

Practice Update

Green Fast Track for Housing Regulations Seek to Expedite Housing Development in New York

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New York City recently amended the City Environmental Quality Review (CEQR) regulations to exempt small residential developments from environmental review. The regulations, called “Green Fast Track for Housing,” seek to expedite review of discretionary land use actions facilitating the development of much needed housing in New York. The amended regulations took effect last month. As is usually the case in the regulatory sphere, the devil is in the details.

The new regulations, codified at 5 NYCRR Section 5-105 (e) for housing, exempt new developments or enlargements of existing developments containing no more than 250 dwelling units and no more than 35,000 square feet of non-residential space in districts zoned R-5 through R-10, and such new developments or enlargements in districts zoned R-1 through R-4 containing no more than 175 dwelling units and 25,000 square feet of non-residential space from environmental review under CEQR.

These exemptions eliminate the need for what is typically a lengthy and prolix process of determining if a proposed land use action would create significant adverse environmental impacts. Recent experience is that that determination often takes up to a year, even if the ultimate outcome is that there

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would not be any significant adverse impacts. In cases where there is a probability of such impacts, the process is even longer because that probability will trigger the need for a full environmental impact statement, which is normally an additional 12 to 18 month process.

As is typical of regulation, the amendments giveth and taketh back. In order to demonstrate that a proposed development or enlargement is entitled to the exemption, the following conditions, among others, must be met:

(a) No new building or enlargement may burn fossil fuels for heat or hot water.

(b) The applicant must provide a Phase I Environmental Site Assessment (ESA) and a determination by the lead agency that there is no need for further investigation, or, if there is, the applicant must consent to placing an “E” designation on the property under existing provisions of the Zoning Resolution.

(c) The applicant must obtain determinations from the Landmarks Preservation Commission that the property is not in an archeologically significant area or is designated, calendared, or eligible to be landmarked, or has been formally determined to be eligible for placement on the National Register of Historic Places, and if the site does not meet these criteria, that the proposed development would not have any adverse effects or require any further study.

(d) If the property is within 90 feet of a designated or eligible landmark or National Register listed or eligible site, the applicant must agree to prepare a construction protection plan in accordance with a 1998 Department of Buildings protocol known as TPPN 10/88.

(e) If the property is within specified proximity of permitted and un-permitted air emission

sources, the applicant must demonstrate to the lead agency that emission will not exceed National Ambient Air Quality Standards (NAQS).

(f) The applicant must provide noise studies to the lead agency demonstrating that ambient noise levels at the site will not exceed a level of 70 dBA, or agree to the placement of an E designation for noise on the property.

Finally, the construction of the development or enlargement must be completed within 24 months. The apparent reason for this is that under CEQR methodologies, if construction of a project would subsume more than two years, a detailed analysis of construction impacts is required. There is little by way of explanation in the regulations as to how and by whom these conditions will be enforced, since once a project is determined to meet the above criteria, it may proceed without any further action relating to CEQR.

The regulations, though well-intentioned, seem to place some burdens on those seeking the exemption which could be characterized as “CEQR-light.” Akerman has decades of experience in the CEQR aspects of land use approvals and can be of assistance in navigating these new rules.

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