



Zoning Resolution

THE CITY OF NEW YORK
Zohran K. Mamdani, Mayor

CITY PLANNING COMMISSION
Sideya Sherman, Chair

81-643 - Special provisions for retaining non-complying floor area in commercial buildings

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LAST AMENDED

8/9/2017

For non-complying commercial buildings existing on December 15, 1961 with non-complying floor area, the provisions of Section [54-41](#) (Permitted Reconstruction) may be modified to allow such non-complying building to be demolished or altered, to the extent of 75 percent or more of its total floor area, and reconstructed on a qualifying site to retain the amount of pre-existing non-complying floor area in accordance with the applicable district bulk regulations of this Chapter, upon certification by the Chairperson of the City Planning Commission to the Department of Buildings first, that prior to demolition or alteration, the applicant meets the provisions of paragraph (a) of this Section, as applicable, and, subsequently, prior to reconstruction, the proposed development will comply with the applicable provisions of paragraph (b) of this Section. For purposes of this Chapter, the reconstruction of such non-complying floor area shall be considered a development. Any enlargement of a non-complying commercial building on a qualifying site shall be permitted only pursuant to paragraph (a) of Section [81-684](#) (Authorizations for qualifying sites), or Section [81-685](#) (Special permit to modify qualifying site provisions).

(a) Certification to demolish or alter a non-complying building

The Chairperson shall certify the amount of non-complying floor area existing within a non-complying building that may be reconstructed pursuant to the provisions of paragraph (b) of this Section, based on calculations submitted to the Chairperson. Such calculations shall be based on either the building's construction documents previously approved by the Department of Buildings at the time of such building's construction,

#enlargement#, or subsequent alterations, as applicable; or on an as-built drawing set completed by a registered architect.

For the purpose of calculating the amount of #non-complying# #floor area# to be retained on #zoning lots# with multiple existing #buildings# at the time of application, the maximum amount of #non-complying# #floor area# that may be reconstructed shall be equivalent to the #floor area# of the #zoning lot# at the time of application, less the total #floor area# of all existing #buildings# to remain.

Certification pursuant to the provisions of paragraph (a) of this Section shall be a precondition to the issuance of any demolition or alteration permit by the Department of Buildings for a #zoning lot# reconstructing #non-complying# #floor area#.

(b) Certification to reconstruct #non-complying# #floor area#

The amount of #non-complying# #floor area# established pursuant to paragraph (a) of this Section may be reconstructed, provided that the Chairperson certifies that:

- (1) all requirements for #qualifying sites# set forth in the definition in Section [81-613](#), inclusive, have been met, except that no publicly accessible space shall be required notwithstanding the provisions of paragraph (f) of the definition of #qualifying site#; and
- (2) a non-refundable contribution has been deposited by the applicant into the #Public Realm Improvement Fund#. Such contribution shall be an amount equal to 20 percent of the #Public Realm Improvement Fund Development Rights Valuation# multiplied by the amount of such pre-existing #non-complying# #floor area#.

The payment of the non-refundable contribution to the #Public Realm Improvement Fund# pursuant to the provisions of paragraph (b) of this Section, shall be a precondition to the issuance of any foundation permit or new building or alteration permit by the Department of Buildings allowing a #development# on a #qualifying site#.

All applications pursuant to this Section shall be referred to the affected Community Board, the local Council Member and the Borough President of Manhattan. No certification shall be granted prior to 60 days after such referral.

Except for #zoning lots# located east of Third Avenue between the centerline of East 46th Street to the centerline of East 51st Street, any proposed #floor area# in the #development# beyond the amount contained in the pre-existing #non-complying# #building# may be obtained by utilizing the applicable provisions of Section [81-64](#) (Special Floor Area Provisions for Qualifying Sites). For the purposes of applying the provisions of such Section, the reconstructed #floor area ratio# shall be considered the basic maximum #floor area ratio#. However, the maximum #floor area ratios# of Row E and Row H of the table in Section [81-64](#) shall continue to apply.