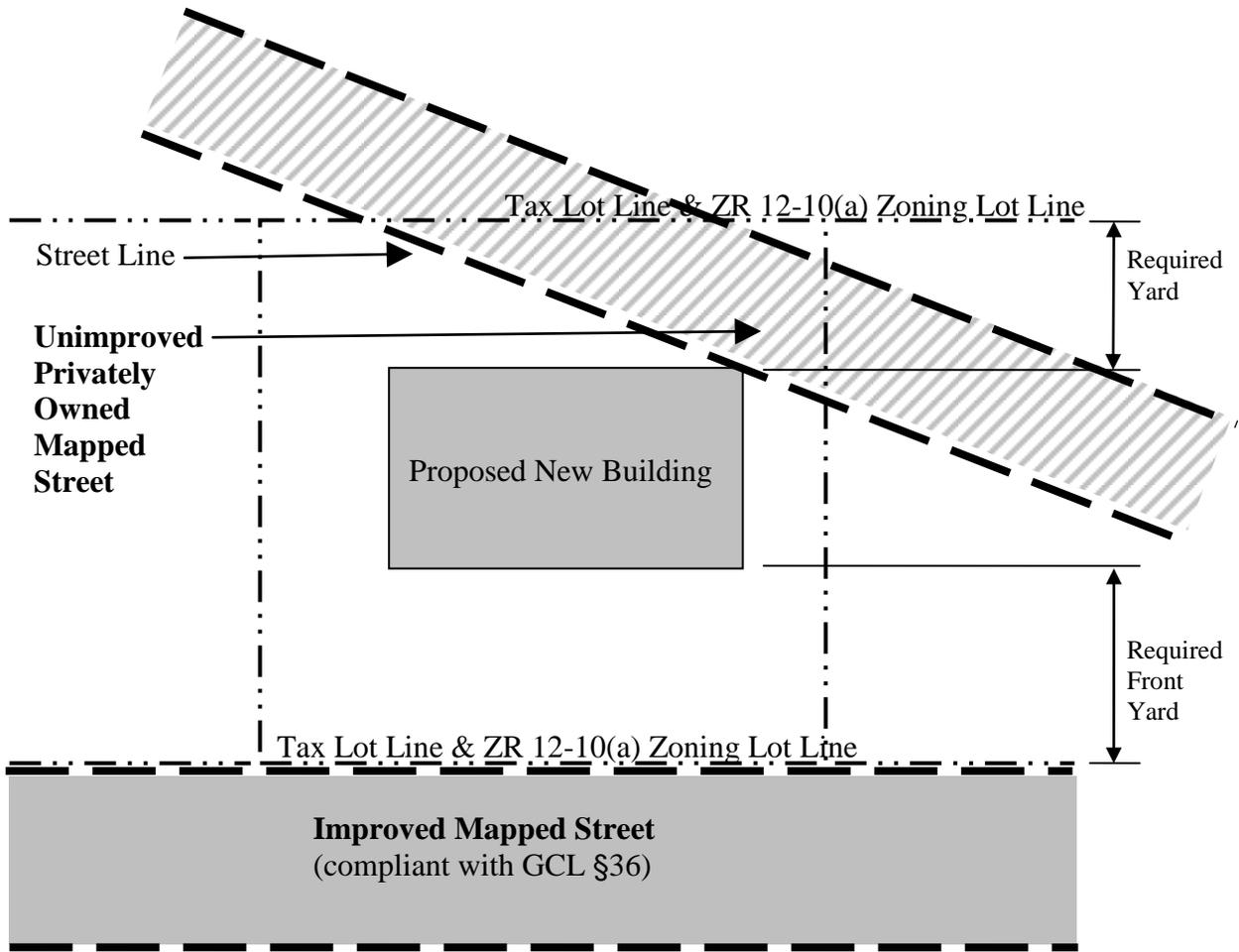
Example 1b: Street Widening Area within a ZR 12-10(a) Zoning Lot, Unimproved, with DOT Waiver of Curb Alignment and not part of DOT Capital Improvement Plan.

Is the hatched area within the zoning lot included in zoning calculations?

Yes.

Where will the measurements for front yard, setback and any required open areas including courts, be taken from?

From the tax lot line because the Unimproved Privately Owned Mapped Street is not needed for GCL §36 access or for any other reason and there is a DOT waiver of curb alignment and applicant has a DOT letter confirming that it is not part of a City Capital Improvement Plan.



Example 1c: Unimproved Privately Owned Mapped Street within a ZR §12-10(a) Zoning Lot, with DOT Waiver of All Improvements and not part of DOT Capital Improvement Plan.

Is the hatched area within the zoning lot included in zoning calculations?

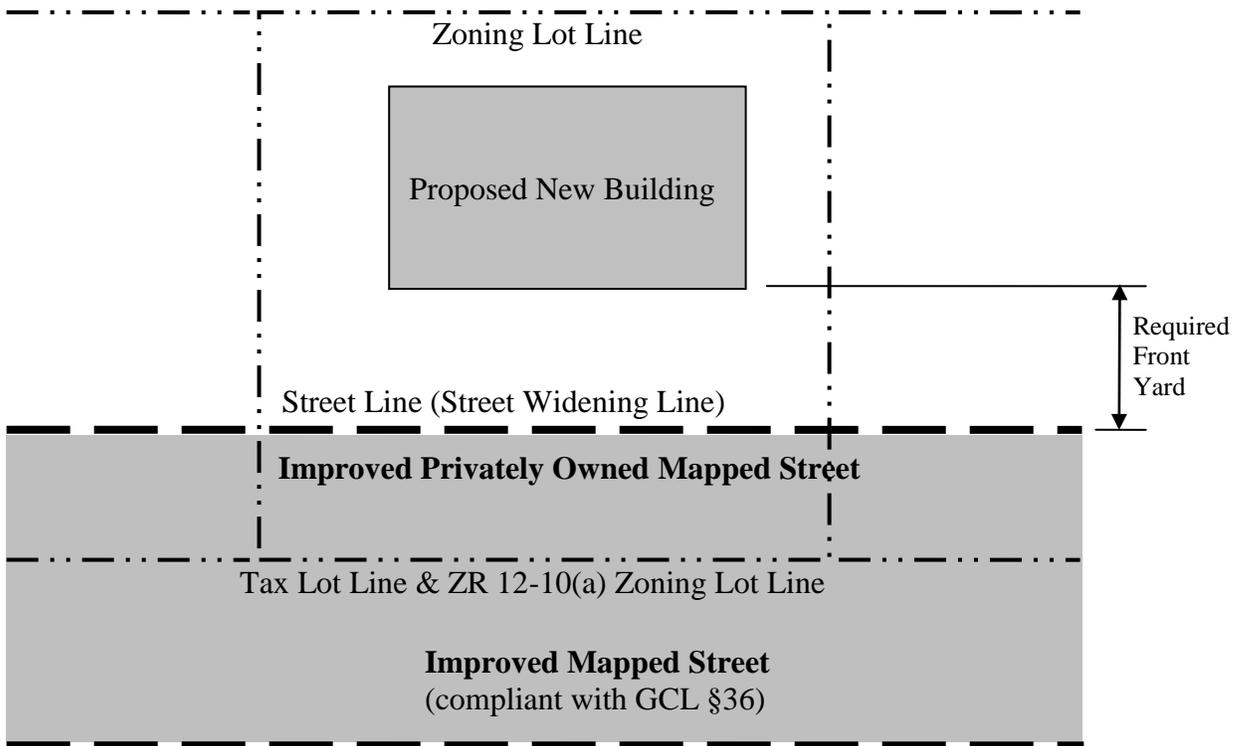
Yes.

Where will the measurements for front yard, setback and any required open areas including courts, be taken from?

From the tax lot line that coincides with the street line.

Do I need to set back from the Unimproved Privately Owned Mapped Street?

No, because it is not needed for GCL §36 access or for any other reason and there is a DOT waiver of all improvements and applicant has a DOT letter confirming that it is not part of a City Capital Improvement Plan. Setback shall be from the Tax Lot Line.



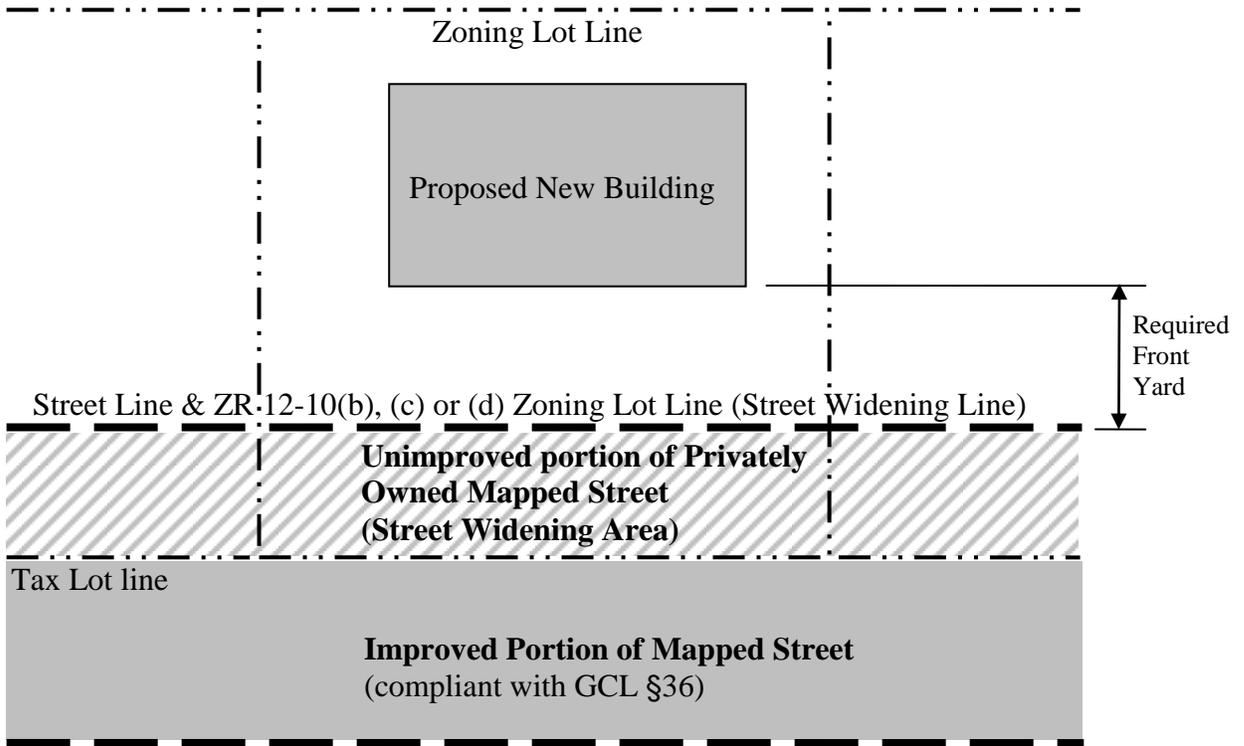
Example 2: Portion of Privately Owned Mapped Street within a ZR 12-10(a) Zoning Lot which either is: Improved, or with no DOT Waiver of Curb Alignment or is part of DOT Capital Improvement Plan.

Is the improved portion of the Privately Owned Mapped Street included in zoning calculations?

Yes, because it is part of the zoning lot.

Where will the measurements for front yard, setback and any required open areas including courts, be taken from?

From the Street Line because the Privately Owned Mapped Street is Improved



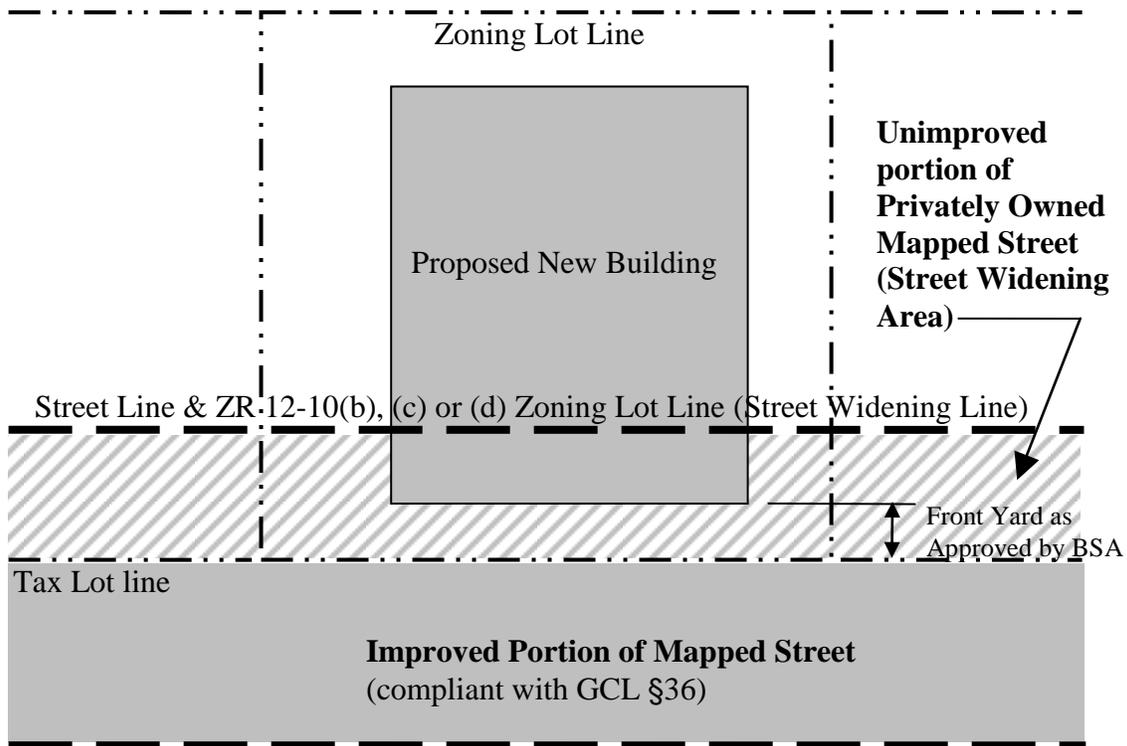
Example 3a: Street Widening Area Fronting on a ZR 12-10(b), (c) and (d) Zoning Lot

Is the hatched area within the tax lot included in zoning calculations?

Yes, since it is unimproved at the time of application for permit and not required for GCL §36 compliance.

Where will the measurements for front yard, setback and any required open areas including courts, be taken from?

From the Street Line



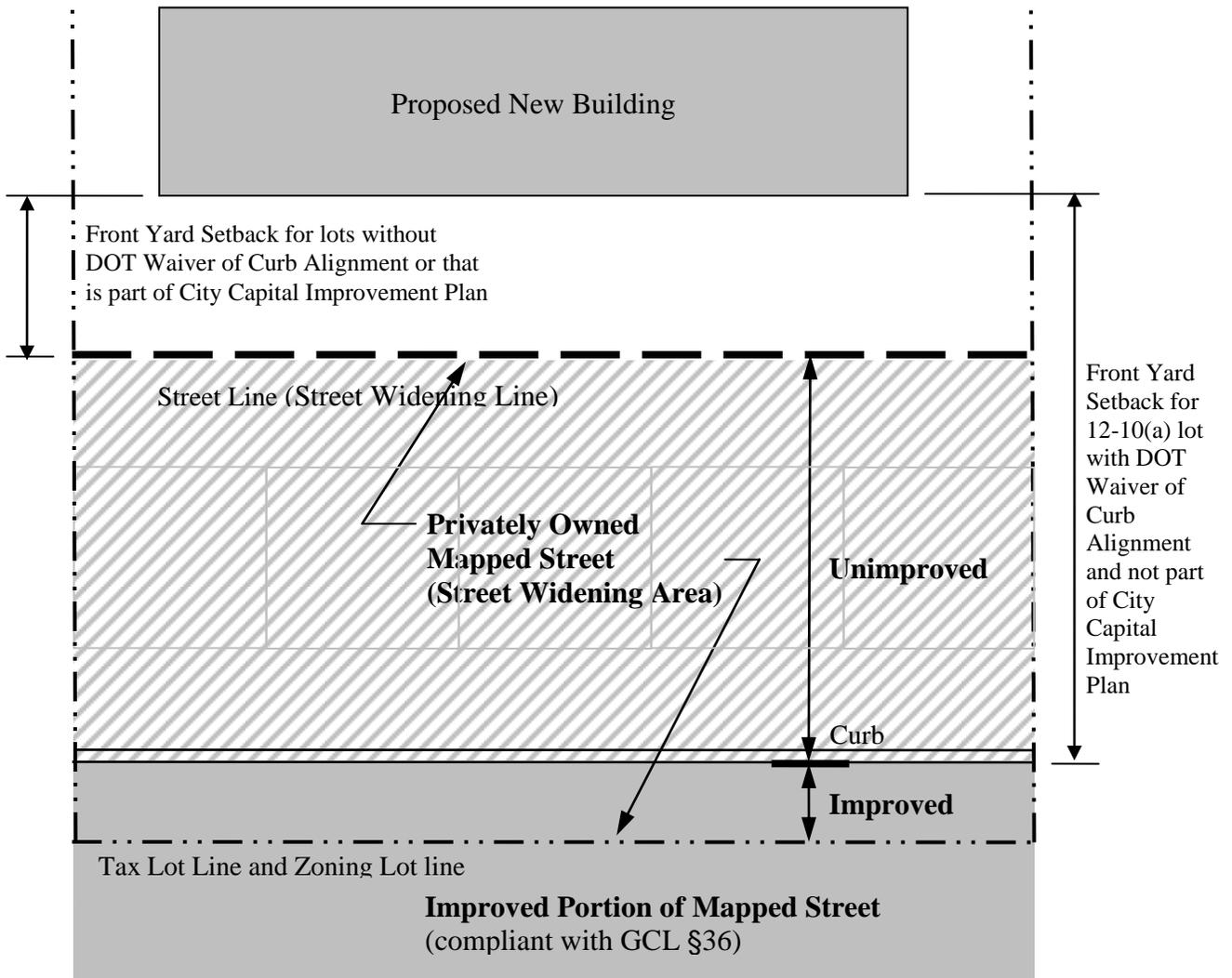
Example 3b: Portion of Building located in Street Widening Area Fronting on a ZR 12-10(b), (c) and (d) Zoning Lot

Is the hatched area within the tax lot that is the subject of a permit pursuant to GCL §35 included in zoning calculations?

Only to the extent BSA's approval to build in the bed of a mapped street pursuant to GCL §35 is conditioned on zoning compliance as though the street were not there.

Where will the measurements for front yard, setback and any required open areas including courts, be taken from?

Applicant must obtain a waiver from BSA pursuant to ZR §72-01(g) or a variance pursuant to ZR §72-21. The BSA waiver or variance will control.



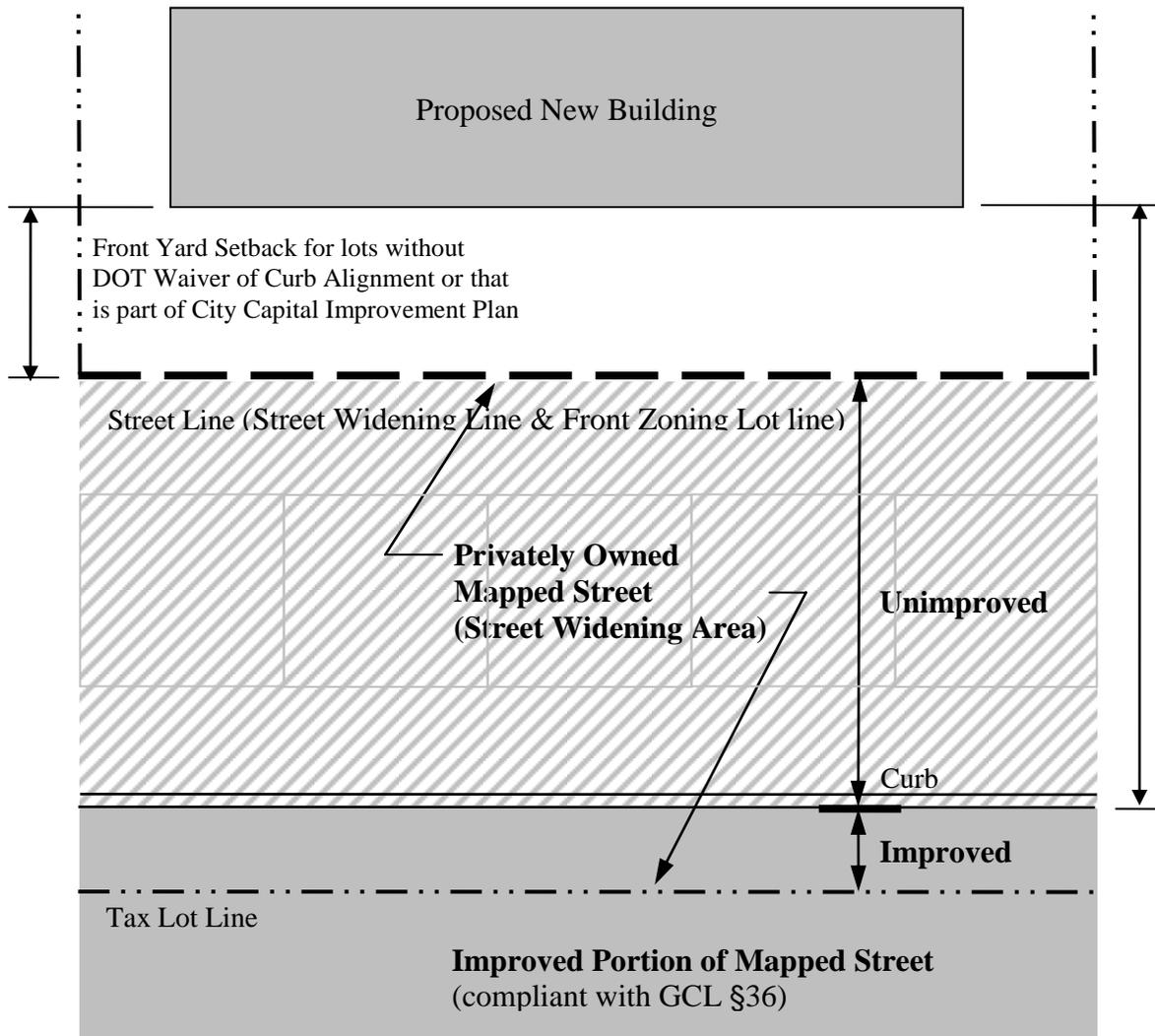
Example 4a: Portion of Privately Owned Mapped Street is Improved for ZR 12-10(a) zoning lots

What portion of the Privately Owned Mapped Street is included in zoning calculations for ZR 12-10(a) zoning lots?

All portions within the 12-10(a) zoning lot.

For 12-10(a) zoning lots, where will the measurements for front yard, setback and any required open areas including courts, be taken from?

From the Improved Portion of the Mapped Street provided the Unimproved Privately Owned Mapped Street is not needed for GCL §36 access or for any other reason and there is a DOT waiver of curb alignment and applicant has a DOT letter confirming that it is not part of a City Capital Improvement Plan.



Example 4b: Portion of Privately Owned Mapped Street is Improved on ZR 12-10(b)(c)(d) zoning lots

What portion of the Privately Owned Mapped Street is included in zoning calculations for ZR 12-10(b), (c) or (d) zoning lots?

The area that is “Unimproved” at the time of application and not required for GCL §36 compliance; the sidewalk, the curb, and the area between the sidewalk and curb are considered “Unimproved” and may be included in the zoning calculations.

For 12-10(b), (c) and (d) zoning lots, where will the measurements for front yard, setback and any required open areas including courts, be taken from? From the Street Line.

IV. USE OF A PRIVATELY OWNED MAPPED STREET FOR PARKING AND CONSTRUCTION

A. Required Parking

1. No portion of a Privately Owned Mapped Street in a 12-10(b) (c), or (d) zoning lot may be used to satisfy required parking.
2. Permitted parking may be located in the Privately Owned Mapped Street.

B. BSA Approval to Construct in Mapped Street

1. No permit may be issued to construct a building or other structure in the bed of a mapped street without an approval from the Board of Standards and Appeals (“BSA”) pursuant to GCL §35.
2. A GCL §35 approval from BSA does not authorize a waiver of bulk and setback requirements. Where the BSA has authorized construction within the bed of the mapped street, zoning will be analyzed in accordance with the terms and conditions of the BSA permit.