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**Gale A. Brewer, Borough President**

December 11, 2015

Carl Weisbrod, Chair  
City Planning Commission  
22 Reade Street  
New York, NY 10007

**Re: N 160049 ZRY – Zoning for Quality and Affordability Text Amendment**

Dear Chair Weisbrod:

I write in regard to the Department of City Planning's (DCP) application for an amendment of the Zoning Resolution ("ZR") of the City of New York to modify articles and related provisions concerning definitions, use, bulk and parking requirements for residential, community facility, and mixed-used buildings in medium and high density residential or equivalent districts. The text amendment, known as Zoning for Quality and Affordability, or ZQA, was put forth in order to address the needs of affordable housing construction, aid in the efficient use of housing subsidies, and encourage higher-quality residential buildings in the city's medium and high density neighborhoods.

While I support these goals, I must recommend disapproval with conditions of this text amendment at this time. I appreciate that a lot of time and effort was put in on behalf of the department to craft this text, and I appreciate the unprecedented move of providing an annotated version of the proposed changes prior to the start of formal public review. However, I have a number of concerns related to the implementation of these changes in Manhattan which I have outlined below. Additionally, I believe that the proposed text will require targeted, specific, neighborhood-appropriate changes in order to fully respond to the individual Community Board resolutions.

As part of my consideration, I took into account the Manhattan Borough Board resolution recommending disapproval with conditions issued on November 30, 2015, all of the Manhattan Community Board resolutions, the testimony received and heard at the Manhattan Borough President's Public Hearing on this matter on November 16, 2015, the letters submitted by Manhattan elected officials on March 25, 2015 and November 17, 2015, and all relevant materials provided by the Department of City Planning pursuant to Section 201 of the New York City Charter as related to the text amendment N 160049 ZRY. For more information on the background behind my consideration, please see the Appendix to this letter.

## **BOROUGH PRESIDENT RECOMMENDATION**

Since I last reviewed this proposal during environmental scoping, DCP made a number of revisions to the text to reflect public input, including Community Board recommendations. A significant new strength in this proposal is the text explicitly tying changes to bulk envelopes to the provision of affordable housing, just as the reduction of parking requirements are similarly tied to the provision of affordable housing. Other beneficial changes include language clarifying various requirements' intent and better organization of certain provisions in the Zoning Resolution designed to make it easier to read. In addition, for the first time outside of a few special districts, there will be a cap on the number of stories for all zoning districts. Furthermore, the proposal adopts many significant elements of the enhanced commercial district streetscape regulations including transparency and glazing requirements and would apply them universally. Lastly, the goal of rationalizing irregular lot size rules is appreciated.

A number of changes are proposed to promote quality in design. While good design is still not guaranteed, a number of the proposed changes would, I believe, remove some of the existing barriers to good design by the average development proposal. A lively and vibrant streetscape is critical to the health and vitality of our urban fabric, and the following changes are positive steps to ensuring that. The changes that meet this threshold are:

- Efforts to improve the ground floor use requirements so that they would be consistent citywide. These improvements would include standardizing the rules regarding minimum depth requirements, requirements for transparency, width of ground floor lobbies, and parking wrap requirements;
- Text modifications that provide guidance on how to determine line-up provisions for street façades when there are architectural features like bay windows;
- Street wall requirements to apply beyond 50 feet of a wide street, where no street wall requirements currently exist;
- Efforts to remove barriers to architectural articulation and interesting façades, like allowing for window recesses and structural expressions within set limits;
- Modifications of court requirements to be more flexible and allow for a variety of spaces to qualify at the street or interior yard level so as to allow more opportunities for natural light. An example of this is the proposed change to allow for small, inner courts to accommodate courts with non-legally required windows, such as those found in kitchens and bathrooms;
- Modifications to allow greater building articulation at the ground floor level on wide streets in our high density commercial districts;
- Modifications to the transition rules which govern heights for corner lots in medium and high-density districts adjacent to lower-density districts to ensure a consistent street wall; and
- Removal of the double-pane window requirement from the Quality Housing Program and a few special districts, since building code requires that as a minimum standard and the zoning requirement makes it harder to provide a window of higher quality or energy efficiency.

While it is unfortunate that more time was not given at the Community Board, Borough Board, and Borough President levels to consider the changes made and the full available text, the

minimum referral timeframe was doubled from 30 to 60 days; in addition the text was made available 30 days prior to referral and included plain English annotations explaining the various changes. This is after individual presentations at all of the community boards following scoping to outline the provisions of the proposal, followed by another round post-referral of individual committee presentations and after multiple presentations and opportunities for discussion at Manhattan Borough Board. Public engagement and process matter, and the hearing held by my office on November 16, 2015 was an opportunity to engage the populace in a discussion on two text amendments that have the potential to reshape our built environment and how we construct affordable housing in the decades to come. What has become clear is that more time with this zoning text has not increased New Yorkers' comfort with the broad stroke changes it proposes for this city, and giving additional time to this first stage in public review will not help that fact. More changes are needed. Many of the concerns directly shaped the substance of this letter, and I would like to thank those who attended, who spoke, and who wrote in with their concerns and most importantly to all for their constructive ideas for how to improve this incredibly complicated and dense zoning text amendment.

- 1) Environmental Review:** It is troubling that the DEIS found no significant adverse impacts to public policy considering the whole premise of these text amendments potentially undoes years of neighborhood planning efforts and negotiations around contextual districts and height caps in one fell swoop. However, that is a flaw in the CEQR manual threshold criteria and beyond the scope of the analysis framework, or generic modeling, used for the environmental review. With that in mind, the Administration was made aware of this shortcoming as early as March 2015 by comments submitted at the scoping session for the DEIS, and the proposal should have designed a neighborhood-by-neighborhood approach that allowed final modifications reflecting specific geographic language responsive to local concerns and diversity of uses and space.

It would be fair to assume that lifting obstacles to new construction technologies that include the “block and plank” technique and modular construction will have an important impact on construction and other skilled trade labor. The economic impact to this critical employment sector should have been assessed under the socioeconomic conditions chapter in CEQR and those results made available for public consideration.

It is also concerning that the proposed text would result in the potential for unavoidable adverse impacts with respect to shadows, historic resources, hazardous materials, and noise. Again, because this was a generic environmental review, with theoretical models, and no list of specific development sites, there is no analytical path to deal with these potential scenarios. This is in and of itself reason for pause.

- 2) Neighborhood character and planning:** After much consideration I found a significant number of proposed changes greatly troubling, with the potential for serious impacts to the built environment. I also remain unconvinced that these changes holistically will truly solve the issues of affordability or quality the text amendment seeks to address and result in beneficial changes to Manhattan. I believe some of these measures may undermine the work already undertaken by local residents to set their communities on the path to smart growth while protecting their unique neighborhood character. For example, one proposed

change would adjust the maximum building envelopes in Special Districts that did not include any special FAR or building envelope rules under the premise that this is a technical change to bring them in line with changes proposed for the Quality Housing option. However, this change disregards the fact that just because a new height wasn't established does not mean height was not part of the original community discussion or consideration.

In addition, in order to truly address the need for individual community study, existing A and B contextual zones should remain as currently written and ZQA text applied only after individual review and City Planning Commission determination that the change will not harm preservation resources or neighborhood character in the specific zone. Lastly, as part of a future neighborhood study, the City Planning Commission should consider whether existing affordable units would be adversely impacted if the proposal's current maximum building heights in A and B contextual zoning text were to be applied.

- 3) **Wide vs. narrow streets:** Other changes may be equally misguided, while the intent is admirable. In order to fix an alleged mismatch between the bonus floor area granted under the Voluntary Inclusionary Housing program with bonus floor area actually used due to existing maximum building height caps, the text proposes a series of height increases, ranging up to 50 feet. What is most troubling is that the proposed increases eradicate, in some cases, the clear distinction and height differential between our wide and narrow streets. Other changes to the text are consciously made to extend street wall requirements and protections onto narrow streets. The applicability of the Sliver Law is also clarified to distinguish between wide and narrow streets. Thus, it is baffling that the text proposes additional height levels that would effectively undermine what protects our "hills and valleys" rhythm of taller buildings on wide streets or avenues which can accommodate the height and shadow impacts and more residential, medium to low-rise character of our mid-blocks.

In order to address these concerns, the ZQA proposal should be revised to maintain the distinction between wide and narrow streets in order to reduce impacts to the historic "hills and valleys" that characterize the development of Manhattan. The proposed height increases should be reduced for contextual districts where the impact is greatest on narrow streets and/or in recently rezoned areas.

- 4) **Sliver Law:** Another concerning change is the proposed elimination of the applicability of the Sliver Law, as ZR Section 23-692 is affectionately known, for buildings containing a portion of affordable housing. The only time I have argued for a broad change in applicability of the Sliver Law, and indeed the only time I would, is in a case where the underlying bulk and height controls are tighter and more restrictive than the rules contained in the Sliver Law. Such was the case in my prior recommendation for a change in a special district (N 150083 ZRM – Hudson Yards D4, D5 text amendment) where the height rules were more restrictive. Only when tighter controls are in place does it make sense to eliminate a rule in conflict. Therefore, while I appreciate the changes made to clarify the intent of this rule, I would recommend that its applicability remain in place and not be modified to preclude a subset of residential development.

- 5) **Rear yards:** Instituting a cap on the number of stories will ensure better floor to ceiling heights, and the reduction of rear yard setback requirements could allow for more efficient floor plates. However, allowing the rear yard to be encroached upon at the ground floor for residential or residential accessory uses will not result in a multitude of affordable units and impedes upon a significant characteristic of Manhattan neighborhoods. As I have pointed out in a number of ULURP applications seeking such a rear yard waiver for residential uses, a unique attribute of Manhattan’s blocks is, in general, a consistent street wall along the perimeter of all four sides of the block. We do not have a road system that includes alleys; instead, we have “donuts.” These donuts were historically formed by the rear yards of townhouses, built speculatively by developers as the residential development of Manhattan expanded ever northward in response to a post-Civil War population boom and the opening of Central Park. Today, it is the City of New York’s Zoning Resolution through its requirements for open space, minimum yards, and distance between buildings that maintains and ensures these open areas will remain in perpetuity to provide light and air. But this proposed change may seriously degrade these spaces and the aggregate impact was not accounted for in the DEIS. While similar rules exist for community facility uses, the overwhelming Manhattan experience has been one of poor enforcement and these accessory spaces are too easily converted to a non-compliant use. The applicability of rear yard encroachment rules for residential and residential accessory uses at the ground floor should be retained in the ZR.
- 6) **Construction and preservation:** The height and setback changes proposed in this text amendment garnered the most visceral reaction and amount of discussion. As a result, while a number of targeted changes could address some level of universal concern, the idea of increasing heights and allowing for increased envelope flexibility also gave voice to other concerns regarding construction practice and safety, an increase in development and the associated quality of life concerns that come with any construction project, and impacts to the historic resources of the city. I will echo the Manhattan Borough Board resolution conditions here: The Zoning Resolution should be neutral as to elevating a particular construction technique over another, and I recommend that the administration recognize and address that changes to the bulk envelopes will spur additional development in historic districts, and that resources should be put in place to ensure that all of the work of the Landmarks Preservation Commission, including designation, is not adversely impacted by an increase in permits. The Administration should respond to the need for construction safety with a plan that addresses current concerns and accounts for the potential increase in problems. This plan must give special focus to the needs of existing tenants, especially those in rent-regulated units, who may fall outside the scope of administration targeted measures for anti-harassment and tenant protections.
- 7) **Senior housing:** Another topic that generated a significant amount of discussion and consideration was in regards to the changes proposed to promote the construction of senior housing. While no one seemed to diminish the need for senior, especially affordable senior, housing in the city, opinions differed greatly as to the substance of how to accomplish this. ZQA attempts to solve this conundrum on the building envelope side, with mixed degrees of success. Elimination of obsolete terms is a good thing, as is

allowing all program types to be treated the same for the purposes of floor area in order to simplify construction. Even allowing pathways to convert under-utilized required parking spaces can be positive, if the right conditions and considerations are set forth to ensure no adverse impacts and the resulting infill is also appropriate. The most problematic aspect of the proposal component for senior housing is again the additional height. The need for this housing is not in doubt. But if the solution involves additional height, then communities must be assured that a permanent height increase will not result in senior housing that is not permanent. The changes proposed for senior housing require further refinement. The text should be revised to clarify the permanency of affordable senior housing and if permanency cannot be guaranteed, then text should be provided that will ensure permanent affordability for the building regardless of whether it can be permanently for seniors. The last thing we want is in 20-30 years for this housing to become prohibitively expensive senior housing.

Additionally, though the intention to create more affordable senior units using a mixed-use development model is commendable, allowing accessory spaces to be built on the ground floor in the rear yard area may result in the disturbance of rear yard areas. Moving accessory uses into those spaces may disturb the quality of life for surrounding neighbors and constricts open space, light and air for neighboring back yards. The exemption to allow affordable senior housing, long-term care facilities, and not-for profit institutions with sleeping accommodations (NPISAs) the ability to co-exist in a single facility may be appropriate in lower density areas and may be the current trend in senior care, but is not viewed favorably in Manhattan. The text should be careful not to elevate one model of senior housing or long-term care over any other.

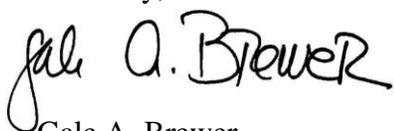
- 8) Voluntary program:** Lastly, I have respectfully requested multiple times for changes to the existing opt-in affordable housing programs. Considering I have been writing on the topic since August 2014, I was incredibly disappointed that, even though time is spent re-organizing the relevant sections of the Zoning Resolution, no substantive changes are proposed to address concern with aspects of the program, such as the two-door option for affordable housing, and the practice of “double-dipping” with 421a. I have also emphasized the need for provisions to adjust the bonus to create additional units in areas where floor area is highly valuable, and to ensure affordable home ownership units are affordable in perpetuity. These concerns were echoed in the March 2015 letter when this office and a host of other elected officials once again reiterated the need to improve the flawed, existing Voluntary program, as it will still be the basis upon which ZQA would be applied. And finally, these concerns were reiterated yet again in the November 2015 letter co-signed by most other Manhattan elected officials at the local, state and federal levels. While I am encouraged to have received a written commitment to a review of the Voluntary and R10 programs, I would have hoped to be further along with correcting the current flaws within the existing opt-in program that serve as the foundation for the ZQA amendments.

Since my concerns and that of the Manhattan Borough Board touch upon various topic areas, and in some cases on particular subsections of the proposed changes, and to truly address the principal concern regarding sweeping changes to the underlying height requirements across the

Borough and city, the proposed text will require targeted, specific, neighborhood appropriate changes in addition to the general Manhattan thematic changes outlined in this recommendation. And that type of intervention may well be beyond the capabilities of the timeframe allotted. The City Planning Commission should seriously consider the recommendations from the individual Community Boards, Borough Boards, and Borough Presidents and decide whether specific, targeted changes will be sufficient to address enough of these issues to justify this text amendment moving forward in the public review process. Therefore, I cannot support this text amendment at this time until these conditions are addressed.

My staff and I are appreciative of the thoughtful responses DCP, HPD and other members of the Administration have come to the table with in our recent conversations about the aforementioned concerns. They have shown a sincere willingness to consider our amendments and think of ways to digest the feedback we've provided through our previous letters and public meetings. We hope this recommendation will serve as a means of continuing those conversations and the work to reach our shared goals of creating more affordable senior, supportive and residential housing, encouraging quality buildings and streetscape design, and encouraging a balanced community-based approach to smart growth in our communities.

Sincerely,

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer  
Manhattan Borough President

## **APPENDIX I. Text Amendment**

### **PROJECT DESCRIPTION**

The Department of City Planning referred out on September 21, 2015 a citywide text amendment known as ZQA (N 160049 ZRY) which proposes changes to the ZR to support the creation of affordable housing and encourage better residential buildings. The text amendment has three main components: 1) the promotion of affordable senior housing and care facilities; 2) the modification of rules that shape buildings to allow for new construction methods and design flexibility; and 3) a reduction in parking requirements for affordable housing.

### **Background**

#### *Existing Inclusionary Housing Programs*

There are currently two voluntary Inclusionary Housing programs that are open to New York City developers: the R10 program and the expanded “Designated Areas” program.

#### R10 program

Created in 1987 for high density R10 residential districts and commercial districts with equivalent density, the R10 program remains applicable in those areas today. For each square foot of floor area dedicated to affordable housing, an eligible development can receive between 1.5 and 3.5 square feet of bonus floor area, depending on a variety of factors including whether the affordable housing is provided on-site or off-site, and whether public funding is used for financing. The floor area bonus caps at 20 percent of the maximum permitted residential floor area, thus increasing the maximum FAR from 10.0 to 12.0. Qualifying affordable housing units must remain permanently affordable to households at or below 80 percent of the United States Department of Housing and Urban Development’s (HUD) Area Median Income (AMI).

#### Designated Areas program

Building on the R10 program, the Designated Areas Program was created in 2005 to encourage the creation and preservation of affordable housing in medium and high density neighborhoods throughout the City that were being rezoned to create new housing opportunities. These designated areas include parts of the Bronx, Brooklyn, Manhattan, and Queens.

This program allows up to a 33 percent floor area bonus for developments that devote at least 20 percent of their residential floor area to housing that will remain permanently affordable to households at or below 80 percent of AMI. In certain special districts, a portion of the affordable housing units may be targeted to higher incomes (below either 125 or 175 percent of AMI) if a greater percentage of affordable units is provided.

#### *Barriers to Building Affordable Housing*

In June of 2014, the Citizen’s Housing & Planning Council published “The Building Envelope Conundrum,” a report that highlighted certain difficulties to affordable housing development that related to existing building envelope restrictions. This report, in combination with other barriers that impede the construction of affordable housing, served as the impetus for the current text amendment.

### Contextual Building Envelopes

Contextual zoning established in 1987, regulates the height and bulk of new buildings, their setback from the street line, and their width along the street frontage to produce buildings that are consistent with existing neighborhood character. However, feedback from the affordable housing development community has reflected certain shortcomings of these regulations.

First, the dimensional rules for lot coverage, setbacks, courts, side yards, and others were designed for a rectangular 100 foot deep lot. They become complicated and more restrictive when applied to irregular lots, which are increasingly common in such a mature, developed city as New York. The typical floor to ceiling height for an apartment has also changed; while the 1987 regulations assumed an 8 foot floor to ceiling height, typical height in a residential building is now over 9 feet. Finally, new construction practices such as modular construction and “block and plank” construction are also restricted by the contextual envelope regulations. These techniques are seen as potential cost effective ways to construct mid-rise residential buildings, which is particularly significant for non-luxury and affordable housing developments. However, the building envelope rules do not allow for the optimal floor to ceiling heights and lot depths for these construction practices. All of this combined, makes it hard for housing developers to fit in the FAR that they are allowed within the building envelope.

The development of additional FAR has become an essential tool of public policy. In addition to incentivizing affordable housing, it is also used to secure a variety of other public goods such as sustainable design and open space. Restrictions on use of the full FAR that is allowed to developers could impede the realization of affordable housing and other public benefits.

### Parking Requirements

Off-street parking can be very expensive to construct, and residents of affordable housing often cannot pay the high fees necessary to offset the cost of these spaces. In these cases, the provided spaces could sit empty as low-income residents who do own cars opt to park them on the street. In other less-dense areas where parking might cost less to build, they nonetheless take up considerable space that might be developed into more housing or better-used public amenities. There is also evidence from data collected by the Department of City Planning that lower-income households own fewer cars, and low-income seniors in particular own very few.

By imposing significant development costs that cannot be sustained by parking revenues, and taking away space from potentially better uses, these parking requirements could act as a restriction on the amount of affordable housing that is built.

### *Opportunity to Improve Existing Inclusionary Programs*

Recognition of potential barriers to building affordable housing has become the impetus to revise old zoning regulations. However, this office believes that it is also a welcomed opportunity to improve the underlying Voluntary Inclusionary Housing program itself.

This office has repeatedly called for reforms to the existing inclusionary program, as it will continue to be an important vehicle for building affordable housing. On August 1, 2014, I first wrote to Chair Weisbrod of the City Planning Commission and Commissioner Been of the Department of Housing Preservation and Development (HPD) requesting that the city remove

the option to build income-segregated buildings from the Zoning Resolution. This letter also outlined other ways the voluntary program could be strengthened and said that the city should institute a mandatory program citywide, as I believe every unit of luxury housing has an adverse impact on the affordability of neighborhoods. I wrote again on October 31, 2014, following a briefing outlining a proposal for a mandatory program, and again asked that the opportunity be taken to fix the current program. I wrote a third time on February 10, 2015, reiterating the need for a citywide mandatory program and fixes to the existing program. From all of these letters dating back to August of 2014, I have clearly expressed concern with aspects of the program, such as the two-door option for affordable housing and the practice of “double-dipping” with 421a. I have also emphasized the need for provisions to adjust the bonus to create additional units in areas where floor area is highly valuable, and to ensure affordable home ownership units are affordable in perpetuity.

The Draft Scope of Work on Zoning for Quality and Affordability was issued on February 20, 2015. In March of 2015, this office and a host of other elected officials once again reiterated the need to improve the flawed, existing Voluntary program, as it would still be the basis for the application of ZQA. At that time, 30 other Manhattan elected officials at the city, state, and federal levels and I, after reviewing the proposal, and in consultation with community groups, wrote a letter dated March 25, 2015 to Chair Weisbrod of the City Planning Commission outlining concerns about the proposed actions. In response to the letter, submitted technical comments, community board input, and other public testimony provided throughout the public comment period for the draft scope of work, DCP made several amendments to their proposed actions, including:

1. Extending the comment period for the environmental scope for almost an additional month to April 30, 2015;
2. A set of refinements to the proposed height changes for R6B, R7A and R8B zoning districts;
3. Creating individual profiles for each Community Board that explained those elements of the proposal that would or would not apply in each community; and
4. Providing presentations to all 59 Community Boards to discuss the proposal with them prior to the formal public review process.

In addition, an annotated version of the proposed text was provided online in August 2015, approximately one month prior to referral for public review.

### **Proposed Text Changes**

ZQA represents one part of the City’s multi-pronged approach to achieving the Mayor’s *Housing New York* ten-year, five-borough strategy to create or preserve 200,000 units of affordable housing. The proposed actions are comprised of a set of targeted changes to zoning regulations to support the creation of new affordable housing and encourage better residential buildings. These suggested changes are in response to the agency’s conversations with architects, developers and construction professionals about existing financial and structural difficulties in producing affordable and senior housing, aiding the efficient use of housing subsidies, and encouraging higher quality residential buildings in the city’s medium- and high-density neighborhoods.

The changes are grouped into two principal buckets: changes to promote affordability and changes to promote quality. In order to promote affordability, changes are proposed to the rules for affordable senior housing and long-term care facilities, the height and setback regulations for Inclusionary Housing buildings, and changes to parking requirements for various types of affordable housing. In order to promote quality, changes are proposed to ground floor requirements, street wall, court, and height and setback requirements, building envelope changes, and related, rules regarding corner and irregular lot sizes, and unit size and configuration.

To achieve the aforementioned objectives, modifications are being proposed across several areas of the Zoning Resolution:

1. Modifications to the language of the Zoning Resolution to make its provisions clearer to the reader and remove obsolete terms
2. A major reorganization of the residential bulk regulations found in Article II, Chapter 3 in order to separate the regulations for R1 through R5 districts from the regulations for R6 through R10 districts, and better organize the various FAR and height and setback controls for medium- and high-density zoning districts
3. Limited organizational changes to the community facility bulk regulations of Article II, Chapter 4, and the commercial zoning district regulations found in Article III, Chapter 2 through Chapter 5.

#### *Parking*

ZQA proposes to modify parking requirements for affordable senior housing and affordable housing. These instances include:

- In Transit Zones, areas that are served by a variety of public transportation options and are generally within one-half mile of a subway station, parking for new affordable senior housing and affordable housing will no longer be required and existing affordable senior housing development would be allowed to remove existing parking as-of-right;
- New BSA special permits will be created to allow for the development of affordable senior housing and affordable housing. BSA Special Permit for Section 73-434 will allow existing affordable housing developments to remove existing required parking spaces, and BSA Special Permit Section 73-433 will allow new buildings to reduce or eliminate their required parking in exchange for mixed-income residential development;
- Outside of the Transit Zone, parking requirements for new affordable senior housing would be lowered to 10 percent with existing affordable senior housing buildings receiving the same reduction in required spaces through a new BSA special permit;
- Comparable modifications would be permitted by the City Planning Commission as part of the General Large Scale Development special permits; and
- No changes to parking requirements for other affordable housing in multi-family zoning districts outside the Transit Zone and for as-of-right parking requirements for market-rate housing.

#### *Senior Housing*

To meet the projected increase of the City's growing senior population and the current shortage of available or appropriate affordable senior housing, long-term care facilities, and not-for profit

institutions with sleeping accommodations (NPISAs), ZQA proposes several changes to incentivize construction of this type of development. These changes include:

For Affordable Independent Senior Housing:

- Allow for a wider range of non-profit and for-profit entities to provide affordable senior housing by replacing the zoning definition “non-profit residence for the elderly” with a new term, “affordable independent residence for seniors;”
- Require qualifying sites to participate in a regulatory agreement from a City or State agency with a minimum term of 30 years with incomes restricted to seniors making less than 80% of AMI;
- Establish a higher FAR for “affordable independent residences for seniors” in high-density districts (R8 through R10) and a number of medium-density contextual zoning districts; and
- Exempt affordable senior housing from unit density controls to allow for higher unit counts.

For Long-term Care Facilities:

- Create “long-term care facility” as a new defined term, a Use Group 3 community facility use, to replace obsolete terms such as “nursing homes and health-related facilities.” The change would account for the range of care facilities licensed by the New York State Department of Health. The facilities would still be required to secure the necessary certification and authorizes licensees;
- Remove the following required special permits (Section 74-90, 74-902) and allow all “long-term care facilities” in R3 through R10 districts, including nursing homes, as-of-right; and
- Set-up discretionary protocols for long-term care facilities in low-density, single-family zoning districts.

For the Mixing of Residences and Care Facilities:

- Simplify requirements for calculating recreation space, residential amenities, and daylight in shared corridors when mixed-uses are occupying qualifying buildings in R6 through R10 contextual districts and for buildings in non-contextual districts that follow the Quality Housing regulations;
- Remove FAR restrictions in R6 and R7-1 districts for long-term care facilities. The restrictions would only apply to other community facility uses not addressed by ZQA;
- Modify the formula for calculating the unit density factor to exclude floor area dedicated to either affordable senior housing, long-term care facilities, and not-for profit institutions with sleeping accommodations (NPISAs) before determining the number of allowable regular residential units in mixed-residence buildings; and
- Modify provisions in special districts that state that “non-residential” uses cannot be located on the same floor or above residential uses to exempt affordable senior housing, long-term care facilities, and not-for profit institutions with sleeping accommodations (NPISAs).

Affordable Senior Housing and Long Term Care Facility Building Envelopes

- Permit in R6 through R10 contextual districts limited additional height for buildings that provide affordable senior housing or long-term care facilities. For buildings that provide at least 20 percent of their floor area as either affordable senior housing or long-term care facilities the proposal would:
  - Permit a higher maximum height and number of stories to allow the full development of permitted FAR in qualifying districts
  - Permit an increase in the maximum base height in qualifying districts
  - Relax rear yard restrictions and allow accessory spaces to be built on the ground floor in the rear yard area
  - Remove the restrictions established by the “Sliver Law;”
- Permit in R6 through R10 non-contextual districts any allowable increase in height or FAR be tied to compliance with the Quality Housing Program available in the qualifying non-contextual districts. Those buildings would be subject to the above mentioned conditions. In a situation where a site is located near a barrier that makes development difficult, a more flexible Quality Housing envelope would be offered so that units are shifted away from the adverse element; and
- Replace an existing Commission authorization for R3-2, R4 and R5 non-contextual districts with a special as-of-right building envelope the would permit a maximum height of 45 feet close to the street and a maximum height of 65 feet for the portion of lots more than 25 feet from the street. The Commission authorization will continue to exist to allow for additional flexibility.

### *Changes to Building Envelopes*

While the text amendment materials refer to two general purposes, promoting affordability and promoting quality, for the purposes of understanding the text this section will discuss the proposed building envelope changes proposed as part of ZQA. Building envelope often refers to the shape of a building and how it will look from the street – how tall is it, where the ground floor is located, what the ground floor looks like, what the façade looks like in terms of articulation or shape. Changes to internal configurations and requirements can also impact the outside of a building. ZQA proposes modifications to the following items: Inclusionary Housing building envelopes, ground floor requirements, street walls, corner buildings, setback requirements, building envelopes and number of stories, unit size and configuration, and irregular site conditions.

Inclusionary Housing Building Envelopes rules can be generally found in Article II, Chapters 2 thru 5 of the Zoning Resolution. The rules are proposed to be modified to:

- Permit a higher maximum height and number of stories to allow the full development of the permitted FAR in a high-quality building form, based on the volume necessary to accommodate the higher permitted FAR through participation in the program;
- Allow an increase in the maximum base heights in some zoning districts to maintain the current proportionality of the building envelope;
- Allow for the development of shared spaces on the ground floor in the rear yard area, so as to allow for more efficient buildings; and
- Remove an impediment to the creation of affordable housing on narrow sites by removing the special height restrictions placed on narrow lots.

Ground Floor requirements rules can be generally found throughout the Zoning Resolution, with different rules for different types of uses and different commercial districts. The ZR is proposed to be modified to:

- Establish a new definition known as “qualifying ground floor,” which refers to the ground floor of a development or enlargement where the level of the finished floor to ceiling is 13 feet or more in height;
- Allow a five foot height increase across all districts for any Quality Housing buildings built with a qualifying ground floor;
- Allow interior ramps in the residential lobbies a floor area exemption of 100 square feet for each foot the ground floor is raised above curb level; and
- Simplify and improve the ground floor use requirements to be consistent citywide. These improvements would include standardizing the rules regarding minimum depth requirements, requirements for transparency, width of ground floor lobbies, and parking wrap requirements.

Street Wall requirements can be generally found in Article II, Chapter 3 of the Zoning Resolution for residential buildings. Quality Housing regulations today include rules that regulate the location of the street wall, design flexibility, and what kind of building articulation is permitted. ZQA proposes to modify:

- Line-up provisions to require buildings to locate their street wall in relation to only directly adjacent buildings and to adjust the maximum setback from the property line to 10 feet. The text is also modified to provide guidance on how to determine line-up provisions when there are architectural features like bay windows;
- Street wall requirements to apply beyond 50 feet of a wide street, where no street wall requirements currently exist;
- Allow for window recesses and structural expression to be permitted within depths or projections of 12 inches from the street wall and allow deeper architectural features to be permitted for a limited percentage of the street wall’s overall width;
- Permit a 1:1 width-to-depth ratio for courts less than 30 feet wide, allow courts that are 30 feet or wider to have no depth restrictions. Court requirements would also be modified to allow for small, inner courts to accommodate courts with non-legally required windows, such as those found in kitchens and bathrooms; and
- Modify street wall requirements on wide streets in commercial districts to allow for building articulation at the ground floor and the extension of the street wall rules beyond 50 feet of a wide street.

Corner Buildings, those buildings that front on two streets, rules are proposed to be modified for R6 thru R10 districts to:

- Increase the maximum permitted lot coverage for Quality Housing buildings from 80 percent to 100 percent within 100 feet of a corner; and
- Modify the transition rules which govern heights for corner lots in medium and high-density districts adjacent to lower-density districts. The proposed changes would allow

portions of a building within the 25-foot transition zone to reach the maximum base height of the zoning district, or a height of 75 feet, whichever is less.

Setback Requirements rules are generally found in Article II, Chapter 3 of the Zoning Resolution. A setback occurs at the maximum base height before a building may rise to its maximum permitted height. The rules today measure front and rear setbacks of Quality Housing buildings differently. The changes proposed are:

- Removal of the rear yard setback requirement for Quality Housing buildings; and
- Reduction of the front setback by one foot for every foot that the building is set back from the property line, but at minimum a five foot setback from the street wall must be provided.

Building Envelopes and Number of Stories requirement changes are as follows:

- Increasing the maximum base heights applicable in some zoning districts by five feet to accommodate “qualifying ground floors;”
- Adding a maximum number of stories in relation to maximum height requirements in contextual districts;
- Modifying optional Quality Housing rules to align wide and narrow street requirements with the comparable contextual district wide and narrow street requirements and to match the proposed revised maximum number of stories rules; and
- Where the Special District did not include any special FAR or building envelope rules, adjusting the maximum building envelopes to bring them in line with changes proposed for the Quality Housing option.

Unit Size and Configuration rules are proposed to be modified as follows:

- Removal of the 400 square foot minimum unit size requirement;
- Revisions to existing density factors in R8 through R10 districts to make them consistent with what is already required in R6 and R7 districts. The new density factor would be 680 square feet;
- Removal of the double-pane window requirement from the Quality Housing Program and a few special districts; and
- To allow for the City’s Office of Environmental Remediation to modify the sound-attenuated window requirement based on site conditions.

Irregular Site Conditions rules are proposed to be modified as follows:

- Provides a framework to adjust in proportion rear yard and lot coverage requirements in concert with lot depth;
- Allow for greater flexibility in street wall location for buildings that are located on acutely-angled sites;
- Modify the slope allowance requirement for using a sloped base plane to determine maximum base and building heights from 10 percent to five percent;

- Reduce the minimum distance between buildings from 60 feet to 40 feet; and
- Create a BSA special permit for Quality Housing buildings on irregular sites, to allow limited modifications to the rules that shape residential buildings.

### **ANTICIPATED IMPACTS**

On September 18, 2015, the Department of City Planning issued its Notice of Completion of the Draft Environmental Impact Statement (DEIS) for the Zoning for Quality and Affordability Text Amendment (CEQR No. 15DCP104Y). DCP's analysis found no significant adverse impacts related to the chapters on land use, zoning, or public policy, socioeconomic impacts, community facilities and services, open space resources, natural resources, water and sewer infrastructure, transportation, solid waste and sanitation services, public health, neighborhood character, and construction. The DEIS also concluded that the proposed action would be consistent with the city's greenhouse gas (GHG) and climate change goals. DCP's analysis did find that the proposal would potentially result in adverse impacts related to incremental shadows, new sensitive receptors closer to existing train operations on elevated train tracks, additional in-ground disturbance that could occur on sites where hazardous materials exist and on sites where archaeological remains exist. However, no practicable mitigation measures were identified which would reduce or eliminate these impacts.

### **COMMUNITY BOARD COMMENTS**

At its Full Board meeting on November 19, 2015, CB 1 voted to oppose the text amendment as currently proposed. The Board stated concerns with the impact of eliminating the Sliver Law for affordable housing development, impact of this proposal on the R10 and Voluntary Inclusionary Housing programs and the potential of the program to encourage out-of-context development. Additionally, the Board did not find that the program encourages mixed-income neighborhoods and had issues with height increases for affordable senior housing that is not permanently affordable.

At its Full Board meeting on November 20, 2015, CB 2 voted to oppose ZQA but supported increasing inclusionary housing and creating buildings that are more in context at a street level. The Board opposed the development of sliver buildings and rear yard obstructions outside of commercial zones, and believes this proposal should be examined on a case-by-case, community-by-community basis.

At its Full Board meeting on November 24, 2015, CB 3 voted to oppose ZQA per their resolution passed on July 28, 2015. In the previous resolution, CB 3 raised concerns about general height increases and particularly in contextual zones.

At its Full Board meeting on November 4, 2015, CB 4 voted to deny the text amendment unless certain modifications are made. CB4 stated they cannot support additional bulk without permanent affordable senior housing. The Board stated taller ground floors would be out of context with surrounding buildings. Further, the Board requested height and setback limits in Clinton and West Chelsea special districts that are consistent with their 2005 rezonings and a

rezoning of East Chelsea/ a geographic area under the Chelsea 197-a Plan to establish height and setback limits that are consistent with their 1996 plan.

On November 12, 2015, CB 5 recommended denial of the text amendment unless certain conditions are met. The Board requested the Voluntary Inclusionary Program be applied to the R10 areas of the district, the height maximums in the Ladies Mile Historic District remain, and the affordable senior housing to remain affordable in perpetuity.

At its Full Board meeting on November 18, 2015, CB6 voted unanimously to recommend denial with certain conditions. CB6 requested that zoning lot mergers have a height limit, rear yard provisions be reduced, affordable senior house be permanent, and an additional 90 days to review the proposal.

At its Full Board meeting on November 4, 2015, CB7 voted to oppose the proposal with conditions. The Board opposed the proposed height increases on narrow streets and historic districts and the development of sliver buildings.

On November 6, 2015 the Land Use and Housing Committees (which is constituted as a committee of the whole) of CB10 agreed to submit a letter voicing its concerns – first that the public review process was unduly rushed –and additionally that the Board requests notification when developers submit applications to HPD. The Board reiterated it supported developing more affordable housing through zoning but requested that the affordable senior housing be permanent. The Board opposed lifting the Sliver Law restrictions and expressed concern about waiving the rear yard requirements.

In a letter dated November 6, 2015, CB10 stated the Board had inadequate time to review the proposal and therefore could not appropriately vote. The Board requested permanent affordable senior housing and more incentives for developers to construct senior buildings.

At its Full Board meeting on November 23, 2015, CB11 voted to deny the text amendment unless certain conditions are met. The Board requested a re-evaluation on the parking requirements in transit zones and permanent affordable senior housing. The Board also expressed concerns about the spacing of residential buildings on the same zoning lot and the reduced minimum size of dwelling units.

At its Full Board meeting on November 24, 2015, CB12 voted to deny the proposal unless certain conditions are met. The Board expressed concern that the proposal would alter the neighborhood character, cause displacement and unattractive buildings. The Board requested 50 percent community preference for all affordable housing developed under this proposal.

## **BOROUGH BOARD COMMENTS**

The Manhattan Borough Board met on a number of dates to consider the proposal known as ZQA, receiving its first briefing on February 19, 2015, and a subsequent briefing on the proposal on October 15, 2015. As part of the chair report, Borough Board members discussed both the ZQA and MIH proposals on November 19, 2015. As not all Manhattan Community Boards had

voted at that time, the decision was made to call a special meeting for a vote. On Monday, November 30, 2015, the Manhattan Borough Board passed, with 12 in favor, 0 opposed, and 4 abstaining, a resolution recommending disapproval of ZQA unless the following conditions are satisfied:

1. The text amendment for the City of New York Zoning Resolution (ZR) is revised to maintain the distinction between wide and narrow streets in order to reduce impacts to the historic “hills and valleys” that characterize the development of Manhattan;
2. The applicability of the Sliver Law as it exists today in the ZR remains in place;
3. Applicability of rear yard encroachment rules at the ground floor will be retained in the ZR for residential and residential accessory uses;
4. The proposed height increases are reduced for contextual districts where the impact is greatest on narrow streets and/or in recently rezoned areas;
  - a. Existing A and B contextual zones will remain as currently written and ZQA text will be applied only after individual review and City Planning Commission determination that the change will not harm preservation resources or neighborhood character in the specific zone
  - b. A and B contextual zoning text as currently written may be applied in the future to zones if there is a City Planning Commission determination that a preservation purpose will be served
5. The Zoning Resolution will be neutral as to elevating a particular construction technique over another;
6. The administration will recognize and address that changes to the bulk envelopes will spur additional development in historic districts, and that resources be put in place to ensure that all of the work of the Landmarks Preservation Commission, including designation, is not adversely impacted by an increase in permits;
7. The Administration recognizes and responds to the need for construction safety and a plan that addresses current concerns and accounts for the potential for an increase in problems;
8. The text is revised to clarify the permanency of affordable senior housing and if permanency cannot be guaranteed than text should be provided that will ensure permanent affordability for the building regardless of age restrictions; and
9. A commitment is made to immediately begin studying and correcting current flaws within the existing opt-in R10 and Voluntary Inclusionary Housing programs.

The Borough Board resolution furthermore stated that the Department of City Planning and the administration should also respond to and address the individual concerns and conditions of the Manhattan Community Boards issued in response to the referral of the text amendment, as should the City Council in the case of any concerns and conditions that remain at the time of City Council action; and all agencies should provide information and seek feedback from community boards as the implementation of the text amendment progresses.

Manhattan Borough Board considered all of the Manhattan Community Board resolutions and letters in its deliberations and discussions, the testimony received and heard at the Manhattan Borough President’s Public Hearing on this matter on November 16, 2015, the letters submitted by Manhattan elected officials on March 25, 2015 and November 17, 2015, and all relevant

materials provided by the Department of City Planning pursuant to Section 201 of the New York City Charter as related to the text amendment N 160049 ZRY.

### **BOROUGH PRESIDENT HEARING**

On Monday, November 16, 2015 the Manhattan Borough President held a public hearing on the subject of the affordable housing text amendments – Zoning for Quality and Affordability (ZQA) and Mandatory Inclusionary Housing (MIH) Program – in order to inform the recommendation herein. Public engagement and process matter, and this was an opportunity to engage the populace in a discussion on two text amendments that have the potential to reshape our built environment and how we construct affordable housing in the decades to come. The hearing was attended by over 250 persons and 55 speakers testified regarding the text amendments. The Manhattan Borough President recommendation letter, dated December 10, 2015, submitted in regard to the MIH application (N 160051 ZRY) discusses in more detail the comments concerning that proposal.

Of the 55 speakers who came to testify at the hearing, 47 speakers testified in opposition to the ZQA proposal, and 8 speakers testified in favor. Those who spoke in opposition to the proposal included citywide organizations such as the Metropolitan Council on Housing, CAAAV Organizing Asian Communities, League of Women Voters, New York Landmarks Conservancy and prominent neighborhood groups such as FRIENDS of the Upper East Side Historic Districts, Good Old Lower East Side (GOLES), the Greenwich Village Society for Historic Preservation (GVSHIP), and Landmarks West!. In addition, Community Boards 4, 5, and 10 came to testify regarding their concerns with ZQA as did New York City Councilmember Ben Kallos. For a full list of organizations that testified or submitted comments to the Manhattan Borough President, please see Table 1 on page 21.

An overarching theme within the testimonies was that the proposed text was a blunt solution to the question of how to construct more affordable and quality housing development in New York City and that in striving to solve the affordable housing crisis the text ignored critical neighborhood differences and important height controls. Many voiced that the text could serve to undo prior robust public engagement processes that resulted in targeted contextual district zoning changes throughout the city.

Of equal concern was whether the proposed changes would actually contribute to either quality or affordable buildings and units in perpetuity. Testimony raised concerns that allowing height increases, rear yard encroachments, and the elimination of the Sliver Law for affordable housing, while removing barriers to good design, do not actually guarantee it. In addition, the financing structure around senior housing does not guarantee permanency in affordability, and serious discomfort was expressed with the concept of what many speakers felt was a gift, increased permanent height, for a needed public good that may not exist beyond a 20 year term sheet.

Additional concerns were raised regarding the public review process for the text amendments, including availability of information, environment review analysis, and timeframe for review, when the review timeframe for other equally complex citywide text amendments were extended when folks voiced the need for additional time.

Those who spoke in favor of this proposal included the American Institute of Architects New York Chapter (AIANY), Association for Neighborhood and Housing Development (ANHD), Municipal Art Society (MAS), Citizens Housing Planning Council (CHPC), and the West Side Federation for Senior and Supportive Housing (WSFSSH). Those in favor spoke to the complexity of the text but highlighted a number of positive changes and thoughtful revisions they felt had been made in this text amendment to the Zoning Resolution. The highlighted changes were those that had the potential to promote the construction of senior housing, the removal of parking minimums so that more affordable units could be constructed, and encouraging more vibrant streetscapes with uniform changes to ground floor requirements. These speakers focused on the need for affordable housing, senior housing, and changes in construction technology and practice as the trade-off in accepting those elements in the proposal that may be perceived as less than positive, such as height increases.

**Table 1:** Organizations who submitted testimony or comments regarding Zoning for Quality and Affordability to the Office of the Manhattan Borough President.

<b>Organization Name</b>
American Institute for Architects (AIA) New York
Association for Neighborhood Housing and Development (ANHD)
Bowery Alliance of Neighbors
Committee Against Anti-Asian Violence (CAAAV)
Coalition for Livable West
Community Voices Heard (CVH)/ Local 79
Friends of Lamartine Place Historic District
Friends of the South Street Seaport
FRIENDS of the Upper East Side Historic Districts
Good Old Lower East Side (GOLES)
Greenwich Village Society for Historic Preservation (GVSHP)
Harlem Keepers of the Flame
Landmarks West!
League of Women Voters
Municipal Art Society
Metropolitan Council on Housing
New York Landmarks Conservancy
New Yorkers for a Human Scaled City
NY Hispanics in Real Estate and Construction
Perry Street Crusaders
PPR Family Members of Evicted Elders
Riverside Neighborhood Association
Save Chelsea
Society for Architecture
Turtle Bay Association
Tribeca Trust
West Chelsea Block Association
West End Preservation Society