

Blog Post

How City Planning Commission Special Permits are Hindering New York's Hotel Scene

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🔑 Key Take: *A cumbersome process for special permits is preventing hotel developers from meeting hotel room demand in New York's billion-dollar hotel industry.*

As New York City's tourism and hospitality sectors continue their post-pandemic recovery, the demand for new hotel rooms may be difficult to meet due to changes in the city's zoning laws over the past several years. These zoning text amendments have eliminated most as-of-right transient hotel developments, conversions, or enlargements in all areas of the city. Instead, new hotel projects require a special permit from the City Planning Commission (CPC) – a discretionary land use action that is subject to public review and influence from various civic organizations and interested trade groups.

Piecemeal text amendments over the years have mandated special permits for new hotel developments in select special zoning districts

throughout the city. In 2018, the city council adopted an amendment extending the special permit requirement to all manufacturing zoning districts. Then, in December 2021, the council extended the CPC special permit citywide through the adoption of Citywide Hotels Text Amendment. This text amendment requires a CPC hotel special permit for the following projects located anywhere in the city:

- the development of a transient hotel building;
- change of use or conversion to a transient hotel, or the proposed enlargement of a building to a transient hotel if such building did not contain a transient hotel use as of December 9, 2021; or
- an enlargement or extension of a transient hotel that existed prior to December 9, 2021, that increases the floor area of such use by 20 percent or more.

The CPC special permit is a discretionary land use action subject to the city's Uniform Land Use Review Procedure (ULURP). The findings that must be made by the CPC in granting any special permit include that (i) the site plan incorporates elements addressing any potential conflicts between the proposed use and adjacent uses, (ii) the use will not cause undue vehicular or pedestrian congestion on local streets or unduly inhibit vehicular or pedestrian movement or loading operations, and (iii) the use will not impair the future use or development of the surrounding area.

As part of the CPC special permit process, the Department of City Planning must review a separate City Environmental Quality Review application, which analyzes the projected environmental impacts generated by the proposed development. This in-depth environmental review includes, but is not limited to, pedestrian and vehicular circulation, shadow studies, air quality, effect on existing mass transit, and quality of life issues. If significant environmental impacts are projected due to the

proposed development, a more comprehensive environmental impact statement must be prepared.

Once an applicant has completed the land use and environmental application review with the Department of City Planning, the project is ready to enter the formal ULURP public review process, which lasts a maximum of 7.5 months. The ULURP process is mandated by the City Charter and involves hearings with the local community board, borough president, CPC, and often the city council. The process almost always requires the support of the local council member, as the full council typically defers to the local member on land use actions. It is during these deliberations that interested groups, such as neighborhood associations and trade unions, may attempt to influence the proceedings, leading to an uncertainty of outcome. In total, these types of applications, inclusive of the pre-certification and public review process, typically take between 24 to 30 months and can cost hundreds of thousands of dollars to process.

Hotels and their related uses are a vital part of New York City's economy and its post-pandemic recovery, contributing billions of dollars in revenue each year. Unfortunately, the time, cost, and uncertainty of success in pursuing a CPC special permit are significant factors that may deter developers from pursuing new hotel projects that will be needed to address increasing demand.

The impacts of the Citywide Hotels Text Amendment have not been fully realized yet since the amendment included grandfathering provisions for hotel projects already in the development pipeline and for existing hotels shuttered during the pandemic. However, a search of the Department of City Planning's Zoning Application Portal is particularly telling for new hotel projects. Since the adoption of the Citywide Hotel Text Amendment, only two hotel special permit applications have been filed with the Department of City Planning. Both of

these applications involve large development projects that necessitated ULURP for other land use actions, and so far neither project has completed the public review process.

Akerman's New York Land Use and Zoning practice is comprised of attorneys and planners who have significant experience working with the Department of City Planning (DCP), City Planning Commission, and New York City Council to successfully shepherd land use applications through the ULURP entitlement process.

Citations

[1] *Woolley v. Embassy Suites, Inc.*, 278 Cal.Rptr. 719 (Cal.App.1991); *see also Pac. Landmark Hotel, Ltd. v Marriott Hotels, Inc.*, 19 Cal App 4th 615 (Cal Ct App 1993); *Govt. Guar. Fund of Republic of Finland v Hyatt Corp.*, 95 F3d 291 (3d Cir 1996); *2660 Woodley Rd. Joint Venture v ITT Sheraton Corp.*, CIV. A. 97-450 JJF, 1998 WL 1469541 (D Del Feb. 4, 1998).

[2] *See, e.g., Marriott International, Inc. v. Eden Roc, LLLP*, 962 N.Y.S.2d 111 (N.Y. App. Div. 2013)(holding that a hotel management agreement is a personal services contract that may not be enforced by injunction).

[3] As noted in *Marriott Hotel Services, Inc. v Wardman Hotel Owner, L.L.C.*, 2020 WL 10758279, at *8 (Md Cir Ct, Montgomery Cnty Dec. 3, 2020), the bill file for Section 23-102 “makes plain that this provision was added to allow enforcement of hotel management agreements by specific performance despite their being considered personal service or agency contracts.” (footnote omitted).

[4] *IHG Management (Maryland) LLC v. West 44th Street Hotel LLC*, 163 A.D.3d 413 (1st Dep’t 2018) (“It is undisputed that the [agreement] at issue provides for the application of Maryland law, which

specifically provides that a court may order specific performance for anticipatory or actual breach or attempted or actual termination of a hotel management agreement.”) (citing Md. Code Ann., Com. Law §§ 23-102[b]; 23-101[c])).

[5] *Marriott Hotel Services, Inc. v Wardman Hotel Owner, L.L.C.*, 2020 WL 10758279, at *8 (Md Cir Ct, Montgomery Cnty Dec. 3, 2020).

[6] *Bigstore Hotel Partners, LLC v. IHG Management (Maryland) LLC*, No. C-13-CV-21-000391 (Md Cir Ct, Howard Cnty Jan. 12, 2022) (granting owner’s motion to dismiss hotel manager’s counterclaim for specific performance).

[7] Author’s note: The court’s quote is from the hearing transcript and the court’s ruling at the conclusion of the hearing, which was followed by a one-page order that incorporated the court’s reasonings its the order.