

"As-of-Right" Development: An Invitation to Ethical Breaches?

by {ga=tangotti}

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To many, the real estate industry is the most important industry in the city. We're always reading about how we need more office space and housing, whether it's Trump City or West Midtown. The real estate industry's major players are consistent advocates for new development through powerful organizations like the Real Estate Board of New York. Developers are often critical of the city's many complex planning and building regulations. They want regulations that are clear, simple and require minimal public review.

New York City's massive Zoning Resolution, the major document governing land use in the city, is by no means clear and simple. This is not so much because the city's planning department has ignored the real estate industry. It's mostly due to the fact that this is a very large and complex city that's already developed, and every time anyone wants to change anything it ends up in a new set of zoning rules that takes into account the myriad needs and interests in neighborhoods. That is why the dream of radical deregulation--having a one-size-fits-all zoning code--is unrealistic in such a large and diverse city.

It is also unrealistic to expect that most new development must occur without review by the public, including residents and businesses in the city's diverse neighborhoods. For too long that has been the objective of developers and, unfortunately, the city's planning agency. "As-of-right" development does not mandate review by community boards, the City Planning Commission or City Council. No public hearings are required. Usually the developer just needs to get a building permit or go through another administrative process. This often frustrates efforts by communities to influence the design of new projects in a way that makes them compatible with existing development and the community's visions for the future of the neighborhood.

The Zoning Resolution is filled with lots of loopholes that allow developers to build their projects (some of them very large-scale projects) as-of-right, without any sort of public review. It's understandable why some developers want as-of-right rules. They make things a lot simpler, avoid what could be a messy review process, and avoid having to make changes in their plans. Some developers, however, would rather have a public process with clear boundaries so they can avoid costly delays and litigation by community groups.

As-of-Right and Planning Ethics in a Brooklyn Neighborhood

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Does as-of-right zoning encourage the city's administrators to ignore or evade community input and become too cozy with developers? This is the question at the heart of a recent as-of-right project in Brooklyn that involves charges of ethical malpractice.

A professional planner assigned to the Brooklyn Office of City Planning recently resigned in protest against her agency. In a letter she sent to the Chairman and District Manager of Brooklyn's Community Board 18, Laurel Brandstetter charged that:

Developers are proposing to construct a new big box home improvement store, movie theatre, parking garage and surface parking lot. I was instructed to participate in a process that would specifically avoid community involvement. While participating in meetings with the project developers, their attorneys, and City Planning staff, I witnessed our own staff utilize the zoning code to assist the developers in designing an as-of-right project in order to avoid community engagement.

After reading Brandstetter's letter, Dorothy Turano, District Manager of Community Board 18, said "I'm not at all surprised. We don't doubt it and we're deeply concerned. All City Planning ever does is look at a map and they don't care about the community." She said the developer hadn't approached the community board with a proposal and that about eight years ago the community board successfully defeated another proposal for commercial development of the same site. The site is in the Kings Plaza Shopping Center and is located on a waterfront parcel.

Regina Meyers, director of the Brooklyn Office of the Department of City Planning, dismissed the charges by Brandstetter. She said that the office wasn't required to involve the community board because it was an as-of-right development. At issue was the design of waterfront access required by the Zoning Resolution. In this case, she said, review was strictly an administrative procedure involving City Planning and the project applicant. Under this procedure the agency and developer are not required to go before the community board or hold a public hearing.

Was City Planning just doing its job or was it being unethical in skirting community input? Did they purposely conspire with the developer or were they just going along with them? Unlike doctors and lawyers, people who function as planners don't have to be licensed, pass a test, or be held accountable to a professional code of ethics. They don't even have to be trained in city planning. The American Institute of Certified Planners (AICP) does have a [Code of Ethics and](#)

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, but it applies only to its members and membership is voluntary. The AICP Code states that the planner has a responsibility to the public. This includes, among other things, the mandate that "a planner must strive to give citizens the opportunity to have a meaningful impact on the development of plans and programs."

While a strict interpretation of the city's Zoning Resolution might exonerate City Planning, a strict interpretation of the professional code of ethics might well find the agency's planners in violation of their obligation to give the public a say. Anyone vaguely familiar with the area in question knows that the issue of waterfront access is of primary concern to the community. Turano points out how the Home Depot now in Kings Plaza is in technical compliance with the waterfront access rules but the area that is set aside for public access is poorly maintained, used for truck parking, and "not really accessible to the public." Will technical compliance in the new development produce the same result? She also notes that traffic in the area has been a chronic problem for years, despite multiple studies by the city and very little action. Will technical compliance with the city's parking regulations only make traffic worse?

Could it be said that the community board is just being exclusionary, following the dreaded not-in-my-backyard philosophy? Does this neighborhood of suburban-style small homes just want to keep people out? Alas, the only way to confront exclusionary tendencies -- they're everywhere, including within government agencies -- is to get them out in the open. There is also nothing wrong with wanting to exclude ugly development, traffic congestion, and bad design. And a careful study of the city's own zoning practices will show how exclusionary they can be (for example, City Planning continues to fight tooth-and-nail against inclusionary zoning that would encourage affordable housing).

As-of-right zoning leaves important decisions to be made by developers and bureaucrats behind closed doors. It is common practice in suburban planning that every new development must go through some kind of public review, including detailed design review. Why this free-for-all here in New York City? Does it have something to do with the political power of the real estate industry and the weakness of neighborhood governance? Are the planners in Brooklyn unable to overlook the fact that the developer of the Kings Plaza site is also developer of the mayor's new business headquarters in Manhattan, and has a major interest in the city's plan for the growth of West Midtown? Does as-of-right development leave questions like these unanswered?

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