



City of Yes for Housing Opportunity: Improving the ability to transfer a landmark's development rights - by Michael Smith and Robert Huberman

March 11, 2025 - Front Section



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New York City real estate owners and developers have long asked us about transferring unused development rights from an individual landmark to a site across the street, through a 74-79 Special Permit issued by the City Planning Commission (CPC). While these transfers have historically been rare due to a time-consuming, uncertain approval process, with the recent changes to the City's zoning regulations — specifically, the “City of Yes for Housing Opportunity” (COY) — these transfers have become much easier and more flexible.

The Old Process: Red Tape and Restrictions

Previously, certain landmarked building owners could apply to transfer unused development rights from a landmarked building via the 74-79 Special Permit issued by the CPC. This process allowed development rights to be transferred to an adjacent (contiguous) zoning lot, including those directly across the street and, if the transferring site was a corner lot, across an intersection. However, it was lengthy and uncertain, requiring a formal application through the Uniform Land Use Review Procedure (ULURP), which includes reviews by the community board, borough president, CPC and city council. This process could take 18-24 months, required discretionary approval, and the receiving site, generally, was limited to a 20% increase in its otherwise permitted zoning floor area (ZFA). As a result, fewer than 15 of these transfers actually occurred in over 50 years.

The New COY Zoning Changes: A Streamlined Process and Geographic Flexibility

With the COY zoning overhaul, transferring unused development rights from a landmarked building

has become significantly easier and more flexible. The need for a Special Permit has been eliminated, and the transfer process is now “ministerial”, meaning that discretionary approval from the CPC is not required. This major shift allows for much faster and more predictable outcomes.

COY dramatically increases the number of potential receiving sites for these valuable air rights. Indeed, unused development rights from an individual landmark can now be transferred throughout the entire block, as well as to zoning lots directly across the street from the block containing the landmark building. Moreover, while previously the 74-79 Special Permit process was not available to landmarked buildings within a historic district, the new transfer process removes this prohibition so long as the portion of the zoning lot containing the landmark is not used for cemetery purposes, statues, monuments, or bridges.

While the approval process is simplified, the receiving site’s total ZFA increase is still capped: the receiving site can increase its ZFA by up to 20% or 30%, depending on the zoning district.

Additionally, where proposed buildings will not exceed the maximum permitted building height by more than 25%, receiving sites can obtain certain bulk waivers through a process which, while slightly more involved, is not subject to ULURP. More significant increases in height and bulk would still require the traditional Special Permit process, but this is now the exception rather than the rule.

The COY zoning changes have significantly improved the process for transferring unused ZFA from landmarked buildings, providing more opportunities for developers to enhance their projects and for owners of landmarked properties to generate revenue. The process is now more predictable and accessible, ideally making these transactions more common in the years ahead.

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New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540