



Adding value through special permits administered by the BSA-Enlarge your building

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Special permits are discretionary land use actions undertaken by the Board of Standards and Appeals (BSA) and the City Planning Commission pursuant to the Zoning Resolution of the city of New York (ZR). There are dozens of special permits that facilitate modification of use and bulk regulations. This article focuses on three special permits administered by the BSA that permit enlargements of existing buildings. These special permits can facilitate the enlargement of existing residential or commercial penthouses, or possibly the introduction of a penthouse level to an existing building. For the homeowner seeking larger living space, the special permit provides a meaningful opportunity to enlarge a home beyond what is normally allowed. In New York City, where land is such a valuable commodity, so valuable that "air rights" are routinely bought and sold, these special permits are like precious found land. The findings for these special permits set forth a fairly bright line set of conditions which enable the applicant to ascertain, with a reasonable degree of certainty, the likelihood of success prior to filing a special permit application.

It is important to note that a special permit is very different from a variance, also a discretionary action administered by the BSA. The grant of a variance is characterized as "relief" from the zoning regulations as applied to a unique property burdened with a hardship. The special permit, however, requires no finding of unique conditions or hardship. The simple desire to realize the benefits of the special permit is a legitimate basis for such an application. Moreover, the special permit findings are generally easier to satisfy than the more complex variance findings.

The three special permits reviewed below provide distinct mechanisms for the enlargement of existing buildings that are either complying or non-complying. These special permits cannot be used in connection with new building or "NB-permit" construction.

Enlargement of Buildings

Containing Residential Use

This special permit, ZR Â§ 73-621, applies city-wide to pre-1961 buildings containing residential use and allows the following zoning bulk provisions to be modified: Floor Area Ratio (FAR) (the ratio of built area to lot area); open space ratio; and lot coverage. Significantly, this special permit provision can be used to enlarge a building that is either complying (e.g., the building has not used all of its available FAR) or non-complying (e.g., the building exceeds its maximum available FAR). This section can be used to enlarge residential buildings as well as mixed-use buildings containing residential use.

For example, using this special permit, the FAR for a site may reach, but not exceed, 110% of the maximum applicable FAR. In the instance of a lot of 10,000 s/f and an applicable FAR of 10.0, a maximum of 100,000 s/f of floor area could be constructed. If an existing pre-1961 building on such site contains 96,000 s/f, utilizing the special permit could enable up to 14,000 s/f of floor area to be

added to the building. Alternatively, if an existing building on such site contains 104,000 s/f, utilizing the special permit could enable up to 6,000 s/f of floor area to be added to the already overbuilt building. In the foregoing examples, the building might be a pre-1961 co-op apartment building seeking to add a duplex level to an existing penthouse.

Enlargement of

Non-Residential Buildings

The companion special permit for non-residential buildings under ZR Â§ 73-63 is also applicable city-wide to pre-1961 buildings. The only bulk provision modifiable under this special permit is FAR. The FAR can be increased in such building up to 110% of the maximum allowable FAR. There is also an additional limitation that the enlargement may not exceed 10,000 s/f. There is no such limitation in the ZR Â§ 73-621 special permit.

Enlargement of

Single and Two-Family Homes

The home enlargement special permit under ZR Â§ 73-622 only applies to single and two-family homes in Brooklyn, specifically in Community Districts 10 (Bay Ridge, Dyker Heights, Fort Hamilton), 11 (Bensonhurst, Bath Beach), 15 (Manhattan Beach, Sheepshead Bay, Gerritsen Beach, Homecrest), and a portion of Community District 14 (Midwood). The enlargement may create or increase non-compliance with regard to lot coverage, open space, FAR, side yards, rear yard or perimeter wall height, subject to specific limitations. A typical special permit home enlargement application may involve an existing 1,800 s/f house located on a 4,000 s/f lot in an R2 zoning district (.50 is the maximum permitted FAR). That house would typically have a 30 ft. rear yard. The special permit allows the expansion of the building into the rear yard (provided at least a 20 ft. rear yard is maintained), and possibly an increase of the home's FAR to .95 (yielding a total floor area of 3,800 s/f). This typical house was reasonably enlarged by over 100% in accordance with the special permit regulations, and in a manner otherwise prohibited by the underlying zoning.

These special permits, and there are many others,¹ provide important opportunities to improve the value and utility of existing buildings. So before you walk away from a contemplated enlargement because it seems prohibited by zoning or because a variance seems too difficult, consider the upside of a special permit.

The foregoing is an overview for general informational purposes only. It does not constitute legal advice and is not a comprehensive review of the zoning sections discussed herein.

¹ There are special permits that provide for the provision of rooftop parking, reduction in the amount of required parking for certain uses, modification of use and bulk for properties with landmark implications, and many others.

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