



RAFAEL E. CESTERO, Commissioner

Office of Development
DIVISION OF HOUSING INCENTIVES
100 GOLD STREET, NEW YORK, N.Y. 10038

HOLLY LEICHT, DEPUTY COMMISSIONER
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421-a Declaratory Ruling Request Form

Developers or project sponsors may request a 421-a declaratory ruling for a specific or hypothetical site, project, fact pattern or interpretation of the applicability of a specific provision of the 421-a Rules. Declaratory rulings are provided at the discretion of HPD. A declaratory ruling relates only to the specific request and may not be used or relied upon in connection with any other application or project. In addition, all projects must comply with the 421-a requirements in effect at the time benefits are issued.

Send requests for a declaratory ruling to Tax Incentive Programs, HPD, 100 Gold Street, Room 3Z-7, New York, NY 10038. For questions, call (212) 863-7414. Further information may be obtained by calling the 421-a Program at (212) 863-8540 or by visiting the 421-a webpage at: <http://www.nyc.gov/html/hpd/html/developers/421a.shtml>.

Requests for a Declaratory Ruling should include a (1) cover letter describing the project (name, address, borough, block and lot(s), pertinent details) and addressing the specific information needed to comply with the requirements of 421-a listed below; (2) any supporting documentation; and (3) a check in the amount of \$1,500 made payable to the NYC Department of Finance.

Commencement of Construction:

- State the date upon which construction will commence or has commenced pursuant to a New Building or Alteration permit based on architectural, plumbing and structural plans approved by the Department of Buildings (“DOB”). For information on the definition of commencement of construction, please see §6-09(a) of the Rules or visit the 421-a webpage at <http://www.nyc.gov/html/hpd/html/developers/421a.shtml>.

New Multiple Dwelling Requirement:

- A project is eligible for §421-a benefits only if it is a new multiple dwelling(s). A new multiple dwelling may include new residential construction and the concurrent conversion, alteration or improvement of a pre-existing building or structure (see §6-02(b) of the Rules and §421-a(1)(c)).
- State whether construction will result in a new multiple dwelling(s) constructed on land entirely vacant and unimproved as of the date of commencement.
- If the new multiple dwelling will include new residential construction and the concurrent conversion, alteration or improvement of a pre-existing building or structure, provide an architect’s letter and demolition/alteration plans describing the extent to which the existing building will be demolished and retained.



Additional Eligibility Requirements:

- State whether the site is situated on land mapped as a public park or land utilized for 10 or more consecutive years immediately prior to October 1, 1971 as a private park (see §6-02(c)(5 and 6) of the Rules).
- State whether the project will be used as a hotel or for single room occupancy (see §6-02(c)(3 and 4) of the Rules).
- State whether the project will consist of 100 or more units and, if so, whether it will comply with the room count requirement (see §6-02(e)(2) of the Rules).
- State whether the site contained any Class A dwelling units immediately prior to commencement and, if so, whether the project will comply with the Class A unit replacement requirement (see §6-02(e)(3) of the Rules).
- State whether the project is receiving or expects to receive other real estate benefits concurrently under any other state or local law (see §421-a(2)(c)(i)). If a condominium unit in the building expects to receive real estate benefits under another program, please identify the program and indicate whether this condominium tax lot will be included as part of a 421-a application (see §6-02(c)(1) of the Rules).
- State whether commencement of construction will occur before December 28, 2010 (see §§421-a(2)(a)(iv)(a) and 421-a(2)(c)(ii)).
- State whether the project will comply with the timing requirements for filing applications for preliminary and final certificates of eligibility (see §§6-05(b) and 6-05(d) of the Rules).
- State whether the building will register with HPD in accordance with the provisions of article two of subchapter four of the Housing Maintenance Code.
- State whether the project will comply with the Energy Star requirements (see 11.245.8 of the Administrative Code and §6-05(d)(1)(viii) of the Rules).
- If the Project contains 50 or more units, and if less than 50% of these units are affordable to households at or below 125% of area median income, state whether the project will comply with the prevailing wage requirements (see §421-a(8)).
- If the project will be operated as a rental, state whether it will comply with the rent stabilization and maximum monthly rent calculation requirements (see §§6-02(g)(2) and 6-04 of the Rules).
- If the residential units will be owned as condominiums or by a cooperative corporation, state whether the project will comply with the condominium or cooperative plan filing requirements (see §6-05(d)(1)(iii) of the Rules).
- If the project contains 20 or more units, state whether it will comply with the community board notice requirements (see §6-03 of the Rules).



Requirements for Projects Constructed On or After July 1, 2008:

- **Affordability:** if a project contains income restricted units, please state the number of units restricted and the percentage of area median income to which the income of the tenant or purchaser is restricted.
- **Substantial Governmental Assistance:** if a project expects to receive substantial governmental assistance, state the agency and the program that will provide the assistance, the type of assistance to be provided (for example, below market interest rate financing, tax exempt bond financing, federal low income housing tax credits), and indicate the number of onsite units restricted and the percentage of area median income to which the onsite units are restricted.
- **Geographic Exclusion Area Requirements:** if a project commences on or after July 1, 2008, and if it is located in the Geographic Exclusion Area, the request should address the following (see §§6-09(a) and 6-09(b) of the Rules):
 - a. State whether the project expects to purchase negotiable certificates generated by a Written Agreement with HPD entered into prior to December 28, 2007. If available, please indicate the date upon which the Written Agreement was executed.
 - b. If the project expects to contain onsite affordable units, for each affordable unit:
 - State the percentage of area median income, adjusted for family size, to which the income of the unit tenant or purchaser is restricted at initial occupancy;
 - If the unit is a rental, state the percentage of area median income, adjusted for family size, to which the monthly rent will be affordable in the format of “affordable at 30% of ##% of area median income”;
 - If the project will be operated as a rental, state whether the affordability restrictions will be enforced at initial rental and upon all subsequent rentals for a period of 35 years from completion of construction;
 - If the project will be operated as a rental, state whether the affordable units will comply with the Geographic Exclusion Area rent stabilization and lease rider requirements (see §6-09(b)(2) of the Rules);
 - State whether the project will comply with the affordable unit distribution requirements (see §421-a(7)(d)(i)).
 - c. State whether the project will comply with the Geographic Exclusion Area filing requirements (see §6-09(b)(3) of the Rules).



Site Eligibility: for a project to be eligible for §421-a benefits, the land on which it is located must have been “vacant, predominantly vacant, under-utilized, or improved with a non-conforming use on the operative date.” Operative Date refers to 36 months prior to the date of commencement. Please provide proof of site eligibility for each of the lots.

- **Vacant Land:** vacant land is land which contains no enclosed, permanent improvement. Any improvement having an Actual Assessed Valuation (“AV”) of less than \$2,000 does not constitute enclosed, permanent improvements.
- **Predominantly Vacant:** predominantly vacant land is land on which not more than 15% of the lot area contained enclosed, permanent, improvements. Provide an architect’s letter detailing the area of the lot and the square footage of its improvements, supplemented by a survey showing the improvements on the lot as of the operative date.
- **Under-Utilized Existing Residential Building:** land is under-utilized if, on the Operative Date, it was improved with a residential building(s) whose Aggregate Floor Area (“AFA”) was no greater than 70% of the AFA of the new building(s). Provide an architect’s letter detailing the eligibility of the lot and indicating the measurements of the lot, the AFA of improvements as of the operative date, and the AFA of the proposed project, supplemented by a survey showing the improvements on the lot as of the operative date.
- **Under-Utilized Non-Residential Existing Building AV:** land in Manhattan south of or adjacent to either side of 110th Street, or land outside of Manhattan or in Manhattan north of 110th Street, is under-utilized if, on the Operative Date, it was improved with a non-residential building(s), each of which had an Actual AV equal to or less than 50% or 75%, respectively, of the Actual AV of the land on which the building(s) were situated.
- **Under-Utilized Non-Residential Existing Building Floor Area Ratio (“FAR”):** land in Manhattan south of or adjacent to either side of 110th Street, or land outside of Manhattan or in Manhattan north of 110th Street, is under-utilized if, on the Operative Date, it was improved with a non-residential building(s), each of which contained no more than the permissible FAR for non-residential buildings in the zoning district, and an FAR which was 50% or 75%, respectively, or less of the maximum FAR for residential buildings in such zoning district, or if the land was not zoned to permit residential use on the Operative Date, it had a FAR which was 50% or 75%, respectively, or less of the FAR of the residential building which replaces such non-residential building(s). Provide an architect’s letter, indicating the measurements of the lot, the floor area of improvements as of the operative date, the maximum permissible residential FAR and non-residential FAR in the zoning district as of the operative date, and the FAR of the proposed project if the site was not zoned to permit residential use as of the operative date, supplemented by a survey showing the improvements on the lot as of the operative date, a copy of the zoning map, and relevant pages from the Zoning Resolution.
- **Non-Conforming Use:** land improved with a non-conforming use as defined in the Zoning Resolution in effect on the Operative Date, that is, any lawful use, which does not conform to one or more of the applicable use regulations of the district in which it is located. Provide an architect’s letter describing the eligibility, a copy of the most recent certificate of occupancy, the zoning map, and relevant pages from the Zoning Resolution.

