



**buildings**  
**2023-003**  
**bulletin**  
**TECHNICAL**

**ISSUANCE DATE**  
May 22, 2023

**ISSUER:** Keith L. Wen, R.A.   
Assistant Commissioner  
Code & Zoning Interpretation

**PURPOSE:** This Bulletin rescinds 17 Memoranda, 1 Directive, and 14 Letters which were issued by the Department but are no longer applicable under current Codes and Local Laws.

**SUBJECT(S):** Rescinding a Directive, Memoranda, and Letters

## RESCINDED DOCUMENTS

### Directive 9 of 1965

**Memo 10/06/53, Memo 4/1/83, Memo 6/30/55, Memo 5/31/84, Memo 11/22/55, Memo 11/13/68, Memo 5/3/65, Memo 4/30/80, Memo 10/5/72, Memo 9/24/75, Memo 10/3/86, Memo 9/2/86, Memo 10/15/74, Memo 3/3/86, Memo 12/2/74, Memo 8/1/69, Memo 5/7/86**

**Letter 5/9/91, Letter 10/24/91, Letter 9/5/90, Letter 4/10/85, Letter 9/13/88, Letter 8/4/88, Letter 11/7/86 (Sec. 23-65), Letter 11/10/86, Letter 9/11/86, Letter 9/24/86, Letter 11/7/86 (Sec. 99-03), Letter 9/20/89, Letter 11/1/91, Letter 4/1/92**

## BACKGROUND

The Department of Buildings periodically reviews published Buildings Bulletins (BB), Policy and Procedure Notices (Technical, Operational, Legal, Administrative, OTCR) and the various Directives, Executive Orders, Memoranda and Letters issued in the past to ensure their continued consistency with current Departmental practice and to verify that new laws and regulations are incorporated into these documents.

The above listed Directive, Memoranda, and Letters are rescinded effective immediately and are attached therein.

The rescinded documents will appear on the Department's website with the watermark **RESCINDED**. Because this review is ongoing, documents not specifically listed in this Bulletin may be addressed in future bulletins. Watermarked Memoranda, Directives, Executive Orders and Letters may be accessed through the online version of this Bulletin at <https://www1.nyc.gov/site/buildings/codes/building-bulletins.page>.

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

**THE CITY OF NEW YORK  
HOUSING AND DEVELOPMENT ADMINISTRATION  
DEPARTMENT OF BUILDINGS**

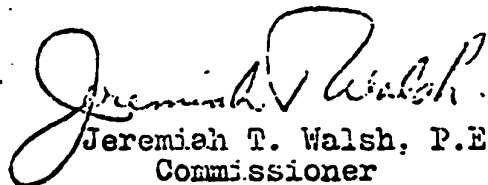
DEPARTMENTAL MEMORANDUM

DATE: December 2, 1974

TO: Borough Superintendents  
FROM: Jeremiah T. Walsh, P.E., Commissioner  
SUBJECT: Special Planned Community Preservation Districts

Installation of all fencing in areas mapped as Special Planned Community Preservation Districts, regardless of size or type, shall be subject to Special Permit requirements by the City Planning Commission and Board of Estimate, as stated in Section 103-08 of the Zoning Resolution in regard to substantial alterations of existing topography, in addition to requirements set forth in Section C26-717.1 of the Administrative Code.

Hereafter, when complaints of illegal installation of fences in the subject districts have been received inspections shall be made, and violations placed where department records do not reflect approval of plans indicating such fences, and installation thereof prior to July 18, 1974. A copy of the enclosed letter from Chairman Zuccotti of the Planning Commission is to accompany each notice of violation.

  
Jeremiah T. Walsh, P.E.  
Commissioner

**RESCINDED BY**  
**BUILDINGS BULLETIN 2023-003**

DEPARTMENT OF BUILDINGS  
Intradepartmental Memorandum

DIRECTIVE NO. 9-1965

To: Borough Superintendents

Date: August 30, 1965

From: Joseph Ferro  
Director of Operations

Subj: Deed Restrictions  
for Off-Site Parking

The Zoning Resolution permits accessory off-street parking space to be located on a zoning lot other than the same zoning lot to which such spaces are accessory. Such off-site accessory parking is permitted in Residential, Commercial and Manufacturing Districts subject to several limitations stipulated in the Zoning Resolution.

One requirement common to all districts as specified in Sections 25-55, 36-45 and 44-34 is that "Such spaces shall be in the same ownership as the use to which they are accessory,....."

In order to insure compliance with the above requirement, the applicant shall file in the Register's Office in the Block and Lot Book where the Deed for the accessory land has been recorded, a declaration which shall include the following:

1. Description by metes and bounds of the lands upon which the principal use and accessory use are located.
2. That the accessory use is in the same ownership as the principal use.
3. That the premises upon which the accessory use is located shall be owned by the owner of the principal use.
4. That the owner of the principal use covenants that the land and/or building of the accessory use shall not be sold and conveyed, except as an adjunct and part of the conveyance of the land of the principal use.
5. That the owner of the principal use covenants that the land and/or building of the principal use shall not be sold and conveyed, except as an adjunct and part of the conveyance of the land and/or building of the accessory use.
6. That if the accessory parking is required parking, then in the event of a sale and conveyance of either parcel without the other, as hereinabove set forth, the certificate of occupancy issued for the principal use shall be forfeited and the building used for the principal use shall become an unlawful structure.

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**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

Directive No. 9-1965

August 30, 1965

Re: Deed Restrictions for  
Off-Site Parking

Page 2

7. That if the accessory parking is permitted parking, then in the event of a sale and conveyance of either parcel without the other, as hereinabove set forth, the certificate of occupancy issued for the accessory use shall be forfeited and the use of the premises for accessory parking shall become unlawful.
8. This Declaration shall run with the land and shall be effective and continue in full force and effect, as follows:
  - (1) If the accessory parking is required parking, then it shall continue as long as the principal use continues to exist.
  - (2) If the accessory parking is permitted parking, then it shall continue as long as the accessory use continues to exist.

Signed

Joseph Ferro  
Director of Operations

*A-10*

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

THE CITY OF NEW YORK  
Intradepartmental Memorandum

TO: Borough Superintendents

DATE: October 6, 1953

FROM: Commissioner Bernard J. Gillroy

SUBJECT: Drop Curbs

The following minimum distances between drop curbs and light poles or hydrants are to be required when new drop curbs are installed, so as to avoid injury to the hydrants and poles.

Also to provide safety for pedestrians using the sidewalk adjacent to drop curbs, a restriction on the maximum length of drop curb and the minimum distance between long drop curbs, are necessary.

Compliance with the following regulations shall be required except where in the opinion of the superintendent undue hardship would result, in which case the provisions may be modified provided adequate pedestrian safety is maintained.

1. The distance from the splay of a drop curb to a light pole or lamp post shall be not less than five (5) feet unless the approval of the Department of Water Supply, Gas and Electricity is obtained for the shorter distance.
2. The distance from the splay of a drop curb to a hydrant shall be not less than five (5) feet unless the approval of the Department of Water Supply, Gas and Electricity is obtained for the shorter distance.
3. The maximum length of a drop curb shall be thirty (30) feet and where the sum of the lengths of adjoining drop curbs for one (1) lot is more than thirty (30) feet, a safety area of at least five (5) feet shall be provided for each thirty (30) feet of drop curb.
4. At the intersection of two streets, a drop curb shall be at least five (5) feet in back of the building line of the other street.

TVE:IA

/s/ Bernard J. Gillroy  
Commissioner

**A-21**

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

THE CITY OF NEW YORK  
DEPARTMENT OF BUILDINGS

*Minkin*

DEPARTMENTAL MEMORANDUM

DATE: April 1, 1983

TO: Borough Superintendents  
FROM: Deputy Commissioner Irving E. Minkin, P.E.  
SUBJECT: Private Streets

*(Falk)*

*(Esnard)*

While we are requiring conformance of private streets with appropriate specifications of the cognizant agencies having an interest in large zoning lots traversed by private streets (Fire Department, Department of Transportation, and Department of Environmental Protection) the Mayor's Community Assistance Unit has advised this office that a residual problem possibly still exists with respect to prompt identification of buildings in an emergency, due to variations in assigning house numbers related to the private street on which buildings front; and, that allegedly under some instances that the street names and house numbers refer to a distant legally mapped street giving access to the overall development.

In order to resolve this deficiency, hereafter no applications shall be accepted for filing unless the street name and house number relate to the particular street in closest proximity to the building, regardless of whether said street is legally mapped or is part of a large residential development. Exceptions may be authorized in consultation with the cognizant Borough Presidents Office and the Fire Department.

*(Signature of Irving E. Minkin)*  
Irving E. Minkin, P.E.  
Deputy Commissioner

IEM:ow

cc: Commissioner Esnard  
Deputy Commissioner Parascandola  
Assistant Commissioner Dennis  
Executive Engineer Polsky  
BIAC  
Professional Societies

bcc: Denise Scheinberg  
Joan Wallich  
Marion Harvey

*1931*





**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

**THE CITY OF NEW YORK  
DEPARTMENT OF BUILDINGS**

DEPARTMENTAL MEMORANDUM

DATE: May 31, 1984

TO: Borough Superintendents

FROM: Deputy Commissioner Irving E. Minkin, P.E.

SUBJECT:  
Private Streets

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As most of you recall several years ago I sat down with Phil Goldstein, Phil Olin and George Berger, and with personnel from DEP (Water Resources), DOT (Highways), Department of City Planning (S.I. Office) and Fire Department (Division of Fire Prevention) and reached a consensus in that private streets within single zoning lots should be developed in accordance with all residential street standards of all agencies involved; and the matter which delayed finalizing the procedure was my hopeful anticipation that Highways and Water Resources would agree to a formalized review procedure where they would relieve us of the burden of detailed review. The latter did not come to pass, but I anticipated that all boroughs would be applying the substantive specifications for private streets, whether internal within a zoning lot, or unmapped streets providing access to independent zoning lots, nonetheless.

A recent investigation disclosed that this is not happening, and, I have been requested to ask the Borough Superintendents to achieve a level of conformity consistent with the foregoing. Accordingly, I would appreciate if you would assimilate all the relevant standards and specifications, including the standard promulgated by the Fire Department as an outgrowth of the above-mentioned meetings, and prepare a draft memorandum for Commissioner Smith's signature in furtherance of the above at your next Borough Superintendents Technical meeting; or, discuss same, and achieve the desired result as soon as possible.



Irving E. Minkin, P.E.  
Deputy Commissioner

IEM:ap  
cc: Commissioner Smith  
Deputy Commissioner Madonia  
Assistant Commissioner White  
Deputy Inspector General Jon Lewis  
File

**1985**



**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

INTRADPARTMENTAL MEMORANDUM

To: Borough Superintendents

Date: November 22nd, 1955

From: Bernard J. Gillroy  
Commissioner

Subject: Radio Towers

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Numerous radio towers have been erected throughout the city for amateur radio stations. Because of the small size and light construction of such towers and since such towers are frequently used for a temporary period only, they have been accepted as being similar to poles. In order to obtain uniformity in all boroughs, permits for radio towers for amateur radio stations may be issued under the following conditions:

1. The application may be filed by the radio amateur. The applicant shall file a location plan, the manufacturer's specification for the tower and its support, the manufacturer's analysis of the stresses in the tower and its supports, the details of footings, guys and braces.
2. Where the tower is erected by a tenant, the consent of the owner shall be filed. Towers shall not overlap adjoining property unless the consent of the owner of such property is filed. Guys may be fastened to anchors on adjoining property, if the consent of the owner is filed.
3. The height of such towers shall not exceed seventy-five feet above the adjacent ground, except that towers constructed of wood may not exceed 20 feet in height.
4. The construction of such towers shall be checked to insure safety. If constructed according to the specifications of the manufacturer, the tower may be accepted. Foundations of such towers shall meet the requirements of the code.
5. The thickness of steel in towers shall be not less than one-eighth inch when galvanized. If not galvanized, steel shall not be less than one-fourth in thickness. Aluminum shall be not less than one-eighth inch in thickness when used structurally. Where towers are constructed of tubing, the minimum wall thickness of the tubing shall be not less than one-sixteenth inch and such tubing, if steel, shall be galvanized on the exterior.
6. Such towers may be accepted in rear yards as they are not substantial enough to effect light or air. They may be accepted in residence districts as accessory to the dwelling.
7. Towers constructed of wood may not be erected on roofs.

Bernard J. Gillroy  
Commissioner

**A-25**

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

C O P Y

The City of New York  
HOUSING AND DEVELOPMENT ADMINISTRATION  
Department of Buildings

Residential Buildings to  
Non-residential Uses

DEPARTMENTAL MEMORANDUM

Date: November 13, 1968

TO: Borough Superintendents

FROM: Thomas V. Burke, Director of Operations

SUBJECT: Residential Buildings Converted to Non-residential Uses in Commercial Districts

In Commercial Districts as established by the Zoning Resolution, no approval shall be given an application for a change of use of a residence portion of a building to a non-residential use until it has been determined that, in addition to meeting all applicable laws, the residence portion of the building which it is proposed to change is vacant.

A statement by the owner to the effect that the portion to be changed is vacant is acceptable.

An approval and subsequent permit may be issued only for conversion of that portion of the building which is vacant and which in Commercial Zoning Districts meets the requirements of Section 32-42 of the Zoning Resolution for the proposed use.

Upon commencement of work, the inspector shall verify that the entire portion of the building which is proposed to be changed is vacant. If not, he shall inform the Borough Superintendent who shall immediately revoke the permit under Section C26-180.0 Administrative Code for applications complying with the existing Building Code (1938), or Section C26-119.2 Administrative Code for applications complying with the new Building Code (1968).

Please distribute a copy of this directive to each of the examiners and inspectors in your borough and have each person acknowledge receipt.

/signed/  
Thomas V. Burke  
Director of Operations

TVB:WCK

-110-



**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

**THE CITY OF NEW YORK  
DEPARTMENT OF BUILDINGS**

**DEPARTMENTAL MEMORANDUM**

**DATE: April 30, 1980**

**TO: Borough Superintendents**

**FROM: Commissioner Irwin Fruchtman, P.E.**

**SUBJECT: Indirect Source Permit for Parking Facilities;  
Accessory Parking for Residential Uses**

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**Enclosed is a copy of the following:**

- 1. Part 203 of the Environmental Conservation Law, relating to Indirect Source Permit regulations, amended July 12, 1979, effective August 11, 1979.**
- 2. An Order and Partial Judgement entered on March 10, 1980 in the United States District Court Southern District of New York, in the matter of Friends of the Earth vs. Hugh L. Carey, et al effective immediately.**
- 3. An Order entered on October 30, 1978 in the same court and case effective October 30, 1979.**

**Based on the foregoing, you are to be guided as follows:**

- a. The memorandum of 7/23/76, entitled "Indirect Source Permit for Parking Facilities" is hereby rescinded. (Pg 198)**
- b. No Indirect Source Permit for Parking Facilities is required hereafter in New York City, except for that portion of the borough of Manhattan south of 60th Street.**
- c. No off-street parking facilities shall be required for new residential construction south of 60th St. in Manhattan (other than publicly assisted housing governed by Section 25-25 of the Zoning Resolution), whether in a residential building, or a mixed use build. All other provisions of the Zoning Resolution regarding required or permitted parking are in full force and effect, except as delimited by the provisions of the Oct. 30, 1978 Court Order, as amended 3/10/80.**
- d. All plans indicating new off-street parking facilities south of 60th St. in Manhattan shall not be approved until an Indirect Source Permit has been obtained from the New York City Office of Environment Impact.**

  
**Irwin Fruchtman P.E.  
Commissioner**

**CC: Chairman Sturz, CPC  
Dir. Carroll, Ofc of Env. Impact  
Executive Staff  
BIAC**

**1713**

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

THE CITY OF NEW YORK  
HOUSING AND DEVELOPMENT ADMINISTRATION  
DEPARTMENT OF BUILDINGS

DEPARTMENTAL MEMORANDUM

DATE: October 5, 1972

TO: Borough Superintendents  
FROM: Director of Operations, Thomas V. Burke, P.E.  
SUBJECT: Ownership of Zoning Lot - Section 12-10 Zoning Resolution

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Attached is a copy of a memorandum of Louis Beck, Counsel to the Department, concerning the matter of ownership of a zoning lot.

Please be guided by the memorandum especially items (a) through (e), and the last paragraph on page 3.

It should be noted that where there is required accessory parking, it must be under the same ownership as the principal use. Therefore, at no time can required accessory parking be placed under ownership which is not the same ownership as that of the principal building to which it is accessory.

  
Thomas V. Burke, P.E.  
Director of Operations

TVB:rar  
atts.

cc: Executive Staff

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HOUSING AND DEVELOPMENT ADMINISTRATION  
DEPARTMENT OF BUILDINGS

(File)

DEPARTMENTAL MEMORANDUM

DATE: September 24, 1975

TO: Borough Superintendents

FROM: Jeremiah T. Walsh, P.E., Commissioner

SUBJECT: Railroad or Transit Air Space - Sections 22-41, 32-44, 42-46 and 74-53  
of the Zoning Resolution

Herewith forwarded is a copy of a letter received from Acting Chairman of the Planning Commission, dated August 12, 1975 relating to railroad or transit air space, for your advice and guidance.

When such spaces are indicated on zoning maps, or surveys submitted in conformance with Section C26-110.2 (a) of the Administrative Code, they shall be subject to the Special Permit requirements of Section 74-631 of the Zoning Resolution, regardless of any subsequent sale or abandonment, unless the Zoning Resolution is amended to allow as-of-right development.

  
Jeremiah T. Walsh, P.E.  
Commissioner

1098

DEPARTMENTAL MEMORANDUM

DATE: Oct. 3, 1986

TO George E. Berger, P.E., Assistant Commissioner  
FROM: Leo Weinberger, Esq., Deputy General Counsel *LW*  
SUBJECT Interpretation of Zoning Resolution Section 23-462 (b)

Attached please find the decision by the Brooklyn Supreme Court in the lot line extension dispute at 1538 East 17th Street, Brooklyn.

The attached decision upholds the B.S.A. resolution, a copy of which is also attached, and finds that Zoning Resolution Section 23-462 (b) allows an owner to build either to the lot line or at least eight feet away. This is at variance with the August 6, 1986 Borough Superintendent's meeting report and the November 26, 1975 memorandum by Commissioner Walsh. Therefore, until this Supreme Court decision is overruled, D.O.B. policy should be adjusted accordingly.

LW:ngm  
Att.

cc: Charles M. Smith, Jr., Commissioner  
✓Cornelius F. Dennis, P.E., Deputy Commissioner  
A. Louis Munoz, Esq., General Counsel  
Lenore Norman, Director - I.G.R.





**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES  
120 WALL STREET, NEW YORK, N. Y. 10005

CHARLES M. SMITH, Jr., R. A., Commissioner

September 2, 1986

MEMORANDUM

TO: BOROUGH SUPERINTENDENTS

FROM: George E. Berger, P.E.  
Assistant Commissioner

SUBJECT: Special Provision for Party or Side Lot Line Walls  
Section 23-49 Zoning Resolution

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GEORGE E. BERGER, P.E.  
Assistant Commissioner  
Building Construction  
Special Projects

NOTE: This memorandum supersedes my memorandum dated August 7, 1986.

Section 23-49(c) of the New York City Zoning Resolution shall be interpreted as applying to a newly created party wall by either the construction of two new buildings or by means of an enlargement of one or more existing buildings or any combination thereof.

The special provision of Section 23-49(a)&(c) are applicable when the party walls are utilized or shared for 50% or more of the depth of the building. Unusual conditions such as a drive-thru area shall be subject to review by the Borough Superintendents.

Party walls and independent walls referred to in Section 23-49 shall be applicable to walls of the residential building and not to accessory buildings such as sheds and garages.

An exterior wall of an existing building which is not more than 6 inches off the lot line shall be considered as being on the lot line.

A straight line extension referred to in Section 23-49(b) may be either vertical or horizontal in direction and is permitted regardless of the open area of the adjoining lot.

  
George E. Berger, P.E.  
Assistant Commissioner

GEB:lg  
cc: Executive Staff  
Engineers & Architects Societies

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

**HOUSING AND DEVELOPMENT ADMINISTRATION  
DEPARTMENT OF BUILDINGS**

ADMINISTRATIVE MEMORANDUM

DATE: October 15, 1974

TO: Borough Superintendents

FROM: Irving E. Minkin, P.E., Executive Engineer

SUBJECT: Infill Zoning; Special Height Regulations for Developments in  
Predominantly Built-Up Areas - Section 23-691, Zoning Resolution

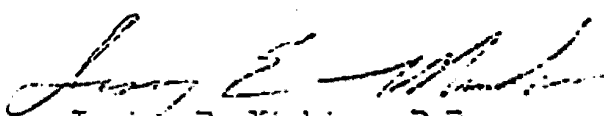
Reprints of page 78 of the Zoning Resolution contain a printing error in Section 23-691.

This section should read as follows:

**"Special Height Regulations for Developments  
in Predominantly Built-Up Areas**

In the case of development which utilizes the special optional regulations applying to a predominantly built-up area of Section 23-141 in R4 and R5 districts of a zoning lot of not more than 1.5 acres, the maximum height of any portion of a residential building shall not exceed 32 feet. Permitted obstructions that may penetrate a maximum height or sky exposure plane are set forth in Section 23-62 (Permitted Obstruction)."

IEW:njk

  
Irving E. Minkin, P.E.  
Executive Engineer

cc: Comm. Walsh  
Dep. Comm. Jenkins  
Ass't Comm. Parascandola  
Exec. Staff

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**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**



DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES  
120 WALL STREET, NEW YORK, N. Y. 10005

CHARLES M. SMITH, Jr., R. A., Commissioner

March 3, 1986

TO: BOROUGH SUPERINTENDENTS

FROM: George E. Berger, P.E. *GEB*  
Assistant Commissioner:

GEORGE E. BERGER, P.E.  
Assistant Commissioner  
Building Construction  
Special Projects

RE: ZONING ) Special Clinton District  
) Section 96-108 Zoning Resolution  
) INTERPRETATION

ZONING RESOLUTION:

Section 96-108  
Demolition of Buildings

No demolition permit or alteration permit for partial demolition involving a decrease in the amount of residential floor area in a building of more than 20 per cent shall be issued by the Department of Buildings for any building containing dwelling units or rooming units within the Preservation Area unless it is an unsafe building and demolition is required pursuant to the provisions of Chapter 26, Title C, Part I, Article 8 of the New York City Administrative Code.

INTERPRETATION:

Regardless of the amount of the final floor area, all buildings involving a decrease of more than 20 per cent of the E X I S T I N G residential floor area shall comply with Section 96-108 of the Zoning Resolution for the Special Clinton District.

GEB:rmr  
cc: Executive Staff

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

**THE CITY OF NEW YORK  
HOUSING AND DEVELOPMENT ADMINISTRATION  
DEPARTMENT OF BUILDINGS**

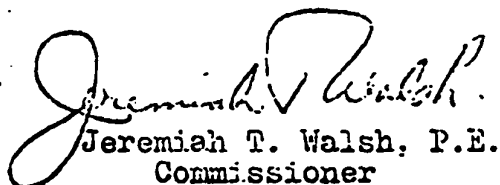
DEPARTMENTAL MEMORANDUM

DATE: December 2, 1974

TO: Borough Superintendents  
FROM: Jeremiah T. Walsh, P.E., Commissioner  
SUBJECT: Special Planned Community Preservation Districts

Installation of all fencing in areas mapped as Special Planned Community Preservation Districts, regardless of size or type, shall be subject to Special Permit requirements by the City Planning Commission and Board of Estimate, as stated in Section 103-08 of the Zoning Resolution in regard to substantial alterations of existing topography, in addition to requirements set forth in Section C26-717.1 of the Administrative Code.

Hereafter, when complaints of illegal installation of fences in the subject districts have been received inspections shall be made, and violations placed where department records do not reflect approval of plans indicating such fences, and installation thereof prior to July 18, 1974. A copy of the enclosed letter from Chairman Zuccotti of the Planning Commission is to accompany each notice of violation.

  
Jeremiah T. Walsh, P.E.  
Commissioner

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

C O P Y

THE CITY OF NEW YORK  
HOUSING AND DEVELOPMENT ADMINISTRATION  
DEPARTMENT OF BUILDINGS

Law Department  
Zoning Resolution  
Variance  
Board of Standards  
& Appeals

DEPARTMENTAL MEMORANDUM

DATE: August 1, 1969

TO: Borough Superintendents

FROM: Thomas V. Burke, Director of Operations

SUBJECT: Law Department Opinion No. 107,157 - Rezoning after Board of Standards & Appeals Grants a Variance.

The attached opinion from the Law Department relates to the question as to whether rezoning of a particular parcel negates a variance previously granted by the Board of Standards and Appeals.

Please be guided by this opinion.

(Signed) \_\_\_\_\_

Thomas V. Burke  
Director of Operations

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DEPARTMENTAL MEMORANDUM

DATE: May 7, 1986

TO George C. Sakona, P.E., Borough Superintendent

FROM: Cornelius F. Dennis, P.E., Deputy Commissioner

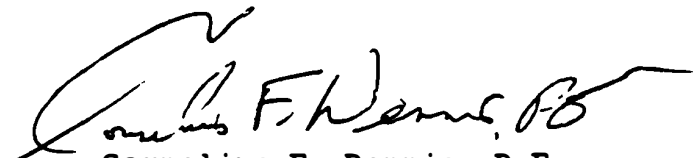
SUBJECT: Clock Projecting Beyond the Street Line  
33 West 56th Street, Manhattan  
Block 1272, Lot 17  
Alteration 1030/85

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Clocks projecting beyond the street line shall be considered as signs and may be erected subject to the following provisions:

1. Building Code Section C26-408.1 of subdivision (a), paragraph (8). The sign (clock) may be erected to project not more than 10 ft. beyond the street line, but not closer than 2 ft. to the curb line when conforming to the requirements of Article 7, and provided that no part of the sign (clock) is less than 10 ft. above the ground or sidewalk level.
2. The sign (clock) shall not be subject to the provisions of the Zoning Resolution in that it shall be considered to be equivalent to a flag or emblem.
3. The advice and guidance of the Art Commission shall be obtained.
4. The clock shall be kept in good repair and shall continuously show the correct time.
5. Advertising or attributions shall not be placed on the clock or its supports.
6. A memorial sign or tablet of small size may be attached, painted on or represented on the building and listing ownership.

The above guidelines may be used for the proposed clock to be attached to the indicated premises. The owner's name shall be removed from the clock.

  
Cornelius F. Dennis, P.E.,  
Deputy Commissioner

CFD/IP/gt  
cc: Boro. Supts.  
Exec. Staff  
Industry



DEPARTMENT OF BUILDINGS  
EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, N.Y. 10013  
RUDOLPH J. RINALDI, COMMISSIONER

CAROLE S. SLATER  
General Counsel & Director  
Office of Legal Affairs  
(212) 312-8118

May 9, 1991

Andrea Kremen, Esq.  
Spitzer & Feldman  
405 Park Avenue  
New York, New York 10022

Re: Satellite Dishes

Dear Ms. Kremen:

This letter responds to your request for an opinion of Counsel as to whether satellite dishes may be considered permissible obstructions, pursuant to Zoning Resolution ("ZR") §23-62.

Except as expressly provided under ZR §23-62, no obstructions may penetrate the sky exposure plane in a residence district. Satellite dishes are not among the list of permitted obstructions, and therefore, are not allowed. In addition, while a satellite dish may represent advanced technology of an aerial, which is a permitted obstruction, the two are very different in size and appearance, and therefore, would be treated differently for zoning purposes.

It should be noted, however, that satellite dishes are considered accessory to the residential use of a multiple dwelling. Therefore, the satellite dish would be permitted provided it did not penetrate the sky exposure plane.

We trust the foregoing responds to your inquiry.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Carole S. Slater", written over a horizontal line.

Carole S. Slater  
General Counsel & Director  
Office of Legal Affairs

CSS:fm

cc: George Sakona, Deputy Commissioner



RESCINDED BY  
BUILDINGS BULLETIN 2023-003



DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, N.Y. 10013

RUDOLPH J. RINALDI, Commissioner

312-8100

October 24, 1991

Mr. Alfred V. Saulo, A.I.A.  
President Elect  
A.I.A. Staten Island  
155 Third Street  
Staten Island, New York 10306

Re: Subdivision of unimproved properties

Dear Mr. Saulo:

I have reviewed your letter of September 17, 1991 regarding the Department's requirement that subdivisions applications be filed and approved for both improved and unimproved properties. In your letter you suggest that the requirement for subdivision approval should be limited to improved properties.

The requirement for subdivision control represents the minimum control necessary to protect the interests of the public and is enforced by most jurisdictions in the State. Subdivision regulations ensure that the lots created can be developed for permitted uses. A proper subdivision plan will not violate the requirements of zoning.

In the absence of review, a tax lot could be theoretically created that fails to meet the minimum requirements of law resulting in a tax lot which cannot be built in a complying or conforming manner.

I trust this responds to your concerns.

Sincerely,

A handwritten signature in black ink, appearing to be "R. J. Rinaldi", written over a horizontal line.

Rudolph J. Rinaldi  
Commissioner

CSS:ngm

RESCINDED BY  
BUILDINGS BULLETIN 2023-003



DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, N.Y. 10013

RUDOLPH J. RINALDI, COMMISSIONER

CAROLE S. SLATER  
General Counsel & Director  
Office of Legal Affairs  
(212) 312-8130

September 5, 1990

Rosemary R. Ginty  
Stroock & Stroock & Lavan  
Seven Hanover Square  
New York, NY 10004-2594

Re: Use Group Classification

Dear Ms. Ginty:

We have reviewed your letter requesting use group classification for the central "node" component of the proposed fiber optic telecommunications system.

As outlined, the operation and function of this system would fall within NYC Zoning Resolution §32-15. Use Group 6, comparable to "[t]elephone exchanges or other communications equipment structures".

This determination is advisory only as no plans or applications are currently pending for this proposed use. A full zoning review of any applications will be performed when submitted to the department.

If you have any further questions please do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Charles G. Sturcken".

Charles G. Sturcken  
Deputy General Counsel

CGS:mt

cc: Ralph Herman, Assistant Commissioner  
Carole S. Slater, General Counsel  
Stephen Neil



The  
City  
of  
New York

DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES  
120 WALL STREET, NEW YORK, N.Y. 10005

CHARLES M. SMITH, Jr., R.A., Commissioner  
248-8811

April 10, 1985

Ms. Kathleen H. McNally, R.P.T.  
45-08A 196th Street  
Flushing, New York 11348

Re: Community Facility Use in  
Residential Zone Districts

---

Dear Ms. McNally:

This is in response to your letter to me dated February 25, 1985, in which you inquire if physical therapy may be practiced on the first floor of an apartment house in a district zoned Residential R3-2.

Please be advised that such usage is not permitted pursuant to Section 22-14 of the NYC Zoning Resolution Community Facilities Use Group 4.

Although medical offices are permitted, physical therapy may not be so considered.

You may consider this response your denial for the purpose of appealing this interpretation to the Board of Standards and Appeals for the specific premises you have chosen, if you so elect.

However, such professional use may be conducted accessory to your residential use of the dwelling unit provided the limitations for accessory home occupations set forth in section 12-10 of the Zoning Resolution (copy enclosed) are complied with.

Sincerely,

  
Charles M. Smith, Jr.  
Commissioner

2029

RESCINDED BY  
BUILDINGS BULLETIN 2023-003



DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, NY 10013

CHARLES M. SMITH, Jr., R.A., Commissioner

September 13, 1988

CORNELIUS F. DENNIS, P.E.  
Deputy Commissioner

312-8120

Mr. Costas A. Kondylis, A.I.A.  
Philip Birnbaum and Associates, P.C.  
136 East 57th Street  
New York, N.Y. 10022

RE: Location of Floors  
Occupied By Non-  
Residential Uses -  
32-422 Z.R.

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Dear Sir:

Your letter of August 23 and the above referenced section of the New York City Zoning Resolution has been reviewed.

Yes, commercial uses such as Use Group 5 and 6 may be located in a tower on a story level with or higher than a story in a separate tower occupied by Use Group 1 or 2 residential uses.

As pointed out in your letter the towers must be separated from each other by a minimum horizontal distance established by Section 23-70 Z.R. with the height measured from the roof of the base of the two towers as provided in Section 23-82 Z.R.

Very truly yours,

  
Cornelius F. Dennis, P.E.  
Deputy Commissioner.

CFD:lg

cc: Commissioner Charles M. Smith Jr., R.A.  
Assistant Commissioner George E. Berger, P.E.  
Assistant Commissioner Fredric Pocci, P.E.  
Executive Engineer Irving Polsky, P.E.  
Borough Superintendents

RESCINDED BY  
BUILDINGS BULLETIN 2023-003



DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, N. Y. 10013  
CHARLES M. SMITH, Jr., R.A., *Commissioner*

CHARLES R. FOY, Esq.  
General Counsel

August 4, 1988

Mr. Jay A. Segal  
Rosenman & Colin  
575 Madison Avenue  
New York, NY 10022-2585

Dear Mr. Segal:

This letter is in response to your recent inquiry regarding whether offices in multiple dwellings located in residential districts utilized by "Doctors of Psychology, Optometry and Podiatry" is a permissible use under Section 22-14 of the Zoning Resolution.

At the outset, as you correctly indicated, use of offices in residential districts by Doctors of Podiatry are permitted as community facility, Use Group 4, medical offices. As is detailed below, the practice of podiatry stands apart from the practice of psychology and optometry and is illustrative of the distinction amongst permissible uses.

Prior to 1948, the Zoning Resolution only permitted the practice of medicine in residential districts as an accessory use to the residence of a physician. The Zoning Resolution was amended in 1948 to permit nonresident doctors to practice medicine in residential buildings. The amendment stated, in part, that such use was limited to "doctor's offices for the practice of medicine, including group medical centers, dentistry and osteopathy..." The clear intent, then, was to permit only doctors practicing medicine, and not all doctors, to have offices in residential buildings.

The practice of medicine is defined under the state Education Law §6521:

"The practice of the profession of medicine is defined as diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physical condition."

As defined by the Education Law, optometry and psychology are not considered to be the practice of medicine. The Education Law allows these professionals to use the term "doctor" but they are not medical doctors.

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

The profession of psychology is not defined under the New York State Education Law. Rather, the professional practice of psychology is defined in the New York Codes Rules and Regulation, Title 8, §72.6:

72.6 Definition of professional practice of psychology.  
(a) The practice of psychology includes rendering to individuals, organizations, or the public, any service involving the application of principles, [SIC], methods or procedures or understanding, predicting or influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions, or interpersonal relationships, or the methods or procedures for interviewing, counseling or psychotherapy; or of constructing, administering or interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions or motivations; or of assessing public opinion. The application of said principles and methods includes but is not restricted to: the psychological evaluation, prevention, diagnosis and amelioration of personality and behavior disorders and adjustment problems of individuals and groups; educational and vocational planning; personnel selection and management; the arrangement of effective work and learning situations; advertising and market research; the resolution of interpersonal and social conflicts; lecturing on or teaching of psychology; and the design and conduct of applied psychological research.

Nowhere in this definition does one find the healing or treating of the physical condition of human beings.

Similarly while doctors of optometry treat human conditions of the eye, they use means which are external, i.e., lenses. They are not medical doctors by definition and courts have so held.

In Goldstein et. al., v. Board of Zoning Appeals of Town of Hempstead, 113 Misc. 2d 756 (1982), the court was confronted with a question similar to the one posed by your letter. The town zoning ordinance allowed for nonresident physicians and dentists to practice in residential areas by special exception. The plaintiff sought a ruling declaring an optometrist to be a "physician" for purposes of the special zoning exception. The court did not so rule citing to the Education Law's definition of optometry and stating:

"An optometrist may not use or prescribe drugs. The optometrist performs no medical function. He does not treat disease and provides corrective therapy by external mechanical means.

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

In the court's view the practice of optometry is not the practice of medicine..."Goldstein supra at 758.

Similarly, in Silver v. Lansburgh & Bro. et al., 111 F. 2d 518, the Court commented upon the practice of optometry in the District of Columbia and stated:

"...optometry is a mechanical art which requires skill and a knowledge of the use of certain mechanical instruments and appliances designed to measure and record the errors and deviations from the normal found in the human eye, but is not a learned profession comparable to law, medicine, and theology, and that though certain standards of education are prescribed by the statute and by rules of the board created under it, optometry is not a part of medicine". Silver, supra at 518.

In contrast to psychology and optometry, the practice of podiatry fits well within the definition of the practice of medicine. Section 7001 of the Education Law defines the practice of podiatry:

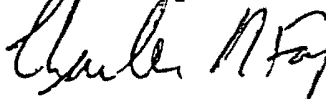
"The practice of the profession of podiatry is defined as diagnosing, treating, operating and prescribing for any disease, injury, deformity or other condition of the foot or operating on the bones, muscles or tendons of the feet for the correction of minor deficiencies and deformities of a mechanical and functional nature..."

In addition, podiatrists may prescribe and administer drugs.

As you can see, this definition of podiatry is encompassed and fits within the Education Law's definition of "medicine." Doctors of Podiatry have been allowed to practice in Use Group 4, Medical Offices since 1968.

Thus, it is this Department's determination that doctors of optometry and psychology, are not within the permissible uses of the Zoning Resolution 22-14, Use Group 4, Medical offices.

Sincerely,

  
Charles R. Foy  
General Counsel

CRF:ngm

cc: Cornelius F. Dennis, Deputy Commissioner  
George E. Berger, Assistant Commissioner  
Lenore Norman, Director Intergovernmental Affairs  
Charles G. Sturcken, Deputy General Counsel



**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**



DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, NY 10013

CHARLES M. SMITH, Jr., R.A., Commissioner  
312-8100

November 7, 1986

Mr. David A. Rahm  
Stroock & Stroock & Lavan  
Seven Hanover Square  
New York, New York 10004

Re: Community Facility Building  
& Residence

---

Dear Mr. Rahm:

Your letter of September 11th regarding residential towers in an R8 Zone has been reviewed with departmental staff and personnel of the City Planning Commission.

The question asked regarding towers has been expanded to include yards, front setbacks and minimum distance between buildings for a building used partly for a community facility use. It is the determination of this department that a residential building is a 'residence' and thus is a building or part of a building containing dwelling units but does not include that part of the building used for non-residential uses.

Therefore a residential tower located above several floors devoted to community facility use located in an R8 Zone is forbidden by Section 23-65 of the New York City Zoning Resolution.

Sincerely,



Charles M. Smith, Jr.  
Commissioner

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**



DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, NY 10013

CHARLES M. SMITH, Jr., R.A., Commissioner  
312-8100

November 10, 1986

Mr. Frank Williams  
Frank Williams & Associates  
154 West 57th Street - Studio 849  
New York, New York 10019

Re: East 68th / 69th Street  
Distance between buildings  
Section 23-70 Zoning Resolution

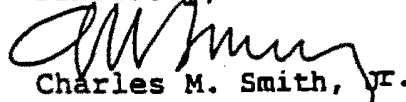
Dear Mr. Williams:

Your letter of October 3rd, August 6th and material from the Borough Superintendents Meeting of September 2nd has been reviewed. The question of applicability of "minimum required distance" has been discussed with staff of the Department of City Planning.

Paragraph e of Section 23-71 contains an exception to the distance requirements for zoning lots or portions of zoning lots in R8-A, R8-B, R9-A, R9-X and R10-A Districts. The paragraph further provides for an eight foot separation for two buildings located on a zoning lot.

It is the determination of the Department of Buildings that the distance requirements of Section 23-70 do not apply to two buildings located on one zoning lot where one is located in an R8-A, R8-B, R9-A, R9-X or R10-A zone and the other is located in another zone as long as a separation of eight feet is maintained.

Sincerely,

  
Charles M. Smith, Jr.  
Commissioner

RESCINDED BY  
BUILDINGS BULLETIN 2023-003

*Stroock & Stroock & Lavan*  
*Seven Hanover Square*  
*New York, New York 10004*

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JEFFREY D. UFFNER  
MICHAEL M. UMANSKY<sup>2</sup>  
LOIS L. WEINROTH  
MARK S. WINTNER  
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MIAMI, FLORIDA 33131-2388  
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SUITE 3300  
200 SOUTH BISCAYNE BOULEVARD  
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PETER I. B. LAVAN      LEWIS KRUGER  
MORTON L. BEITCH      GILBERT LAZERUS  
MARTIN D. EILE      WILLIAM H. LEVIT<sup>1</sup>  
EDWARD R. KORMAN      CHARLES R. TAINE  
WILLIAM J. VANDEN HEUVEL  
ALAN S. WEILER  
COUNSEL

WRITER'S DIRECT DIAL NUMBER:

212-806-5763

September 11, 1986

BY HAND

Honorable Charles M. Smith, Jr.  
Commissioner  
The City of New York  
Department of Buildings  
120 Wall Street  
New York, New York 10005

Re: Tower Regulations in R8 Districts

Dear Commissioner Smith:

Our client is contemplating the purchase of "air rights" of several lots contiguous to a site he now owns. The entire zoning lot of the merger, if consummated, will be located in an R8 district.

Because of the lot size and configuration, optimum development is feasible only if tower regulations are utilized.

Our client intends to construct a building with several of the lower floors devoted to community facility uses, and the remainder of the building, including the tower portion, devoted to residential uses.

*Shook & Shook & Lavan*

Hon. Charles M. Smith, Jr.  
September 10, 1986  
Page 2

Section 24-54 of the Zoning Resolution permits towers to penetrate sky exposure plans in R8 districts. Section 24-01 of the Zoning Resolution stipulates that Chapter 4 of Article 2 of the Zoning Resolution (within which section 24-54 is included) applies to any community facility building or any building used partly for a community facility use on any zoning lot located in any residence district in which such building is permitted. (Emphasis added.)

Section 23-65 of the Zoning Resolution sets forth tower regulations for residential buildings applicable only in R9 or R10 districts. However, section 23-01 of the Zoning Resolution stipulates that Chapter 3 of Article 2 of the Zoning Resolution, within which section 23-65 is included, is not applicable to a building used partly for community facility use.

In view of the foregoing, may the above-described building, used partly for residences, and partly for community facility uses, be constructed utilizing the tower regulations of section 24-54 of the Zoning Resolution?

Cordially,

David A. Rahm

cc: Irving E. Minkin, Esq.

RESCINDED BY  
BUILDINGS BULLETIN 2023-003

*Stroock & Stroock & Lavan*  
*Seven Hanover Square*  
*New York, New York 10004-2594*

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TELECOPIER (305) 371-7486  
WUI TELEX STRCA MIA 803133

WRITER'S DIRECT DIAL NUMBER  
212-806-5763

September 24, 1986

BY HAND

Hon. Charles M. Smith  
Commissioner  
The City of New York  
Department of Buildings  
120 Wall Street  
New York, NY 10005

Re: Special Madison Ave. Preservation District

Dear Commissioner Smith:

This firm represents several cooperative housing companies that own buildings located in the Special Madison Ave. Preservation District. The buildings are primarily residential, but they have one level of commercial uses, usually fronting on Madison Ave.

Our clients are desirous of this firm's rendering an opinion to the effect that the existing commercial uses may be converted to residential uses as-of-right, provided that all pertinent zoning bulk provisions, and other pertinent applicable building laws are complied with.

We have clients with different fact patterns. However, one set of circumstances appears to provide a unique exception to certain requirements, and we are desirous of obtaining your interpretation in regard thereto before we advise our clients in this regard.

The particular section of the Zoning Resolution at issue is § 99-03, NYCZR, which states in pertinent part as follows:

RESCINDED BY  
BUILDINGS BULLETIN 2023-003



DEPARTMENT OF BUILDINGS

EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, NY 10013

CHARLES M. SMITH, Jr., R.A., Commissioner

November 7, 1986

CORNELIUS F. DENNIS, P.E.  
Deputy Commissioner  
312-8120

Mr. Richard Siegler  
Stroock & Stroock & Lavan  
Seven Hanover Square  
New York, New York 10005

Re: Special Madison Avenue  
Preservation District  
Section 99-03 New York  
City Zoning Resolution

Dear Mr. Siegler:

Your letter of September 24th concerning basement uses in the Special Madison Avenue Preservation Area was referred to me for reply.

The above referenced section of the New York City Zoning Resolution mandates certain "commercial uses shall occupy at least the first story above curb level". A basement is a story one-half or more above curb level. It is the decision of this department that the basement or if no basement the first floor is the first story controlled by this section. Existing basements are not exempt from the dictates of Section 99-03 New York City Zoning Resolution.

Sincerely,

  
Cornelius F. Dennis, P.E.  
Deputy Commissioner



DEPARTMENT OF CITY PLANNING  
CITY OF NEW YORK

ZONING

September 20, 1989

Commissioner George Berger  
Department of Buildings  
60 Hudson Street  
New York, NY 10007

Dear Commissioner Berger:

Please be advised that the recently adopted low density contextual zoning amendment contains a discrepancy between Sections 23-12 and 25-64. Paragraph (a) (2) in Section 23-12 (Permitted Obstructions in Open Space) provides that only 33 percent of the required open space may be occupied by parking and driveways in R4 or R5 districts. Section 25-64 (Restrictions on the Use of Required Open Space for Parking) permits 66 percent of the open space to be used for parking and driveways in R4 or R5 districts.

The text of Section 25-64 is correct: 66 percent of the required open space may be used for parking and driveways.

This letter will also clarify the intent of the lower density contextual zoning amendment with regard to the height and setback regulations of Tier II developments in the Special Hillside Preservation District.

Section 119-212 establishes adjoining grades all along the periphery of a building as the points from which building height is measured. Section 23-631 establishes the base plane, as the point from which building height is measured. The former respects the contour of a hillside; the latter creates a horizontal average which ignores the differences in grades and is inappropriate for use on hillsides.

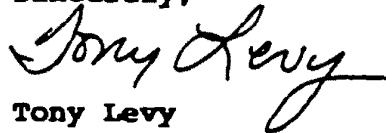
Upon reviewing Section 119-212 it is also apparent that the original concept of maintaining infill housing at a height of 32 feet is unclear. The height of 32 feet should be measured from all points adjacent to the building from the adjoining ground



up and not from curb level as in Section 23-691 or from base plane as in Section 23-631.

The Department proposes to amend Section 23-12 to eliminate the discrepancy and Section 119-212 to clarify its intent as expeditiously as possible.

Sincerely,

A handwritten signature in black ink that reads "Tony Levy". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Tony Levy

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**



**DEPARTMENT OF BUILDINGS**

**EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, N.Y. 10013**

**RUDOLPH J. RINALDI, Commissioner**

**GEORGE C. SAKONA, P.E.  
Deputy Commissioner  
Technical Affairs  
(212) 312-8120**

**November 1, 1991**

**Mr. Louis Kerner, R.A.  
A. Epstein & Sons ( New York )  
Suite 1701  
245 Fifth Avenue  
New York, New York 10016-8728**

**RE: 230 West 17th Street,  
Manhattan  
Block 766, Lot 61  
BIS # 100286405  
NYNEX Installation**

---

**Dear Mr. Kerner:**

**This is in response to your letter to me, dated October 25, 1991, pertaining to the construction of a cellular mobile telephone station at the above cellar and eight story office building located in a commercial C6-2M zoning district.**

**The proposed work involves the installation of Log-Periodic Antennae ( 52 inches in height ) and Gain Omnidirectional Base Station Antennas ( 9 feet to 14 feet in height ) attached to existing structures on the roof; and a telephone equipment room ( less than 400 sq. ft. ) on the eight floor.**

**Objection #3 and #4, dated July 29, 1991, state: "Proposed antenna work is non-accessory to an existing use in a building and is contrary to Zoning Resolution Section 32-31. Board of Standards & Appeals approval required" and "Proposed work involves change in use, file Alt. I application."**

**In your letter you state that the building is classified on the existing Certificate of Occupancy as Use Group 6, Occupancy Group E, in a Commercial District. The proposed installation is a Use Group 6 ( 6D Public Service Establishment ) permitted as of right, and in Occupancy Group E.**

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

In view of the above, that the filed plans indicate that the proposed work is for NYNEX Mobile Communication Company, a public utility regulated by the Public Service Commission, that Reference Standard RS3-3 lists "Telephone exchanges or other communications equipment structures" in Building Code Occupancy Group E, and Section 32-15 of the Zoning Resolution lists "Telephone exchanges or other communications equipment structures" in Zoning Use Group 6, reconsideration is given relative to Objections #3 and #4.

Very truly yours,

  
George C. Sakona, P.E.  
Deputy Commissioner

GCS:IP:ap

**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**



**DEPARTMENT OF BUILDINGS**

EXECUTIVE OFFICES  
60 HUDSON STREET, NEW YORK, N.Y. 10013

RUDOLPH J. RINALDI, Commissioner

312-8100

April 1, 1992

Perry Balagur, Esq.  
Graubard Mollen Horowitz  
Pomeranz & Shapiro  
600 Third Avenue  
New York, NY 10016-1903

Re: Amalgamated Warbasse Houses  
BN 1619/90  
2701 West 6th Street  
Brooklyn, New York

Dear Mr. Balagur:

In response to your letter of March 20, 1992 this Department has further reviewed the application of Amalgamated Warbasse Houses ("Warbasse") with respect to its power plant.

Warbasse's proposal entails the expansion of its existing power plant which presently serves its residents. The power plant was developed approximately 26 years ago in conjunction with the residential development and is permitted as an accessory use within a residence zoning district.

The proposed expansion will produce a Co-generation Facility capable of generating in excess of five times the amount of power needed to serve the residential development. The excess generated will be sold to Con Edison for the provision of services to off-site consumers. Given the magnitude of the excess energy to be generated by this Co-generation Facility, the use cannot be considered accessory. Since the facility is not an electric substation, it is not eligible for any of the special permits under the jurisdiction of the City Planning Commission and Board of Standards and Appeals under the Zoning Resolution.

It is my belief that Co-generation Facilities are an important source of additional electric power and should be encouraged as a matter of City policy. However, under current provisions of the Zoning Resolution, a Co-generation Facility with excess power to sell, is not permitted as an accessory use to a residential development.


**RESCINDED BY  
BUILDINGS BULLETIN 2023-003**

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Since this use cannot be permitted as-of-right or as accessory to the primary use on the site, we previously recommended that you seek a change in the special permit provisions under Article 7 of the Zoning Resolution to permit Co-generation Facilities, in addition to the current provisions which authorize substations; or, a change in the underlying zoning district by shifting the adjacent manufacturing M-3 district boundary line so that it includes the location of your facility. The use would be as-of-right in that manufacturing zone.

Another approach would be to amend the Zoning Resolution to permit certain residential and institutional developments to have accessory Co-generation Facilities capable of generating excess electric power to be utilized off-site.

Sincerely,



Rudolph J. Rinaldi  
Commissioner

cc: George C. Sakona  
Deputy Commissioner, Department of Buildings

David Klasfeld, Esq.  
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