



Applying Zoning

To help the reader understand the range of the Zoning Resolution's *use*, *bulk*, parking and *streetscape* regulations, this chapter pairs an explanation of zoning rules with three hypothetical case studies to illustrate how they work in practice. While no two zoning cases are identical, these following prototypical scenarios illustrate how the regulations of the Zoning Resolution are applied:

- The first case study involves perhaps the most typical application of zoning: the construction of a new building that follows the applicable zoning rules without any special approvals. In zoning terms, this is an *as-of-right development*.
- The second case study illustrates how zoning is generally applied to existing buildings. It explores how one is able to modify, adapt and enlarge existing buildings if they were built before, and do not comply with, the current zoning rules. This is the *conversion* and *enlargement* of a grandfathered building.
- The final case study explores a scenario where the standard zoning regulations do not permit what the property owners would like to do. In order to accomplish this, a *discretionary action* – a *special*

permit, a zoning text or zoning map amendment, or a *variance* – needs to be sought and obtained through a public review process.

Of course, no set of case studies can capture every zoning issue – properties, owners, and zoning rules are varied and diverse. This handbook is intended as a quick reference source to help answer many common questions about zoning, but authoritative and complete answers must rely on the Zoning Resolution itself, which is available either online – at www.nyc.gov/zoning – or in print form at the agency's bookstore. Additional zoning and planning information is available on the Department of City Planning (DCP) website at www.nyc.gov/planning. This website also includes demographic and socioeconomic data for each neighborhood, information on agency-led plans and studies around the city and a repository of historical information, such as the *City Planning Commission (CPC)* reports for all previous actions taken by the CPC, including zoning text and zoning map amendments and CPC special permits. DCP also maintains a Zoning Helpdesk to assist the public, reachable at (212) 720-3291 or zoningdesk@planning.nyc.gov.



Case Study 1: Development of an As-of-Right Building

Carlos has lived on the same block his entire life. He knows all of his neighbors, all of the clerks in the stores and even most of the dogs that are being walked past his house. As president of his block association, he prides himself on knowing everything that is going on in the neighborhood.

So Carlos' interest was immediately piqued when he noticed a construction fence surrounding the former parking lot across from his apartment on Wargo Street. He wondered: "What type of building will this be? An apartment building? A shopping center? An office building?" He wanted to find out more about what rules this new building would need to follow.

Carlos decided to attend the next Community Board meeting and asked the members how he could find out more information about this new construction. They informed him that at the time of obtaining construction permits, all new buildings must comply with the relevant zoning regulations, and that he could find information on the Department of Buildings website about the building permits that had been filed, including the proposed size and use of the building. They also told him that this was likely an *as-of-right* new building, as they did not recall any applications for a *discretionary action* related to the site passing through the Community Board as part of the public review process. To have a better sense of what type of building would be constructed, Carlos was told he could begin by understanding the pertinent zoning rules that govern the new building.

The construction across the street from Carlos' apartment is classified as a *development* in the Zoning Resolution because it is the construction of a new building. Carlos used the Resolution to find out more about the range of zoning regulations that could apply to this as-of-right development.

Development Site



Carlos was curious about the construction across from his house. He wanted to find out more about how zoning would govern this new development.

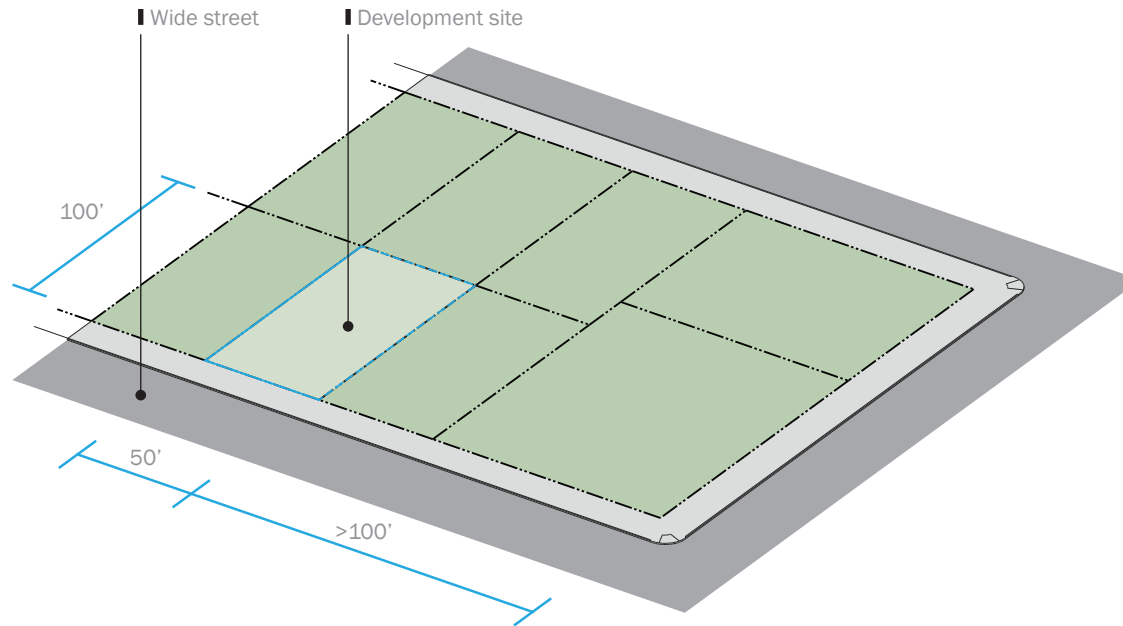
Zoning District, Street Type and Zoning Lot Type

Carlos first needs to figure out some basics, including the zoning district in which the property is located, whether it is located on a wide or narrow street and what type of zoning lot it is.

From the **zoning map**, Carlos learns that the property is located within an R7A District. The “R” designates a Residence District, the “7” denotes the relative density among districts ranging from 1 to 10 and the letter “A” suffix signifies a **contextual district**. From this, Carlos now knows an R7A District to be a medium density, contextual Residence District. The map also includes cross-hatching along the entire frontage of the block, which means that the property is located within a **commercial overlay** district, specifically a C1-4 District. On the map he does not see a grey tone over the property, so it is not in a **special purpose district**. Additionally, it is not located near the waterfront, an airport or any of the other areas where special zoning rules apply, so the standard zoning regulations for a C1-4 District mapped within an R7A District will apply. Properties within commercial overlays are first and foremost considered to be in a Commercial District, so Carlos will need to consult Article III of the Zoning Resolution to determine the applicable rules for the new building.

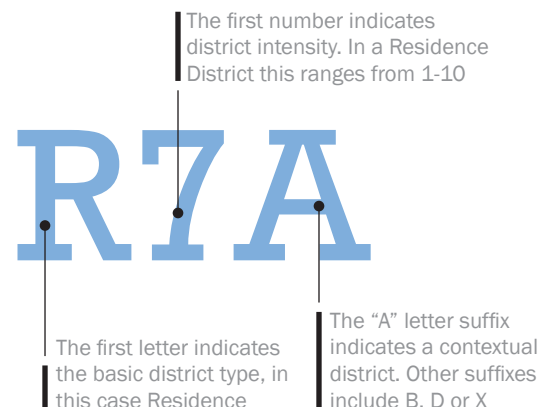
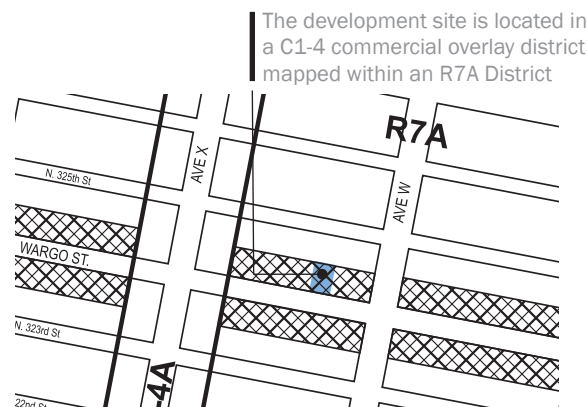
Since the development site is located along the middle of the block, and fronts onto just one street, it is an **interior lot**. The street that abuts the property is 80 feet wide, so it is considered a **wide street** (**narrow streets** have a width of less than 75 feet). The zoning lot is 50 feet wide by 100 feet deep, so it has a **lot area** of 5,000 square feet. This information will be useful when applying different regulations.

Zoning Lot Type



The development site measures 50 feet by 100 feet, or an area of 5,000 square feet. It is located more than 100 feet from the corner, and has frontage on only one street, so it is an interior lot.

Zoning District Type



Permitted Uses

Now that Carlos has gathered some basic information, including the zoning district, he can begin to assess the pertinent zoning regulations, starting with the use regulations.

Carlos assumes that the commercial overlay designation means all the properties in that zone are permitted to have *commercial uses*, but he doesn't know what types are allowed. He wonders: "Can they build department stores? Gas stations? Offices? Delis?" Since the overlay is mapped over a Residence District, he also assumes that housing is permitted, but doesn't know to what extent *community facility uses* are allowed.

To find out, Carlos consults the Commercial District use regulations in Article III, Chapter 2 of the Zoning Resolution to determine which uses are permitted in a C1-4 District mapped within an R7A District. He discovers that the district allows *residential uses* in Use Groups 1 and 2, community facility uses in Use Groups 3 and 4 and commercial uses in Use Group 6 (ZR 32-00). This narrows Carlos' questions down considerably: the

development cannot be a department store or a gas station ("automotive service station" in the Resolution), as Use Group 10 and 16 uses are not permitted in a C1 District.

Carlos is still curious about some of the specific commercial uses that would be allowed in the overlay, and decides to examine Use Group 6 further by going to the full list of uses permitted (ZR 32-15). He finds that Use Group 6 permits a wide array of retail and service establishments oriented toward the neighborhood, including eating and drinking establishments, bakeries, delicatessens, clothing stores, florists, and pet shops. He notes that Use Group 6 also permits offices.

Next, Carlos checks to see if any supplemental use restrictions apply to the property. In a C1-4 District mapped within an R7A District, any commercial uses in a *mixed building* would be limited to the ground floor, and in a non-residential building they would be limited to two *stories* (ZR 32-421). Carlos sees that these rules largely reflect the character of his block: most of the buildings have ground floor retail with apartments on the upper stories.

Permitted Use Groups

		Residential		Community Facility		Retail and Commercial										General Service	Manufacturing		
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
		Residence Districts																	
R7A	→ R1 and R2	•		•	•														
	→ R3-R10	•	•	•	•														
		Commercial Districts																	
C1-4	→ C1	•	•	•	•	•	•												
	C2	•	•	•	•	•	•	•	•	•					•				

Sample C1 District Commercial Uses



Bakeries – Use Group 6A



Barber Shops – Use Group 6A



Post Offices – Use Group 6A



Bars – Use Group 6A or 6C



Restaurants – Use Group 6A or 6C



Banks – Use Group 6C



Toy Stores – Use Group 6C



Ice Cream Stores – Use Group 6C



Fire Houses – Use Group 6D

Permitted Bulk

A few days after Carlos learns about the permitted uses on the property across the street, his hunch is confirmed: the developer put up a construction fence with a temporary banner announcing “coming soon — new apartment rentals with ground floor retail.” The construction crew begins excavating the site in order to create the foundations of the new building.

With construction beginning, Carlos has many new questions about the physical shape of the building: “How tall can it be? Can it be set back from the *lot line*, or does it need to be close to the street, like the other buildings on the block? How many new apartments can it contain?”

Bulk regulations typically determine how much floor area may be contained within a building, how it may be located within a lot and how tall a building may be. Rules often depend on both the zoning district and the particular uses in the building. In a Commercial District, the bulk rules for a mixed building – one containing residential as well as non-residential uses – are set out in Article III, Chapter 5 of the Zoning Resolution. These regulations generally instruct him to reference Article III, Chapter 3 to determine the regulations for the commercial component of the building and Article II, Chapter 3 for the residential portion, which is subject to the rules for R7A Districts. In a few instances, those respective regulations are modified by Article III, Chapter 5. For example, the residential street wall provisions are modified to better reflect the commercial context.

Floor Area Ratio

The *floor area ratio (FAR)* for a particular property describes how much *floor area* a building can contain, as a ratio of building area to lot area. Floor area ratios differ by uses and by districts.

To determine the maximum floor area permitted, Carlos needs to examine the maximum FARs for mixed buildings. No use can exceed the maximum set forth for it, and the entire building cannot exceed the highest FAR permitted by any individual use.

By looking through these various FAR provisions, Carlos sees that the maximum FAR for residential uses in a C1-4 District mapped within an R7A District is 4.0 (ZR 23-153), or 20,000 square feet of floor area (5,000 square foot lot x 4), and the maximum FAR for commercial uses is 2.0 (ZR 33-121), or 10,000 square feet of floor area (5,000 square foot lot x 2). However, he also remembers that in a mixed building in a C1-4 District, the commercial use will be limited to the ground floor.

Open Areas

Carlos is curious to learn how the building’s size and shape is affected by the amount of open area that needs to be provided around the building. While the intent of these regulations is to ensure light and air for building occupants and the public realm, the rules themselves come in a variety of types. Depending on the district, and the uses in the building, rules may include standards for *yards*, *courts*, *lot coverage*, or *open space* percentages or ratios.

Reading through the various open area rules, Carlos realizes that the 4.0 FAR permitted will not be equivalent to four stories, because yard and lot coverage requirements do not allow the building to cover the entire lot. Carlos also learns that, like the floor area regulations, the yard regulations for the new building differ based on whether the particular portion of the building contains residential or commercial uses.

For the residential portion, he sees that an interior lot needs to provide a *rear yard* with a minimum depth of 30 feet along the entire *rear lot line* (ZR 23-47), and needs to comply with a maximum lot coverage of 65 percent (ZR

23-153). This means the residential building footprint can only occupy 3,250 square feet (5,000 square foot lot x 65 percent). A rear yard at least 20 feet deep is typically required for the commercial portion if it rises more than one story (or higher than 23 feet) (ZR 33-26, 33-23). However, since the proposed retail will occupy just one floor, ground floor retail use may cover 100 percent of the lot, and the residential yard can begin above this first story.

Height and Setback Regulations

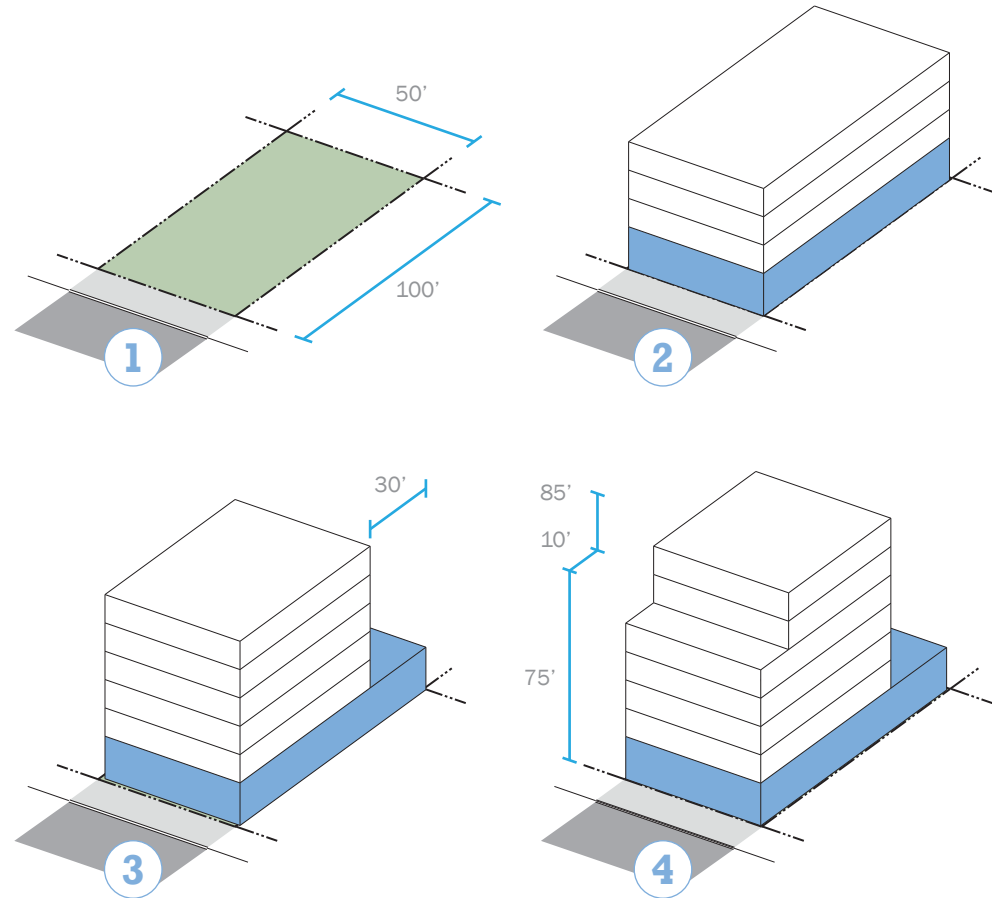
Since the development site is located in a contextual district, the Quality Housing Program regulations, which have specific height controls, will apply. Looking at the provisions for mixed buildings (ZR 35-60), Carlos determines that the building’s front wall must rise to a base height between 40 feet and 65 feet (ZR 35-652, 23-662). Above the base height, a horizontal setback of at least 10 feet will need to be provided. The depth of the setback is determined by the type of street on which the building is located, in this case a *wide street* (a frontage on a *narrow street* would require a 15 foot setback). After this setback, the overall building height will be limited to 80 feet or eight stories (ZR 35-652, 23-662 Table 1). However, for a building that provides quality retail space with high ceilings, known as a *qualifying ground floor* (which will be described further in the streetscape section), the maximum base height may rise to 75 feet, and the building height may rise to a maximum of 85 feet. The building still cannot exceed eight stories though. (ZR 35-652, 23-662 Table 2)

Other Residential Bulk Rules

Residential uses contain other bulk regulations that serve as an extra measure of protection for building residents, largely to prevent overcrowding. These include density provisions and minimum lot sizes.

Carlos sees that the minimum lot width for a residential building in an R7A District with or without a commercial overlay is 18 feet and that the minimum lot size is 1,700 square feet (ZR 23-32). With a lot width of 50 feet and an area of 5,000 square feet, the property meets these standards, so Carlos now determines how many apartments the development is allowed to have: the permitted unit density. By dividing the permitted residential floor area (minus any commercial or community facility space) by the *dwelling unit factor* for the zoning district, which is 680, Carlos determines that, at a maximum, 22 units are permitted (20,000 square feet minus 5,000 square feet, divided by the R7A District dwelling unit factor of 680) (ZR 23-22). If the maximum number of units were provided, the average dwelling unit size would be less than 680 square feet, since a portion of the residential floor area must be devoted to common spaces, such as the lobby, elevators, stairs and the hallways between apartments. (Carlos later learns that the developer will only provide 20 units, so that the average apartment size will be larger.)

Applying the Bulk Regulations



1. The development site is on an interior lot located on a wide street. The 50 foot width and 5,000 square feet area exceed the minimum lot width and area for the R7A District.
2. The developers will provide 1.0 FAR of commercial uses (shown in blue), and 3.0 FAR of residential (shown in white), for a total of 4.0 FAR.
3. A 30 foot rear yard is required for the residential portion, but no yard is required for the commercial portion if limited to the ground floor.
4. The minimum base height is 40 feet and the maximum base height is 75 feet, if providing a qualifying ground floor. A setback of 10 feet is required on wide streets, and must be applied between the minimum and maximum base height. The overall height is limited to 85 feet, and 8 stories.

Parking and Loading

As construction has been progressing across the street, Carlos has seen five on-street parking spaces blocked off in front of the construction project, to accommodate construction equipment. Carlos' neighbor Bob, who usually parks in this area, asks him whether the new development needs to provide **parking**. Carlos isn't sure whether the requirements are the same near a subway line or other form of mass transit as they are elsewhere, or whether there need to be loading docks for deliveries, or bike storage spaces, since more and more people in the area seem to be biking these days.

Carlos finds that the Zoning Resolution regulates permitted and required automobile off-street parking, the minimum amount of loading berths required and, as part of recent changes, the amount of bike parking spaces required. Parking regulations are set forth in Article II, Chapter 5 (Residence Districts); Article III, Chapter 6 (Commercial Districts) and Article IV, Chapter 4 (Manufacturing Districts). Each chapter is structured with a similar sequence of sections that reflects the range of these rules.

Vehicular Parking

Looking at the regulations of Article III, Chapter 6, Carlos sees that the required parking depends on the uses in the building, with separate amounts required for any residential, commercial or community facility component.

Carlos concludes that the residential component of the development will need to provide parking for 50 percent of the dwelling units (ZR 36-33, 25-23), based on the R7A District provisions. Since the owner is proposing 20 units, 10 residential parking spaces will be required. Assuming that the retail component of the building will be a Use Group 6 use with a **Parking Requirement Category B** requirement (PRC-B), the C1-4 District rules require one parking space per 1,000 square feet of floor area (ZR 36-21), so a 5,000 square feet store would require five

parking spaces. In total, it appears that the new building across the street will be required to provide 15 accessory parking spaces (10 residential plus five commercial).

However, because of the practical difficulties and cost of constructing parking in a modest-sized building with a relatively small number of spaces, the Resolution allows for both reductions and waivers of parking requirements in some zoning districts.

Since the zoning lot across from Carlos is smaller than 10,000 square feet, the residential parking is eligible for a reduced requirement, from 50 percent to 30 percent of the dwelling units (ZR 36-341). This reduces the requirement from 10 to six spaces. In addition, since this six-space requirement is below the threshold of 15 spaces in an R7A District, the residential parking requirement may be waived altogether (ZR 36-361). Similarly, since the C1-4 commercial overlay has very low parking requirements, and because the resulting commercial parking requirement is below 40 spaces, the parking requirement for this small retail space can also be waived (ZR 36-232). Since neither use proposed on the lot requires parking, it is up to the owner whether they wish to provide parking as a building amenity (subject to the maximum permitted number of spaces) (ZR 36-12, 36-13). Because the development is only a short walk from a subway stop, Carlos anticipates that the owners will opt not to include any parking in the development.

Bicycle Parking and Loading Berths

Carlos discovers that the 20 new residences across the street will generate a requirement for 10 bike parking spaces (one per two dwelling units in Use Group 2) (ZR 36-711). While the ground floor retail generates a requirement for one additional space (one per 10,000 square feet of floor area in Use Group 6, with calculations resulting in fractions of 50 percent or more rounded up to an additional space), bike parking for commercial or

community facility spaces may be waived if the resulting requirement is equal to or less than three spaces (ZR 36-711). As long as the space does not exceed 15 square feet per bike (165 square feet total), the square footage of the bike storage area or room can be exempted from the maximum floor area (ZR 36-75), as is allowed for vehicular parking as well.

For retail uses in C1-4 Districts, loading berths are only required for spaces larger than 25,000 square feet (ZR 36-62). Since the new retail store across from Carlos will be no more than 5,000 square feet, the owner will not be required to provide a loading berth.

Parking Calculations

Requirement for R7A Districts	Application
Basic requirement: Parking required for 50 percent of dwelling units	20 dwelling units x 50% = 10 parking spaces
Reduced requirement for small lots: Parking required for 30 percent of dwelling units	20 dwelling units x 30% = 6 parking spaces
Waiver: Requirements of up to 15 spaces may be waived	6 < 15, so parking may be waived
Requirement for Use Group 6 with PRC-B in C1-4 Districts	Application
Basic Requirement: 1 parking space required for every 1,000 sf of floor area	5,000 sf of space ÷ 1,000 = 5 parking spaces
Waiver: Requirement of up to 40 spaces may be waived	5 < 40, so parking may be waived

Residential Parking

Required Residential Parking (**ZR 36-33, 25-23**)

District within which C1 or C2 is Mapped	Parking Spaces (Percent of Dwelling Units)
R1, R2, R3, R4, R5A	100
R5	85
R6	70
R5B, R5D	66
R7-1	60
R6A, R6B, R7-2, R7A , R7B, R7D, R7X, R8B	50
R8, R9, R10	40

Reductions in Residential Parking (**ZR 36-341, 36-343**)

District within which C1 or C2 is Mapped	Lot Area	Parking Spaces (Percent of Dwelling Units)
R6, R7-1, R7B	10,000 sf or less	50
R7-1, R7A , R7D, R7X		30
R7-2, R8, R9, R10		0
R7-2	10,001 sf to 15,000 sf	30
R8, R9, R10		20

Waived Residential Parking (**ZR 36-361**)

District within which C1 or C2 is Mapped	Maximum Number of Spaces Waived
R5D	1
R6, R7-1, R7B	5
R7-2, R7A , R7D, R7X, R8, R9, R10	15

Commercial Parking in Commercial Overlay Districts

Required Commercial Parking (**ZR 36-21**)

Type of Use	Districts	Parking Spaces
Uses in PRC-B in Use Group 6, 8, 9, 10 or 12	C1-1, C2-1	1 per 150 sf
	C1-2, C2-2	1 per 300 sf
	C1-3, C2-3	1 per 400 sf
	C1-4, C2-4	1 per 1,000 sf
	C1-5, C2-5	None Required

Waived Commercial Parking (**ZR 36-231, 36-232**)

Residence District within which C1 or C2 is Mapped	Maximum Number of Spaces Waived
C1-1, C2-1	10
C1-2, C2-2	15
C1-3, C2-3	25
C1-4, C1-5, C2-4, C2-5	40

Loading

Required Loading Berths (**ZR 36-62**)

Type of Use	Districts	For Floor Area	Required Berths
Retail or Service in Use Group 6A, 6C, 7B, 8B, 9A, 9B, 10A, 12B, 14A or 16A	C1, C2, C3, C4, C5, C6, C7, C8	First 25,000 sf	None
		Next 15,000 sf	1
		Next 60,000 sf	1
		Each additional 150,000 sf	1

Bicycle Parking in certain Commercial Overlay Districts

Required Bicycle Parking (**ZR 36-711**)

Districts	Type of Use	Bicycle Parking Spaces Required	
C1 or C2 mapped within R6-R10	Residential	Use Group 1	None required
		Use Group 2	1 per 2 dwelling units
	Commercial	Use Group 6B	1 per 7,500 sf of floor area
		General Retail	1 per 10,000 sf of floor area
		Use Groups 8A, 12A	1 per 20,000 sf of floor area
		Public parking garages	1 per 10 car parking spaces
		Not specified above	None required

Waived Bicycle Parking (**ZR 36-711**)

Type of Use	Spaces Waived
Residences	10 or fewer residential units
Commercial uses	3 or fewer spaces required

Streetscape

Across the street, the concrete workers have finished, and the crew is working on the building facade. Carlos can see what the final building will look like. His neighbors share with him their opinions and concerns about the developer's choices of building materials, architectural style, and the particular way the building interfaces with the sidewalk and rest of the buildings on the block.

While the Zoning Resolution does not dictate architectural styles or, for the most part, prescribe materials (although ground floor transparency is a notable and common exception), it often establishes rules to ensure that new buildings interact with the sidewalk in a way that promotes walkability. Since there is no discrete *streetscape* chapter in the Resolution, ground floor use requirements, *street wall* location rules, *sign* regulations, planting rules and parking location restrictions are mixed among the various other use, bulk and parking regulations.

Ground Floor Use Regulations

The contextual district regulations specify that for this new building on Carlos' street to obtain an additional five feet of building height, it must provide a *qualifying ground floor*. This means that the ground floor must be at least 13 feet high, and must comply with additional streetscape rules, which differ depending on whether the lot has primary or secondary street frontage. Since the C1-4 overlay along the street extends along the entire front of the block, the parcel is considered to be located along a *primary street frontage*. This requires the portion of the ground floor within 30 feet of the street to contain commercial or community facility uses, with a limited amount of space dedicated to entrances and the residential lobby. To ensure that retail and service spaces are visible from the street, 50 percent of the surface area of the ground floor must be transparent (ZR 35-652, 37-30).

Street Wall Rules

Since the property across from Carlos is in a zoning district with a commercial overlay, he determines that the new building will have to be located close to the sidewalk. Specifically, he reads that in a C1-4 District mapped within an R7A District, 70 percent of the *street wall* needs to be within eight feet of the sidewalk (ZR 35-651). It looks to him like the facade will be at varying depths (within eight feet or less of the street) to allow the upper floors to include balconies and terraces facing the street.

Signs

When the retail tenants move into the ground floor space, any *signs* they want to provide will be subject to the commercial sign regulations (ZR 32-60).

Advertising signs, and any type of *flashing signs*, are not permitted in commercial overlay districts.

In C1 Districts, the total area, in square footage, of all accessory signs for a retailer will be limited three times the width of the lot along the street and may not exceed a maximum of 150 square feet (ZR 32-641, 32-642), of which no more than 50 square feet may be *illuminated signs* (ZR 32-643). This would allow, for example, a 50 foot wide, non-illuminated sign that is three feet tall, or a 30 foot wide sign that is five feet tall.

The height of a commercial sign in this district is limited to 25 feet above street level (ZR 32-655), but in a mixed building such as this one, it can be no more than two feet above the floor of the second story (ZR 32-421). If the building owner, at a later point, wants to divide the retail portion of the ground floor into two establishments, each would be considered a separate zoning lot when applying the sign regulations (ZR 32-64).

Planting Rules

Looking at these regulations, Carlos realizes that by the time the building is completed, the developer must plant two street trees along the sidewalk, one for every 25 feet of street frontage (ZR 23-03, 26-41). Because the ground floor use is commercial, no other plantings are required in front of the building. If the building were purely residential, the *Quality Housing* regulations would require any open area between the street wall and the sidewalk to be planted (ZR 28-23).

Parking Design Requirements

This development is not required to provide any parking spaces. If parking is provided, however, the regulations for a qualifying ground floor would require that, since the zoning lot is located on a *primary street frontage*, all parking must be "wrapped" by other uses to prevent it from being seen from the sidewalk (ZR 35-652).

Applying the Streetscape Regulations

1. At least 70 percent of the street wall is required to be located within eight feet of the street line.
2. Up to 30 percent of the street wall is allowed to recess beyond eight feet of the street line.
3. Up to 150 square feet of signage may be provided below a height of 25 feet.
4. To obtain an additional five feet in building height, a qualifying ground floor is provided, with a ground floor retail use that is at least 13 feet tall.
5. One street tree is required for every 25 feet of street frontage.



Basic Information

Zoning District	C1-4 mapped in an R7A District
Zoning lot type	Interior lot
Street type	Wide street

	Section	Permitted/Required	Provided
Permitted Uses			
Uses	ZR 32-11	Residential	Use Groups 1 and 2
	ZR 32-12, 32-13	Community Facility	Use Groups 3 and 4
	ZR 32-15	Commercial	Use Group 6
Supplemental Use Regulations	ZR 32-421	In mixed buildings, no commercial use listed in Use Groups 6, 7, 8, 9 or 14 is permitted above the first story	
			Commercial use located on ground floor

Permitted Bulk				
Minimum Lot Size	ZR 23-32	Residential	Lot width of 18 ft, lot area of 1,700 sf	50 ft lot width, 5,000 sf lot area
Floor Area Ratio	ZR 23-153	Residential	4.0 (20,000 sf of floor area)	3.0 (15,000 sf of floor area)
	ZR 33-121	Commercial	2.0 (10,000 sf of floor area)	1.0 (5,000 sf of floor area)
Open Areas	ZR 23-153	Residential lot coverage	65% max.	62% lot coverage
	ZR 23-47	Residential rear yard	30 ft deep	30 ft deep
	ZR 33-26, 33-23	Commercial rear yard	20 ft deep above ground floor	None
Height and Setback	ZR 35-652, 23-662	Base height	Min. 40 ft Max. 75 ft (with qualifying ground floor)	55 ft
		Setback	10 ft on a wide street	10 ft
		Overall height	85 ft (with qualifying ground floor)	75 ft
Density	ZR 23-22	20,000 sf (permitted residential floor area) minus 5,000 sf (commercial floor area) divided by dwelling unit factor of 680: $15,000 \div 680 = 22$ dwelling units permitted		20 units

Parking and Loading				
Vehicular Parking	ZR 36-341, 36-361	Residential	30% of dwelling units (small lots), waived if less than 15 spaces: $20 \times 30\% = 6$ spaces, $6 < 15$, so waived	None
	ZR 36-21, 36-232	Commercial	1 per 1,000 sf of floor area for uses in PRC-B in Use Group 6, waived if less than 40 spaces: $5,000 \div 1,000 = 5$ spaces, $5 < 40$, so waived	None
Bicycle Parking	ZR 36-711	Residential	1 space per 2 dwelling units, waived for less than 10 units	10 bicycle parking spaces
		Commercial	1 per 10,000 sf of floor area for general retail, waived if less than 3 spaces: $5,000 \div 10,000 = 1$ space, $1 < 3$, so waived	None
Loading Berths	ZR 36-62	No loading berth required for first 25,000 sf of floor area for retail uses in Use Group 6A		None

Streetscape				
Ground Floor Use	ZR 35-652	In order to use additional height for qualifying ground floor, ground floor on primary street frontage must contain commercial or community facility uses and be at least 13 ft tall		Contains retail use and is 15 ft tall
	ZR 37-30	Commercial frontage between 2 and 12 ft above grade must be at least 50% transparent		Retail frontage is 55% transparent
Street Wall Rules	ZR 35-651	70% of the street wall must be located within 8 ft of the street line		70% is at street line
Signs	ZR 32-642	Three times the street frontage: $3 \times 50 = 150$ sf permitted		Surface area = 80 sf
Planting	ZR 23-03, 33-03	One tree every 25 feet of street frontage: $50 \div 25 = 2$ street trees		2 street trees



Carlos considers his zoning analysis, and realizes that development is not at all happenstance; many of the things he took for granted about how neighborhoods look and feel are actually codified in the Zoning Resolution.

Case Study 2: Conversions and Enlargements to Existing Buildings

In another part of the city, Louisa has been retired for five years, and has been rekindling her passion for the history of her neighborhood and its buildings. She leads neighborhood tours once a month, where she checks in on some of her favorite buildings. On her last tour, she noticed a fence being put up around a three-story loft building, known in the neighborhood as “the Craddock building” because of its early 20th century tenants, the Craddock Company, a gyroscope and aviation-instrument manufacturer. After the company moved out several years ago, the building became a warehouse for a movie production studio and was continuously used for this purpose until last year, when the movie studio put the property up for sale. It has been vacant since, and Louisa is concerned that, if it remains empty for long, the building may deteriorate.

Louisa is encouraged to see new interest in the building but realizes that, while she knows plenty about her neighborhood’s architecture, she knows little about the regulations affecting the repurposing of old buildings. She knows that the zoning regulations apply to new buildings, but is not sure how they would apply to older buildings, especially those that were built prior to the enactment of zoning in 1916. She wonders: “What can the owners do with the building? Do they have to change it to comply with today’s rules?” She would like to see the building repurposed rather than knocked down, so she decides to try and learn more about the applicable zoning regulations.

Existing Building



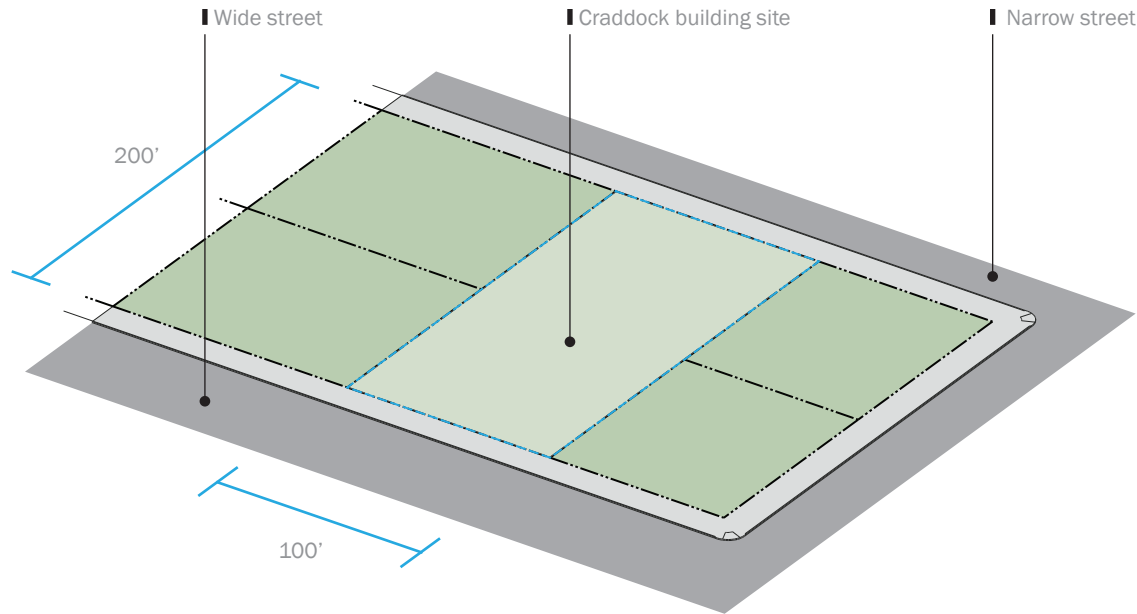
As Louisa sees new interest in “the Craddock building” she wonders how zoning regulations apply to existing buildings.

Zoning District, Street Type and Zoning Lot Type

Using the ZoLa application on the Department of City Planning website, Louisa is able to input the property address and learn some basics: the Craddock building is located on, and occupies the entirety of, a 20,000 square foot zoning lot (100 feet wide and 200 feet deep) and is situated within a C4-4 District. By looking through the defined terms in Article I, Chapter 2 of the Zoning Resolution, she learns that this lot would be classified as a **through lot** because it is on the midblock, and it has frontages on two **streets**, in this case both a **wide street** and a **narrow street**.

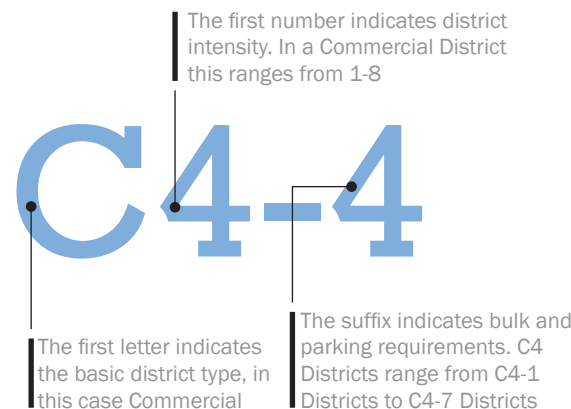
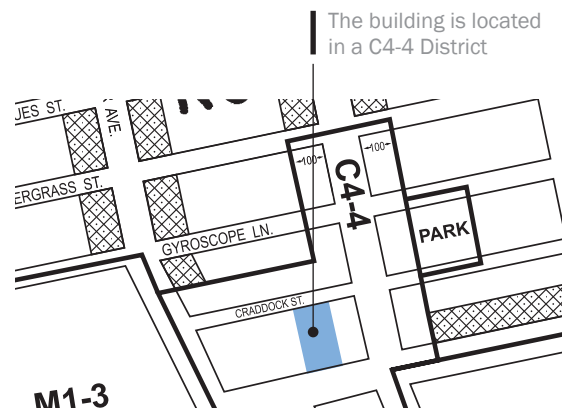
Because the Craddock building was built well before the current zoning went into effect, the degree to which the building deviates from the zoning regulations in place today will determine the degree to which the new owners can change and potentially even enlarge their building.

Zoning Lot Type



The Craddock building is on a site that measures 100 feet by 200 feet, or an area of 20,000 sf. It is located more than 100 feet from the corner, but has frontage on two streets, so it is a through lot.

Zoning District Type



Permitted Uses

Louisa's neighborhood has changed significantly since the Craddock building was built. Built with a mix of manufacturing, warehousing, and residential buildings, the neighborhood today contains a mix of **residential** and office **uses**, reflected by the C4-4 zoning designation. While this district permits a wide range of residential, **community facility**, retail, office and entertainment uses, the Craddock building has most recently been used as a warehouse, which is listed in Use Group 16 and is not permitted in a C4-4 District ([ZR 32-25](#)). Consequently, the warehouse is classified as a **non-conforming use**. But because the warehouse was in operation long before the zoning district that prohibits the use was mapped, as long as the space was never vacant for a continuous period of more than two years, its status is grandfathered and the Craddock building can continue to operate as a warehouse. If the space had been vacant for more than two years, then it could only be occupied by conforming uses ([ZR 52-61](#)) which, for this property, are those uses permitted in C4-4 Districts in Use Groups 1, 2, 3, 4, 5, 6, 8, 9, 10 and 12 ([ZR 32-10](#)).

By looking in the Zoning Resolution at the regulations for non-conforming uses in Article V, Chapter 2, Louisa sees that the warehouse could change either to a comparable use or one that is closer to conforming (Use Groups 7B, 7C, 7D, 11A, 11B, 14, 16 or 17), or to a permitted use in the C4-4 District, such as office space (Use Group 6) ([ZR 52-35](#)). It could not be changed to a use in Use Group 18, which includes intensive manufacturing activities, because this would move the building further from the range of uses intended for the C4-4 District. If the owners of the building established a conforming use in the space, they could not revert the space to a non-conforming use at a future date, even if that use had previously been grandfathered.

Louisa now knows that the owners of the Craddock building have the option to reactivate the building as a warehouse, change the use or convert it to other uses such as office space or apartments.

Permitted Use Groups

		Residential		Community Facility		Retail and Commercial										General Service	Manufacturing		
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Commercial Districts																			
C4-4 →	C4	•	•	•	•	•	•		•	•	•		•						
	C5	•	•	•	•	•	•			•	•	•							
	C6	•	•	•	•	•	•	•	•	•	•	•	•						
Additional Uses that are Permitted because there is a Non-Conformance Use																			
		○	○	○	○	○	○	●	○	○	○	●	○		●		●	●	
● Indicates additional uses that are permitted because the previous use was non-conforming										○ Indicates C4-4 permitted uses									

Sample C4 District Commercial Uses



Offices – Use Group 6B



Movie Theaters – Use Group 8A



Parking Garages – Use Group 8C



Trade Schools – Use Group 9A



Automobile Showrooms – Use Group 9A



Department Stores – Use Group 10A



Large Furniture Stores – Use Group 10A



Bowling Alleys – Use Group 12A



Pool Halls – Use Group 12A

Permitted Bulk

To assess the potential changes to the Craddock building, Louisa also needs to consider the owners' options to change the use, and potentially even enlarge the building, from a *bulk* perspective. She needs to understand how the existing bulk of the building compares to the current district regulations: Does the *floor area* in the existing building exceed that which is allowed today for the particular use? Are the *yards* and open area provided on the *zoning lot* insufficient under the current regulations? Does the height of the existing building exceed that permitted by the current C4-4 District? If the answer to any of these questions is “yes,” then the Craddock building is a *non-complying building*.

Floor Area Ratio

The owners are likely to hire an architect who will measure the gross square footage of the building and deduct all the spaces that do not constitute zoning floor area, such as mechanical space. Louisa has looked at old floor plans of the building, and roughly estimates the built *FAR* to be 2.4. She compares this to what is allowed in a C4-4 District, which is set forth in Article III, Chapters 3 through 5 of the Zoning Resolution. A C4-4 District permits an *FAR* of 3.4 for commercial uses such as offices (ZR 33-12), and an *FAR* of between 3.44 and 4.0 for residential uses (an R7-2 District is the residential equivalent of a C4-4 District), depending on whether the building is using *height factor* regulations or *Quality Housing Program* regulations (ZR 35-23, 23-15). Since the existing *FAR* of the Craddock building is lower than the permitted *FAR* for both uses, the owner could potentially enlarge the building.

Open Areas

Louisa next assesses the degree to which the building may need to be physically altered to accommodate a change of use (much like the owner's architect is doing). Concerned that the building occupies the entirety of its lot, Louisa consults the open area provisions for high density Commercial Districts. She learns that while no

maximum *lot coverage*, *rear yard* or *rear yard equivalents* apply to commercial uses in a C4-4 District (ZR 33-28), the regulations for residential uses in an R7-2 District will require either a minimum amount of *open space* using the height factor regulations or a maximum lot coverage if using the Quality Housing regulations. Both sets of residential regulations will additionally require that a 60 foot deep rear yard equivalent be provided on the through lot (ZR 23-53), necessitating cutting out a portion of the building to bring it into compliance — a very expensive proposition.

However, Louisa discovers that if a *non-conforming* use is converted to a conforming use, the applicable bulk (and parking) regulations do not apply (ZR 52-31). This generous rule is intended to encourage the transition of uses from non-conforming to conforming, and recognizes the expense of physically altering older buildings to bring them into compliance. While this provision theoretically allows the residential conversion of the Craddock building, the configuration of this particular building makes this unlikely, because either the windowless center portions of the building would remain unoccupied or units would have dark and undesirable spaces. Louisa therefore assumes that the most practical conversion option would be to office uses.

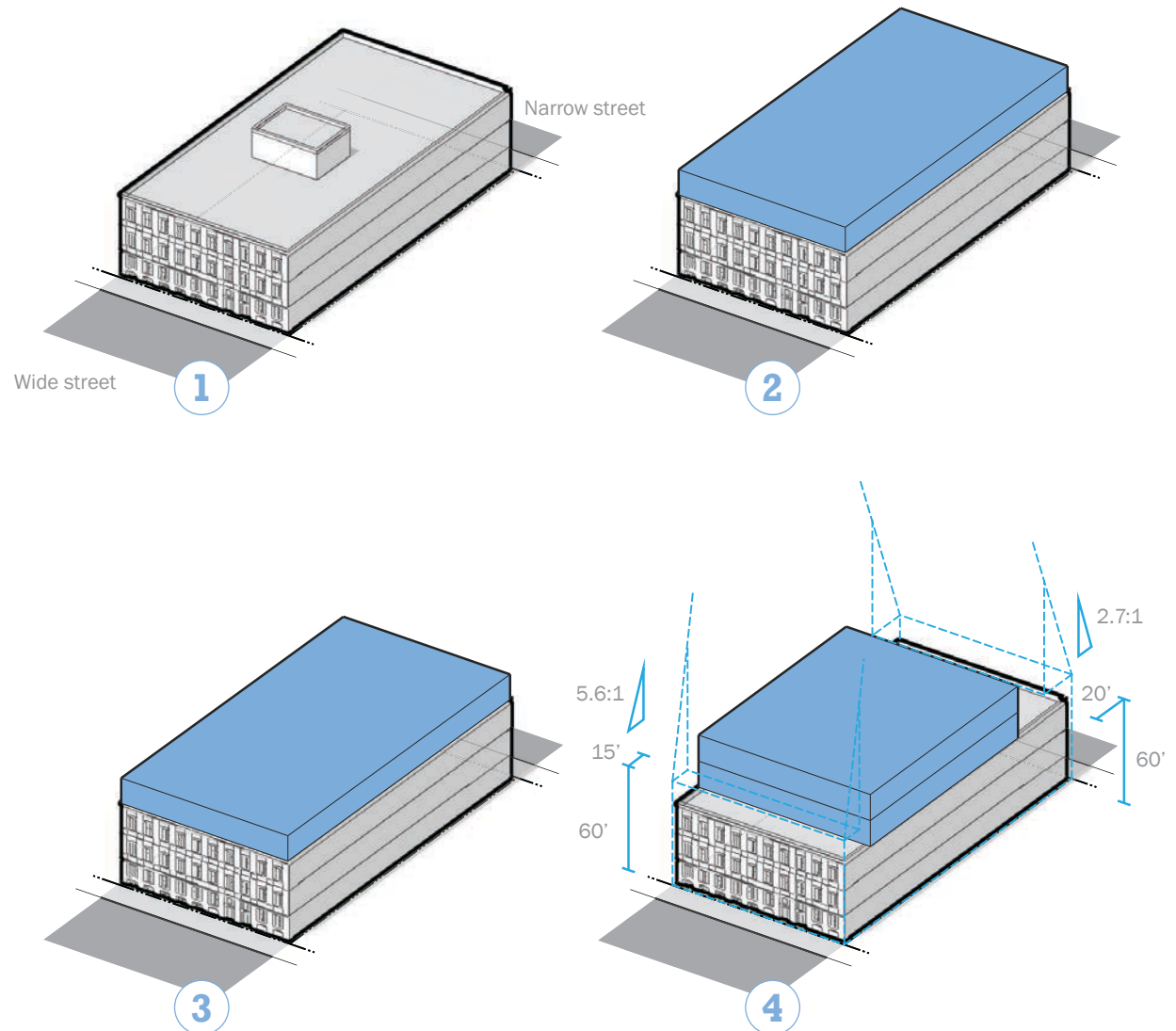
Height and Setback Regulations

Since the Craddock building has a significant amount of unused floor area, the architects can create an enlargement on top of the building, as long as the enlarged portion complies with all the current zoning regulations. Because the existing building is three stories high and 45 feet tall, and commercial buildings in C4-4 Districts are governed by a *sky exposure plane* that begins at a height of four stories or 60 feet (whichever is lower) above the street (ZR 33-43), the entire building is below the point at which the sky exposure plane begins, so there are no *non-compliances* for height and setback. The enlarged portion

of the building will need to be constructed fully beneath the sky exposure plane. Because the building is located between a *wide* and *narrow street*, the planes will have different angles and different setback distances for each side of the zoning lot (ZR 33-43). Louisa estimates that the resulting envelope is sufficient to accommodate the remaining 1.0 *FAR* in a two-story *enlargement*.

Applying the Bulk Regulations

1. The Craddock building is on a through lot which is located on both a wide street and a narrow street. The lot measures 100 feet by 200 feet, for a lot area of 20,000 square feet.
2. The existing building contains 2.4 FAR, which the developers will enlarge by 1.0 FAR (shown in blue) for a total of 3.4 FAR of commercial uses.
3. No rear yard equivalent is required for non-residential uses on through lots in C4-4 Districts.
4. Sky exposure plane starts above 60 feet or 4 stories, whichever is less. The angle of the plane differs between wide and narrow streets, as does the initial setback distance.



Parking and Loading

Two weeks after her first tour, when she initially noticed the construction fence, Louisa led another tour past the Craddock building. This time she reads the construction permit posted at the Craddock building site and realizes that her hunch was indeed correct – the owners are planning to convert the existing warehouse space into an office building. A rendering of the project shows they are also planning a small, two-story glass enlargement on top.

Now that Louisa understands how the use and bulk aspects of zoning apply to existing buildings and enlargements, she begins to wonder how other regulations such as those for parking apply.

Vehicular Parking

While developments and enlargements typically generate parking requirements, alterations, changes of use and *conversions* generally do not. Conversions involving the creation of new dwelling units sometimes do require parking, but they are not required in C4-4 Districts for buildings constructed prior to 1961 (ZR 36-312), nor are they required if the conversion is from a non-conforming to a conforming use (ZR 52-31). These provisions recognize that the reuse of buildings is often desirable, and the addition of parking to an existing building is often impractical.

Parking requirements for enlargements are usually based on either the amount of new commercial, community facility or manufacturing floor area in the building or the number of new dwelling units created. The 1.0 FAR of new commercial office space that the owners of the Craddock building would build is equivalent to 20,000 square feet. From the commercial parking regulations in Article III, Chapter 6 of the Zoning Resolution, Louisa sees that the parking ratio for an office use in a C4-4 District with a *Parking Requirement Category* [PRC-B1] is one space per 1,000 square feet of floor area (ZR 36-21), which would generate a 20-space parking requirement.

However, a waiver of up to 40 spaces is allowed for this district (ZR 36-23); C4-4 Districts are typically mapped in regional business districts with ample public transportation. Because multiple subway and bus lines are within a five-minute walk, and because it would likely be difficult to carve parking spaces into the building, Louisa assumes that the owners will take advantage of the waiver allowance.

Bicycle Parking and Loading Berths

Finally, Louisa checks Article III, Chapter 6 to determine whether the enlargement will need to include bicycle parking or loading berths. Bicycle parking is required for developments and substantial enlargement (increases in the floor area of the building by 50 percent or more), and is not required for smaller enlargements, conversions or changes of use because it is often more challenging for existing buildings to accommodate this requirement (ZR 36-70). Since the size of the enlargement is less than 50 percent of the existing floor area, the owners of the Craddock building will not need to provide bicycle parking.

Changed, converted or enlarged portions of buildings (in addition to developments) generate loading requirements. In C4-4 Districts, there is no loading berth required for the first 100,000 square feet of office space, and one berth is required for the next 200,000 square feet (ZR 36-62). Since the total square footage of office use will be just 68,000 square feet, the owners will not need to include any loading berths.

Parking and Loading Calculations

Requirement for Use Group 6 with PRC-B1 in C4-4 Districts	Application
Basic Requirement: 1 parking space required for every 1,000 square feet of enlarged floor area	20,000 square feet of space ÷ 1,000 = 20 parking spaces
Waiver: Requirements of up to 40 spaces may be waived	20 < 40, so parking may be waived
Requirement for offices in C4-4 Districts	Application
Basic Requirement: 1 loading berth for first 100,000 square feet, and one for the next 200,000 square feet of office floor area.	68,000 < 100,000 square feet, so no berths are required

Commercial Parking in C4 Through C6 Non-contextual Districts

Required Commercial Parking ([ZR 36-21](#))

Type of Use	Districts	Parking Spaces
Uses in PRC-B1 in Use Groups 6 , 7, 8, 9, 10, 11, 13, 14 or 16	C4-5, C4-6, C4-7, C5, C6	None required
	C4-1	1 per 150 sf
	C4-2	1 per 300 sf
	C4-3	1 per 400 sf
	C4-4	1 per 1,000 sf

Waived Commercial Parking ([ZR 36-361](#), [36-232](#))

Districts	Spaces Waived if Less Than
C4-1	10
C4-2	15
C4-3	25
C4-4, C4-7, C5, C6	40

Loading in C4 Through C6 Non-contextual Districts

Required Loading Berths ([ZR 36-62](#))

Type of Use	Districts	For Floor Area	Required Berths
Hotels Offices Courthouses	C4-1, C4-2, C4-3	First 25,000 sf	None
		Next 75,000 sf	1
		Next 200,000 sf	1
		Each additional 300,000 sf	1
	C4-4 , C4-5, C4-6, C4-7, C5, C6	First 100,000 sf	None
		Next 200,000 sf	1
		Each additional 300,000 sf	1

Streetscape

A couple of months after her last visit, Louisa leads another tour past the Craddock building and continues to check on its progress. As the project moves towards completion, Louisa wonders how *streetscape* regulations in the Zoning Resolution interact with conversions, changes of use and enlargements.

Based on the challenges and limitations that can exist in modifying an existing building, fewer streetscape provisions apply to conversions, other changes of use, and enlargements..

Ground Floor Use Regulations

As the Craddock building is not located within any *special purpose district*, or in a district with supplemental use requirements (such as a C4-5D District), Louisa has discovered that there will be no applicable ground floor use requirements. Even if the building were located within a special purpose district with ground floor use provisions, such as the Special Enhanced Commercial District, many of these provisions would only apply to developments and enlargements of the ground floor. This limited applicability is intended to establish a reasonable overlap between the scope of the construction work and the relevance of the zoning regulations. For example, it may be impractical to impose requirements for additional alterations on the ground floor when the entire scope of work is limited to a small enlargement several stories up.

Street Wall Rules

There are no street wall location regulations for commercial buildings within non-contextual districts. Even if the Craddock building were located within a contextual district – where street walls often need to be close to the sidewalk – street wall provisions would still be inapplicable to conversions or changes of use and would have limited applicability to enlargements. This is because it is often impractical or unfeasible to move the street wall of an existing building (ZR 35-61). For buildings subject to

street wall regulations, there are also minor allowances to vertically enlarge a non-complying street wall by one story, or 15 feet (ZR 35-655).

Signs

Louisa is anticipating that, once converted, the office space in the Craddock building will be subdivided among a few tenants. She imagines they may have two options: allow each of the tenants to have *signs*, which would, in the aggregate, be subject to the maximum surface area regulations, or use the rules to create a sign containing the name of the building, and rely on a directory inside for people to find the individual tenants.

In C4-4 Districts, a building is allowed to have both *illuminated* and non-illuminated signs. Either sign type is permitted to have a surface area of up to five times the street frontage, or 500 square feet per frontage, whichever is less. This amount is also the maximum sign allowance for the zoning lot — the maximum amounts for illuminated and non-illuminated signs are not added together (ZR 32-64). Since the Craddock building is located on a through lot, each of its two frontages is permitted a 500 square feet sign ($5 \times 100 = 500$ square feet). In C4-4 Districts, all signs must be located below a height of 40 feet (ZR 32-65).

Louisa takes another peek at the rendering posted on the construction fence and notices that the owners have designed cutout, illuminated letters to announce “the Craddock building” on each facade. The area calculations for such a sign would be determined by placing a single theoretical boundary around the outermost extent of the letters (ZR 12-10).

Planting Rules

Conversions or changes of use do not typically trigger requirements for street trees or other planted areas, and even small enlargements are typically exempt. Street trees

are required for enlargements that increase the existing floor area of the building by 20 percent or more (ZR 33-03). If the owners of the Craddock building create a 1.0 FAR enlargement – going from the current FAR of 2.4 to 3.4 – they will be increasing the floor area by 41.6 percent, so they will need to provide street trees. Applying the requirement of one tree per every 25 feet of street frontage (ZR 26-41), they will need to provide a total of eight street trees along the sidewalk (200 feet of total frontage divided by 25).

Applying Streetscape Regulations

1. There are no street wall location rules for commercial buildings in non-contextual districts.
2. Up to 500 square feet of signage may be provided per frontage below a height of 40 feet.
3. There are no ground floor use restrictions in this C4-4 District.
4. One street tree is required for every 25 feet of street frontage.



Basic Information

Zoning District	C4-4
Zoning lot type	Through lot
Street type	Wide street Narrow street

	Section	Permitted/Required		Provided
Permitted Uses				
Uses	ZR 32-11	Residential	Use Groups 1 and 2	None
	ZR 32-12, 32-13	Community Facility	Use Groups 3 and 4	None
	ZR 32-15, 52-35	Commercial	Use Groups 5, 6, 8, 9, 10 and 12, or, in the case of non-conforming Use Group 16 use, Use Groups 7B, 7C, 7D, 11A, 11B, 14, 16 and 17	Use Group 6B
Supplemental Use Regulations	ZR 32-422	In mixed buildings, commercial uses are permitted only on stories below residential dwelling units		n/a
Permitted Bulk				
Floor Area Ratio	ZR 33-122	Commercial	3.4 (68,000 sf of floor area)	Existing floor area = 2.4 (48,000 sf) Proposed floor area = 1.0 (20,000 sf) Total = 3.4 (68,000 sf)
Open Areas	ZR 33-281	Commercial rear yard	No rear yard equivalent required on through lots in C4-4 Districts	None
Height and Setback	ZR 33-432	Height the sky exposure plane begins at	60 ft or four stories, whichever is less	60 ft
		Initial setback distance	15 ft on a wide street, 20 ft on a narrow street if using basic regulations	20 ft on a wide street, 40 ft on a narrow street
		Height limit	None, governed by a sky exposure plane, which is 5.6:1 on a wide street and 2.7:1 on a narrow street if using basic regulations	85 ft
Parking and Loading				
Vehicular Parking	ZR 36-21, 36-232	Commercial	1 per 1,000 sf of enlarged floor area for uses in PRC-B1 in Use Group 6, waived if less than 40 spaces: 20,000 sf enlargement ÷ 1,000 = 20 spaces, 20 < 40, so waived	None
Bicycle Parking	ZR 36-70	Commercial	No requirement for enlargements that increase the floor area of the building by less than 50%	None
Loading Berths	ZR 36-62	No loading berth required for first 100,000 sf of floor area for offices in C4-4 Districts		None
Streetscape				
Signs	ZR 32-642	Five times the street frontage: 5 x 100 = 500 sf of surface area permitted per frontage		400 sf of surface area per frontage
Planting	ZR 23-03	One tree every 25 feet of street frontage: 200 ÷ 25 = 8 street trees, 4 per frontage		8 street trees



Louisa now knows about the concept of grandfathering and understands how buildings can be adaptively re-used pursuant to zoning.

Case Study 3: Modifying Zoning

Jackie is the owner of a small clothing and accessory store that specializes in articles with tweed and other woven fabrics from around the world. She started her business over 25 years ago, and has watched it grow steadily ever since.

Jackie's actual storefront has changed along with her retailing needs over the years. The initial shop was just 500 square feet in size, and she subsequently moved it to larger spaces before growing into the 5,000 square foot corner store it has occupied for the last five years. She is once again outgrowing her space, and is currently assessing her expansion options. She would like a retail space that is around 15,000 square feet, so that she can accommodate a wider selection of goods and not worry about moving again for a while. While she has moved the business a few times in the past, she has always stayed on the same retail street within two blocks of the original location. If she does need to move, she would still like to maintain this proximity to her customer base. Jackie has three potential options: moving her shop to an available space in a nearby Manufacturing District; expanding within the building where she is currently located, which is in a C2-3 District mapped within an R6 District; or moving her shop into a large, but irregularly shaped storefront in a different *Commercial District*.

Clothing or clothing accessory stores are listed as *uses* in two separate *Use Group* categories in the Zoning Resolution, depending on their square footage: Use Group 6C, if 10,000 square feet or less, or Use Group 10A if larger. While Use Group 6 uses are permitted as-of-right in C1, C2, C4, C5, C6 and C8 Commercial Districts and in all Manufacturing Districts, Use Group 10 is only permitted as-of-right in the higher intensity C4, C5, C6 and C8 Commercial Districts and, by *special permit* of the City

Jackie's Store



Jackie is the owner of a small clothing and accessory store. She is outgrowing her space, and is assessing her options for a larger store.

Possible Sites



1. A 10,000 square foot retail space is available adjacent to current space in a C2-3 District mapped within an R6 District. (A 15,000 square foot space is not permitted as it would require a zoning map or text amendment to allow the larger store.)
2. A 15,000 square foot retail space is available in a nearby M1-4 District. This would be eligible for a CPC special permit.
3. A 15,000 square foot retail space is also available on an irregularly shaped lot in a C2-3 District mapped within an R5 District. This parcel might be eligible for a variance.

Planning Commission (CPC), in M1 Districts. Since she is looking for a store larger than 10,000 square feet, she will need to focus on this more limited set of districts.

None of Jackie's three options are located within the high intensity Commercial Districts that would allow a larger clothing store to be permitted as-of-right. In fact, the nearest location for one of those districts is a half-mile away, which she feels is too far from her current customer base.

To remain in her current neighborhood, Jackie wants to seek modifications to the zoning. The types of zoning solutions that would work for each of Jackie's potential sites is different: a special permit for one, a zoning change for the next or a variance for the third. Each of these is a type of *discretionary action*, as it may be approved or denied at the discretion of the governmental body overseeing the application (see Chapter 8).

Special Permits

The first vacant retail space Jackie looks at is around the corner, in an M1-4 District. Many ground floors on this block had been empty, but because of the success of the retail street on which Jackie is located, there are already a few retailers who have moved to the block. The 15,000 square foot space was previously tenanted by a liquor store, which is a use allowed as-of-right with no size restriction. The M1 designation would allow Jackie's Use Group 6C use – clothing or clothing accessory stores, up to 10,000 square feet – as-of-right. It would also allow the Use Group 10A version, with no size restriction, through a special permit from the CPC.

Jackie's lawyer explains that the Zoning Resolution contains pre-defined modifications to the underlying use, bulk and parking regulations through mechanisms known as *special permits* that are administered by either the CPC or the *Board of Standards and Appeals (BSA)*.

CPC special permits generally involve larger planning decisions such as the approval of a stadium or arena. CPC special permits are also subject to the *Uniform Land Use Review Procedure (ULURP)* and are considered, over a roughly seven-month period, by the affected Community Board, the Borough President (and Borough Board if it affects more than one Community Board), the City Planning Commission and, finally, the City Council. Each stakeholder in this process has a prescribed period in which to consider the proposal. A *public hearing* is held at each stage of review, and a hearing and a vote occur at the CPC, then at the City Council.

BSA special permits are generally narrower in scope than those granted by the CPC. The BSA is comprised of members with technical expertise in various aspects of development, and BSA special permits often require consideration of factors that utilize those skills. BSA

special permits are subject to a public hearing and review process, but are not subject to ULURP or review by the CPC or City Council.

Both types of special permits trigger *City Environmental Quality Review (CEQR)* and therefore, depending on the scope of the action, either an Environmental Assessment Statement (EAS) or an *Environmental Impact Statement (EIS)* will need to be completed. The CEQR Technical Manual provides guidance for the types of analysis required to complete these documents.

Special permits typically contain specific “findings” that describe determinations the CPC or the BSA must reach in making their decision whether or not to approve the application. Many special permits instruct the CPC or BSA to consider how the zoning modification before them will impact the surrounding area. If the application is a use permit, the decision-making body may be asked to consider whether the use would exacerbate traffic congestion, draw traffic through local streets to the detriment of residential neighborhoods, or change the essential character of the neighborhood. If it is a bulk special permit, the decision-making body may be required to consider whether the height change would unnecessarily obstruct access to light and air to surrounding properties and streets, or alter the essential character of the neighborhood.

Section 74-922 of the Zoning Resolution, which allows the CPC to grant a special permit for larger clothing stores in M1 Districts, has between seven and 13 separate findings for the CPC to consider before allowing a clothing store to exceed 10,000 square feet, depending on whether the application is additionally requesting bulk or loading berth modifications. Five of the findings instruct the CPC to consider the traffic implications of the project, by ensuring that adequate measures are in place to prevent congestion, and confirming that consideration has been given to

siting the project near mass transit. Two of the findings require the CPC to consider the use in the context of the surrounding area — the CPC needs to determine that the larger retail establishment will not impair the character or future development of the area and must conclude that the store will not have adverse impacts on the appropriate uses in the district. If the CPC concludes that a larger retail store would disrupt industrial activity in an active M1 district, for instance, it can reject the application. The final six findings pertain to exclusively to projects seeking bulk or loading berth modifications.

If Jackie pursues this option, she will need to work with professionals, potentially including architects, planners, land use attorneys and environmental engineers to prepare her land use and environmental review applications. Among the materials required will be a detailed statement describing how each of the specific findings of the special permit are met. The *Department of City Planning (DCP)* staff conduct meetings to help guide the applicant team toward their completion of the application, which is then reviewed by DCP in order to determine if it is complete and ready to begin the land use review process. Applicants for a BSA special permit would similarly work with staff of that agency.

Zoning Changes

The second option for Jackie is to remain at her current location and expand into the neighboring space, which was recently vacated. The 5,000 square foot space she currently occupies, plus the 10,000 square foot store next door would give her a combined 15,000 square foot store. The zoning designation is a C2-3 commercial district mapped within an R6 District. While this district permits the broad commercial Use Group 6, it does not permit the Use Group 10 she is seeking. Unlike the Manufacturing District site she looked at earlier, there is no special permit available in C1 or C2 Districts for larger stores. If Jackie wants to remain in this location, she would need to amend the applicable zoning for her property. She can do this through a **zoning map amendment** or, potentially, a zoning text amendment.

A zoning map amendment, or a **rezoning**, changes the zoning designation for a group of properties based on a land use planning objective for that area. To allow a larger clothing store as-of-right, Jackie could consider rezoning the block front to a zoning district that permits these larger stores, such as a C4 District. For the rezoning to be considered appropriate, the regulations of the C4 District, such as the allowance for certain larger stores, would need to be considered generally suitable within the area, and the area subject to the rezoning would need to be delineated in a way that makes sense based on planning considerations for the area, and not arbitrarily limited to a particular owner's property. Zoning map amendments are, like CPC special permits, subject to ULURP, and therefore require roughly seven months of public review by the Community Board, the Borough President, the CPC and the City Council. A rezoning can be proposed by a private applicant like Jackie, or by the City government. Dozens of rezonings occur around the city every year, differing widely in terms of size and degree of change from the previous district designation.

Jackie could also consider a zoning text amendment, which would modify the underlying regulations of the Zoning Resolution for a zoning district, a defined geographic area or another category of properties (such as those with buildings built before 1961). Text amendments are not subject to ULURP, but follow a very similar process pursuant to the City Charter. In text amendments, there is no "clock" that binds decision-makers to collectively act within seven months, and the Community Board and Borough President review can occur concurrently. Zoning text amendments can also be initiated by private applicants or by City government. However, DCP would rarely recommend a zoning text amendment to address an issue that could be addressed by a zoning map amendment or other zoning action. In addition, the environmental review process would need to consider how the text amendment would affect all properties to which the change would apply; this would extend well beyond the narrow condition Jackie is trying to address.

Either of these applications would go through a process administered by DCP. Out of curiosity, Jackie reached out to the Borough Office of the Department and, after some preliminary discussions, her team believes that with the steady increase in residential growth near the corridor, which has increased the demand for commercial uses, plus the limited availability of higher intensity Commercial Districts within the area, it would make sense to propose a rezoning. A C4-3 District, for example, would retain the same level of permitted residential density (an R6 District equivalent) while allowing a wider range of commercial uses at a higher commercial FAR. The Department advised Jackie to map this district over the entire block front – not just her establishment – because the same factors affecting her property exist on the remainder of the block. The *City Environmental Quality Review (CEQR)* analysis to determine the environmental impacts of the rezoning and the land use application will be based on the entire rezoning area.

Variances

The final site that Jackie looks at is a C2-3 District mapped within an R5 District, but it is located in a part of the neighborhood where the historic street pattern created an awkwardly shaped block that is narrow, shallow and irregularly angled. The entire block is just one 15,000 square foot zoning lot, with a one-story vacant building. The site is too narrow to feasibly accommodate any residential uses, limiting the possibility of a more substantial development. Because of the awkward shape of the parcel, and the limited viability for other types of retail in a space that small and irregularly shaped, Jackie has been instructed that this site might be a candidate for a zoning variance, which addresses hardships that result from zoning regulations as they apply to a particular site.

Variance applications are administered by the BSA and, while not subject to ULURP, they are referred to the local Community Board and do require a public hearing before the BSA renders its decision. In granting variances, the BSA must find that the application meets all five findings set forth in the Zoning Resolution ([ZR 73-03](#)):

- there are unique physical conditions on the property, like narrowness, shallowness or exceptional topography, that make complying with the zoning regulations a practical difficulty;
- without the variance, a reasonable rate of financial return is unlikely for the owner were they to proceed under the as-of-right regulations;
- the variance, if granted, would not alter the essential character of the neighborhood;
- the practical difficulties are not self-created; and
- the variance is the minimum amount necessary to provide relief.

Prospective variance applicants work with the staff at the BSA in preparing their application materials and determining whether these findings can be met for a particular property.

The Public Review Process

Working with her professional consultants to choose between pursuing a special permit, a rezoning or a variance, Jackie opts to try to obtain a CPC special permit to allow the clothing store on the first site in the M1-4 District.

When her land use application is complete, the project will be “certified” as ready to begin ULURP at one of the twice-monthly CPC review sessions. After this step, copies of the application will be delivered to the Community Board and Borough President, which will hold public hearings and offer their advisory recommendations on the project, for consideration by the Commission. The environmental analysis helps inform these decisions. For example, the assessment of traffic conditions will enable decision-makers to understand whether the proposed retail store is likely to affect traffic congestion.

When the project returns to the CPC, a public hearing will be scheduled and publicized, with “notice” placed in The City Record (and on the DCP website). Jackie or her representative will be asked to describe why she is seeking the special permit, and may be asked to answer questions from the CPC Commissioners about the project. The CPC will consider this testimony, and testimony from any other members of the public, together with recommendations from the Community Board and Borough President, and determine whether a clothing store of the proposed size is appropriate on the site in that area. If the CPC grants the special permit, the project will move on to the City Council, which has the option to hold a public hearing and vote on the application. If the Council does not vote to disapprove the special permit, then the special permit becomes effective and the use becomes legal to operate at that location, subject to any conditions imposed by the special permit. Jackie can proceed to convert the space into an expanded clothing store, in accordance with Building Code and any other relevant laws and regulations.



Once the special permit becomes effective, Jackie can proceed to convert the space into an expanded clothing store.