

Real Estate Trends

ZONING AND LAND USE PLANNING

Thorny Zoning Questions Posed by EV Charging Stations

By Anthony S. Guardino

July 24, 2024

It's no secret that electric vehicles ("EVs") are becoming increasingly popular. According to the International Energy Agency, EVs accounted for approximately 18% of all car sales worldwide in 2023, a marked increase from 4% in 2020.

Closer to home, current estimates put the number of plug-in electric vehicles on U.S. roads at 5.4 million. And, this number will continue to grow as some major automakers have firm plans to stop selling gasoline-powered cars and trucks by 2040, and several states, including New York, have banned the sale of new gasoline-powered cars by 2035. The Union of Concerned Scientists projects that 50 percent of U.S. passenger car sales could be electric by 2030, and that EVs could make up 60 to 70 percent of the cars on U.S. roads by 2050.

As the number of EV owners continues to grow, there is a corresponding need to increase the number of EV charging stations on roadways.

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Despite the success of EVs, many communities either still do not have EV charging stations, or have an insufficient number of them. These underserved areas create "range anxiety," which is a fear that an EV will not have enough



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battery charge to reach its destination and there won't be charging stations available when needed. Range anxiety is a major psychological barrier that prevents people from migrating from gasoline-powered vehicles to EVs.

To encourage future EV sales by alleviating range anxiety, municipalities will need to approve more publicly-accessible charging stations in their communities. More charging stations also provide economic benefits to a community because long-distance travelers will patronize local restaurants and retailers while they wait for their vehicles to charge.

Similarly, owners of office and multi-family developments that install new charging stations are likely to see an increase in property values because their buildings will attract or retain EV owners who desire the convenience of charging their vehicles when they are parked for long periods either at work or at their apartments.

In order to facilitate and encourage more EV charging stations, municipalities need to update their zoning ordinances to regulate and manage this new land use. Zoning code amendments should provide developers and property owners with clear guidance on the manner in which

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applications for charging stations will be processed and the timing of approvals, so that the process is more predictable. Some New York municipalities have done so, but many have not.

In the municipalities that have not yet addressed EV charging stations in their zoning ordinances, developers and property owners are left to wrestle with three thorny zoning questions regarding them.

Will an EV Charging Station Be Considered a Primary Use Or an Accessory Use? Zoning ordinances permit landowners to use a property for a principal permitted use and for secondary activities that are accessory to that use. A classic example is a zoning ordinance that permits gasoline filling stations, but not stand-alone convenience stores or car washes, but still allows all three uses to operate on the same property. In this example, the gasoline filling station would be the permitted primary use, and the convenience store and car wash would be allowed as accessory uses to the filling station.

To qualify as an accessory use in most jurisdictions, the use must be customarily incidental and subordinate to the primary use. Since there

are many examples of gasoline filling stations with convenience stores and car washes, it is relatively easy to demonstrate that these uses are “customarily incidental” to a filling station. Unfortunately, until EV charging stations become more common and are routinely associated with certain primary land uses, establishing that they are “customarily incidental” to any primary land use may be a challenge.

When zoning ordinances are silent regarding EV charging stations, whether they are allowed in a zoning district will depend on what kind of use they are considered to be. Where a handful of otherwise unpermitted EV charging stations are proposed to be added in the parking lot of a restaurant, convenience store, or big-box retailer, these stations can reasonably be approved as accessory uses. But the number of parking spaces served by EV charging stations, the number of charging stations used each day, and the number of EVs using them could change this analysis.

For example, if a coffee shop with 30 seats for customers provided 60 parking spaces with EV charging docks at the head of each space, and EV owners frequently used them from opening until closing to charge their vehicles, an argument can be made that the chargers function as the primary use of the property.

Likewise, if Tesla, Rivian, or another EV maker proposed a branded convenience store on a property zoned for such a use, but every parking space was served by an EV charging station, there’s a good chance the EV charging stations would be deemed to be the primary use of the property.

Given the growing popularity of EVs, and the environmental and economic benefits associated with their use, there are certainly compelling reasons for a municipality to add EV charging facilities to the list of permitted uses in most commercial districts. At the very least, however, they should give serious consideration to recognizing EV charging stations

as being accessory to certain uses, such as restaurants, big-box retail uses, and office buildings, because of the natural synergy that exists between these uses.

Will EV Charging Stations Change How Parking Spaces Are Defined and Calculated? Zoning ordinances often require a minimum number of parking spaces in connection with various uses, and many limit the number of parking spaces (*i.e.*, the amount of asphalt or impervious surface) through the site plan approval process. Today, there is no prevailing approach for how municipalities address EV charging stations as

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part of these calculations. Some municipalities' zoning ordinances require that a certain percentage of parking spaces be equipped with an EV charging station. Others require a minimum number of charging stations for a given number of parking spaces, such as one parking space with a charging station for every 25 standard parking spaces.

But in these municipalities and in those that have not yet addressed EV charging stations, developers and property owners may be stymied by how the presence of those stations impacts whether EV charging spaces can be counted as parking spaces in the calculation of required parking spaces.

For example, if an apartment building requires 50 parking spaces and is covered by the ordinance mentioned above, the developer must provide two parking spaces with charging stations. But what if the developer wanted to provide 30 parking spaces with charging stations based on the demographics of the renters it wants to attract?

Would the developer be limited to the 50 parking spaces? Could it build another 28 parking

spaces with charging stations to get to its desired total of 30 (which includes the two required by the ordinance)?

Would the signage placed at the head of the parking space change the analysis? If those 28 additional spots will have signs that say "EV only," do they count as parking spaces if they're not available to every resident? What if there will be no signs? What if the signs say "All cars welcome at all parking spaces?" Since Americans with Disabilities ("ADA")-compliant (*i.e.*, wheelchair accessible) and "compact car only" parking spaces are included in the total number of parking spaces provided for a development, one could make a compelling argument for "EV only" spaces also being included in the calculation of required parking spaces.

Until EVs are more widely accepted by the public, municipalities should monitor EV usage in their communities so that their zoning ordinances will result in sufficient parking for all vehicles. In the same way that local zoning codes do not allow developers to designate disproportionately large numbers of smaller, compact car-only spaces to increase the number of parking spaces to satisfy a development's minimum parking requirement, municipalities should not permit more EV-only parking spaces than are likely to be needed. Instead, the allowable percentage of EV-only parking spaces should reflect the level of EV usage in the community, and that percentage will need to be revised from time to time as EVs become more common.

How To Handle The Installation of EV Charging Stations? The installation of EV charging stations also presents dimensional zoning issues. In addition to the individual charging docks, charging facilities require large amounts of electricity that require transformers and other related equipment. This equipment must be placed near the charging stations so they can be safely connected to the electrical grid. Depending on the charging level of the facility (*i.e.*, Level 1, 2, or 3), this equipment

may be larger than the combined area of the charging docks themselves. As such, transformers and other equipment also pose land use issues in municipalities that have not addressed EV charging stations in their zoning ordinances.

For one, are the transformers and related equipment considered “structures” that are subject to an ordinance’s bulk and area requirements? How they are classified will determine whether additional requirements govern their installation and operation. Does this equipment have to meet height and setback requirements? Also, will a municipality require them to be screened or require landscaping to minimize charging stations’ prominence and make the areas where they are installed more aesthetically pleasing to residents and visitors?

How Municipalities Resolve These Questions Will Reflect Their Policy Interests. Some New York municipalities have updated their zoning ordinances to address the above questions by designating EV charging stations to be permitted principal uses in commercial and industrial districts, or by allowing EV charging to be located in all zoning districts as permitted accessory uses. Many more will likely do so in the coming years. Both the municipalities that have taken action and those that have not yet have something in common: Their decisions will reflect the policy prism through which they view EVs and fossil fuels.

Municipalities that want to encourage EV adoption by their residents will enact ordinances that anticipate future demand for EV charging stations and incentivize developers to add them or to at least construct developments in ways that make them EV-Ready (*i.e.*, requiring electric infrastructure during construction to facilitate the future installation of EV charging stations).

They could relax parking space requirements for multifamily housing and commercial properties when a certain percentage of spaces will have EV charging stations. They could also pass development-friendly ordinances regarding the placement of transformers and related equipment and how they must be screened or their locations landscaped. Or, they could follow in the footsteps of several New York townships and facilitate the installation of EV charging stations by creating a streamlined, expedited administrative approval process.

The municipalities that want to discourage EV adoption by their residents will do the opposite. They could make developers and others jump through bureaucratic hoops to seek consideration for requests to install EV charging stations, and place other roadblocks in the way of entities wishing to install them.

But even the most EV-friendly municipalities will need to consider safety issues regarding EV charging stations. Fire departments across the world are still learning how best to fight fires in EVs and at EV charging stations. Fire departments’ recommendations regarding the placement of EV charging stations—such as avoiding placing them inside parking garages, below large structures, or in other inaccessible areas—must be factored into the process for reviewing and approving these facilities.

EVs offer exciting possibilities for a greener future. But like all emerging technologies, they also pose regulatory challenges. Given the speed with which EVs are being adopted by car owners, it is in the best interests of municipalities, their residents, developers, and property owners to answer the above questions (and any others) sooner rather than later by updating their zoning ordinances to address EV charging stations.