

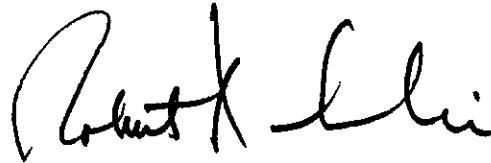
NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the addition of Sections 101-15 and 101-16 to Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding public challenge of department decisions.

This rule was first published on February 4, 2009 and a public hearing thereon was held on March 6, 2009.

This rule shall take effect on July 13, 2009.

Dated: June 5, 2009
New York, New York



Robert D. LiMandri
Commissioner

Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding new sections 101-15 and 101-16 to read as follows:

Chapter 100 Administration

§101-15 Public challenge of department zoning approvals. The following procedure shall be followed only when members of the public wish to challenge a zoning approval issued by the department for a new building ("NB") or an enlargement affecting the exterior envelope of an existing building ("enlargement"). For the purposes of this section, "zoning approval" shall mean the approval of zoning documents filed as part of either a full approval of construction documents pursuant to section 28-104.2.2 or a partial approval of

construction documents pursuant to section 28-104.2.5 of the administrative code, whichever comes first.

(a) Initial zoning challenge. The public shall have forty-five (45) days from the date of posting on the department's website of a zoning diagram filed in connection with an NB or enlargement to challenge the zoning approval, whether or not a permit or full approval for the NB or enlargement application has been issued. Posting of the zoning diagram shall serve as notice of zoning approval. All permits shall state that the zoning diagram can be accessed on the department's website. In addition, such zoning approval and information related to such approval shall be made available upon request at the appropriate borough office. The challenge shall be postmarked by the 45th day from the date of posting and shall be sent to the appropriate borough commissioner on forms specified by the department.

(b) Department review and decisions. After the forty-five (45) days for public challenge have elapsed, the department shall provide the challenge(s) to the applicant and the borough commissioner shall begin a review of the challenge(s) received and issue decision(s). The borough commissioner may deny the challenge(s) and/or issue to the applicant a notice of intent to revoke the zoning approval and any other approval and/or permit that relies on the zoning approval, along with a list of objections to the application. The challenge(s) and decision(s) shall be posted on the department's website and made available upon request at the appropriate borough office.

(1) Denial of challenge. The public shall have fifteen (15) days from the date of the posting of the borough commissioner's decision to deny the challenge to appeal to the department's technical affairs unit on forms specified by the department. The appeal shall be postmarked no later than the 15th day after the date of the posting.

(2) Notice of intent to revoke. The borough commissioner may issue a notice of intent to revoke the zoning approval and any other approval

and/or permit that relies on the zoning approval, along with a list of objections. Such notice shall be rescinded when all objections are satisfied. The public shall have fifteen (15) days from the date of the posting of the rescission of such notice on the department's website to appeal the rescission to the department's technical affairs unit on forms specified by the department. The appeal shall be postmarked no later than the 15th day after the date of the posting.

(3) Final determinations. In addition to the internal appeals procedure provided for in paragraph 2 of this subdivision, rescission of a notice of intent to revoke a permit, issuance of a permit and revocation of a permit are final determinations that may be appealed to the Board of Standards and Appeals (BSA) in accordance with its rules. Where a permit has already been issued, the denial of a challenge by the borough commissioner or by the head of the technical affairs unit pursuant to this rule shall also be considered a final determination that may be appealed to the BSA.

(c) Amendments to zoning approvals.

(1) Resolving objections. An applicant may file to amend a zoning approval solely to resolve the objections stated in the notice of intent to revoke. Rescission of a notice of intent to revoke as a result of the resolution of objections shall constitute a decision that may be appealed pursuant to the provisions of paragraph 2 of subdivision b of this section or to the BSA, pursuant to paragraph 3 of subdivision b of this section.

(2) Amendments to the approved zoning documents. An applicant may also file to amend approved zoning documents for reasons in addition to or other than addressing the zoning objections raised in the notice of intent to revoke approval or permit. Challenges to the department's approval of such amendments shall be subject to the process set forth in subdivisions a and b of this section.

(d) Currently filed jobs. The public challenge process described in this section shall not apply to jobs where the application submission for an NB or enlargement is deemed by the department as ready for initial plan examination and the appropriate fees have been paid prior to the effective date of this rule.

§101-16 Posting of permit. A building permit or copy thereof shall be securely posted at the work site in a conspicuous location readily visible to the general public from a public right of way within three days of issuance but not later than the date of commencement of work and shall remain posted until all work is completed or the permit expires, whichever is later.

Statement of Basis and Purpose

These rules are proposed pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter.

Section 101-15 is proposed to allow for informed public challenges of zoning approvals early in the project approval process. Where a zoning approval is issued in connection with an NB or enlargement, prior to the full approval for the NB or enlargement application, the forty-five days for a challenge shall run from the posting on the department's website of such zoning approval. The posting of the zoning diagram, in particular, adds transparency to proposed projects and will enable the public to challenge a zoning approval early in the application approval process. This will allow such challenges to be examined and decided before the project progresses to the point where a viable solution may be difficult to achieve.

In addition, the proposed rule spells out to whom challenges may be made and sets out time frames for zoning challenges. This furthers the dual goals of clarity

and finality in the process. The public-challenge process set forth in this proposed rule establishes a defined and organized means for the public to challenge decisions by the Department that they believe are incorrect, and will provide clarity for developers about when a project can move forward, and when changes to a proposed development need to be made. The current process, which has no formal timeframe, produces confusion and unnecessary and unintended costs for development in New York City.

Section 28-105.11 of the Administrative Code requires posting of a permit at a work site during construction. Section 101-16 clarifies that the posting of the permit must be no later than three days of issuance in order to further inform the public of such issuance in a reasonably rapid manner.

