

## Outside Counsel

## Expert Analysis

# Overview of Light and Air Legal Requirements in New York City

**T**his article provides a general overview of legal requirements for light and air applicable to residential use in New York City.

As a general matter, every “living room” in a residential unit must have a legal window, i.e., a window through which required light and air is provided. A living room is, generally, any habitable room other than a small kitchen or dinette, bathroom, foyer or hallway. Legal windows may of course open directly on the street or on a setback portion of a building facing the street. Otherwise, per Zoning Resolution Section 23-861, there must be at least 30 feet of open area between a legal window and an opposite wall or a rear or side lot line. That distance is measured “in a horizontal plane at the sill level of, and perpendicular to, such window for the full width of the rough window opening.”

Other regulations under the Zoning Resolution track the 30-foot minimum

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window distance requirement. For example, the required rear yard for residential use is generally 30 feet, and the minimum dimension of an inner court is also generally 30 feet. A legal window can open upon such a rear yard or court with a 30-foot dimension. The Zoning Resolution allows a reduction of the rear yard requirement for certain unusually shallow lots, and a legal window is permitted to open upon such a rear yard if it is as little as 20 feet in depth. However, while a reduction of the minimum inner court dimension is available in other situations, a legal window is not permitted to open upon such a substandard inner court.

The 30 feet of open area must be provided on the same zoning lot, i.e., either on the same lot as the building

itself or, where there is a merged zoning lot, over another parcel on the merged zoning lot. Thus, although developers generally focus on zoning lot mergers and the associated zoning lot development agreements (ZLDAs) as means of acquiring excess development rights, they can also provide the additional benefit of establishing legal light and air over the adjoining parcel.

The benefits of light and air easements are many—they ensure that views will be protected into the future, they allow for the establishment of legal bedrooms on a facade where they might not otherwise be permitted, and the right to legal windows can often enhance the layout of a unit or a floor. However, the right to legal light and air is not automatic on a merged zoning lot. The ZLDA should explicitly provide for a light and air easement over the adjoining parcel, and should require that the owner of the adjoining parcel deliver the easement in a separate form document, as required by Department of Buildings.

The easement can be established over the height of an existing building

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on the adjoining parcel, or it can be above a defined plane, in the event that the owner of the adjacent parcel anticipates additional development in the future. In any event, the commencement level of the easement must be sufficient so as to provide direct light and air to each legally required window in the new development. The easement should also account for existing and future bulkheads and rooftop mechanical equipment, some of which may be permitted obstructions within the legal light and air.

Easement rights established in a ZLDA can be insured by a title company under a New York City Development Rights Endorsement. The Title Insurance Rate Service Association (TIRSA) form endorsement provides: "This policy further insures an easement for light and air ... and negative covenants not to build ... as is set forth, defined and limited in the ZLDA ..."

This minimum distance requirement may be waived by the Board of Standards and Appeals through a variance pursuant to Zoning Resolution Section 72-71, or through certain special permits under the jurisdiction of the City Planning Commission. However, the minimum distance requirement is considered an important requirement for residential occupancy, and BSA and CPC will generally only consider a waiver if the applicant can show that the proposed light and air condition is otherwise sufficient. For example, we have been successful in obtaining waivers of this requirement where less

than 30 feet is provided to the lot line, but additional open area is provided by easement over an adjoining parcel on a different zoning lot.

Otherwise, the only exception to the requirement that light and air over an adjacent parcel be established by zoning lot merger and easement is in the case of conversions of nonresidential buildings to residential use pursuant to Article I, Chapter 5 of the Zoning Resolution. Such conversions are subject to Multiple Dwelling Law ("MDL")

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A general overview of requirements for legal light and air applicable to residential use in New York City.

Section 277, which establishes more liberal provisions for light and air and other requirements than the regulations generally applicable to residential development, and allows for legal light and air where there is as little as 15 feet between the window and an opposite building wall. Further, such distance can include up to 10 feet on an adjacent lot, with no requirement that the adjacent lot be part of the same zoning lot or that the 10-foot area be protected by an easement. Thus, it is possible that a legal window could be established in a converted building with as little as five feet of open area on its own lot, and it is even possible that the adjacent parcel could subsequently be developed to the lot line, leaving that five feet of open area as the legal window's only source of light and air.

MDL Section 277 also allows the DOB to waive the otherwise applicable requirements for conversions of nonresidential buildings, and DOB has on occasion allowed legal windows where there is only a minimal distance between the window and the lot line but the light and air condition is otherwise sufficient, e.g., where the light and air is protected by an easement over the adjacent parcel on a different zoning lot.

Under the MDL, legal windows are subject to various other requirements, including standards for the size of the window relative to the size and depth of the room for which light and air is provided. Every window must be at least 12 square feet, and the windows in every room must have a total area of at least one-tenth the floor surface area of the room. No room may extend in depth more than 30 feet from a legal window. And windows must be constructed so that at least one half of their required area may be opened, except that this requirement may be reduced if mechanical ventilation is provided.

A building's exterior wall openings, i.e., its windows, are also subject to fire separation and other requirements under the Building Code and interpretive DOB bulletins and memoranda.