



CITY PLANNING COMMISSION

August 24, 2011/Calendar No. 16

N 110285 ZRY

IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York to create a new zoning district, M1-6D, and to modify related Sections pertaining to the establishment of the new district; and to modify Appendix F to facilitate a new Inclusionary Housing designated area.

The application for an amendment of the Zoning Resolution was filed by the Department of City Planning on April 6, 2011. The text amendment would create a new zoning district, M1-6D, intended to facilitate the creation of high-density, mixed-use areas through the preservation of existing concentrations of commercial office and light industrial space, and introduction of contextual, infill residential development, with ground floor retail. The proposed text would also create opportunities for affordable housing development through the Inclusionary Housing Program. The new district is proposed to be mapped for the first time through a separate, parallel application (C 100063 ZMM) sponsored by 249 W. 28th Street Properties, LLC, on the midblock portions of two blocks bounded by West 28th Street, Eight Avenue, West 30th Street, and Seventh Avenue in Community District 5, Borough of Manhattan.

BACKGROUND

Over the last decades, many of the manufacturing districts south of Midtown have transitioned from manufacturing districts to important centers of Class B and C commercial office space that house diverse sectors of New York City's economy. Increasingly, these districts are home to emerging media, professional services, non-profit, health care, design, and other relatively small business that are attracted by affordable rents and the central location. Nonetheless, these areas have received little new investment, lack a variety of retail services, and are often characterized by blank facades and surface parking lots, despite the fact that they have some of the best transit access in New York City and are surrounded by neighborhoods that have continued to experience development and growth. Moreover, the few developments built under the existing

zoning regulations are often out of character with the rich, pre-war loft architecture of these areas. A number of hotels, for example, have recently been built 15 or 20 feet from the street line and rise without setbacks or articulation to a height taller than their pre-war neighbors. Overall, the Department recognizes the significant value of the affordable office market that has been created and the importance of the array of businesses that locate in these areas to the City's economic diversity, but believes the existing manufacturing zoning has, in places, stymied new investment and development, such as new housing, that could complement existing uses, enhance the business environment by enlivening streets and bringing in new retail services, and generally create a more robust mixed-use community.

In consideration of the above trends, the Department began to look at ways to accommodate new residential development while taking into account the important contributions of the existing affordable office market and its unique, built character. An in-depth study of the two midblocks between West 28th Street and West 30th Street, between Seventh and Eighth avenues, helped create the outlines of the new M1-6D zoning district and, many of the specific use and bulk regulations were designed with this particular area in mind.

In developing the district the Department identified five core goals:

- Support the development of a vibrant mixed use district
- Protect concentrations of existing Class B & C office & light manufacturing uses
- Encourage the introduction of residential uses on underutilized sites
- Promote the creation of affordable housing
- Ensure that new development reflects the existing built character

The M1-6D district is designed to build upon some of the strengths of this area – the pre-war built fabric, the concentration of affordable office space, and proximity to transit – while addressing some of the problems with the existing zoning – its lack of contextual bulk rules and limited incentive for new development. The intention is to activate and enliven this area with a healthy mix of uses, enabling it to become an attractive location for working and living.

M1-6D Use Regulations

The M1-6D zoning district would create a unique set of use regulations that would: 1) allow the full range of commercial uses and light manufacturing uses appropriate in a mixed-use environment; 2) provide protections for existing concentrations of commercial and light manufacturing uses; 3) allow infill residential development; 4) allow a broader range of community facility uses; 5) require ground floor retail uses and transparency to enliven the street; and 6) require a special permit (or certification) for hotels with more than 100 rooms to ensure that the hotel development does not preclude the goal of encouraging residential uses and affordable housing.

Protections for concentrations of existing commercial or manufacturing uses

- For zoning lots that contain buildings with at least 50,000 square feet of floor area, some or all of which consists of non-residential floor area, the amount of non-residential floor area in the building as of April 25, 2011, would need to be maintained on the zoning lot. This requirement could be met by keeping the existing building in place or constructing a new building with one-for-one replacement of commercial or manufacturing floor area. There is no requirement that the same type of commercial or manufacturing floor area be maintained or replaced (i.e. manufacturing uses can become commercial uses); however, community facility uses with sleeping accommodations cannot be used to meet the requirement.

Residential uses

- For zoning lots that contain buildings with less than 50,000 square feet of floor area, residential uses would be allowed as-of-right. This would help facilitate the development of surface parking lots and other underdeveloped sites with new residential uses.
- Residential uses on zoning lots that contain at least 50,000 square feet of floor area, some or all of which consists of non-residential uses, would be allowed, only upon certification by the City Planning Commission that the zoning lot will contain at least the amount of

non-residential floor area at the time of referral of this text. In such cases, a restrictive declaration would also be required to be executed.

Community facility uses

- Currently, in M1 zoning districts, a very limited set of community facility uses are allowed. These uses include houses of worship, open uses such as cemeteries, and a category of health facilities. The proposed zoning district would allow the full range of community facility uses, such as universities, schools, museums, and non-commercial art galleries.

Community facility uses with sleeping accommodations (i.e. dorms) would be allowed as of right on zoning lots containing less than 50,000 square feet of floor area, however, like residential uses, a certification would be required for such use on zoning lots with at least 50,000 square feet of floor area, some or all of which consists of non-residential uses.

Hotels

- Hotels with more than 100 rooms would only be permitted through a special permit unless a residential development goal for each area where the M1-6D district would be mapped has been met. The residential development goal would be derived from the projected residential development identified in the environmental analysis for the zoning map amendment. Once the residential development goal has been achieved, hotels would be permitted as-of-right if the Chairperson of the City Planning Commission has certified that the residential development goal has been met. This requirement is intended to ensure that hotel development does not conflict with the goal of a vibrant mixed-use district with a meaningful residential presence. Hotels with less than 100 rooms would be allowed as of right, as would hotel conversions.

Retail uses and transparency

- For zoning lots with 50 feet of frontage or more, retail uses are required along 50% of such frontage and are required to have a minimum depth of 30 feet.

- For all permitted ground floor uses, except ground floor apartments where allowed, 50% of the surface area of the streetwall located between two feet and 12 feet would be required to be glazed with transparent material.

M1-6D Bulk Regulations

The proposed M1-6D zoning district would create bulk regulations that would: 1) allow the appropriate amount of density given the location of the proposed rezoning area, and the size of existing buildings; 2) provide incentives for affordable housing in the context of a high-density, mixed-use area; and 3) ensure that new development or enlargements complement the existing built context and architectural expression of the larger pre-war loft buildings located in the proposed rezoning area.

FAR and Affordable Housing

- The proposed M1-6D district would allow a maximum FAR for residential, community facility, commercial and light manufacturing uses of 10.0, however for M1-6D districts mapped within an Inclusionary Housing designated area, the maximum base FAR for a zoning lot containing residences would be 9.0, bonusable to 12.0 through the Inclusionary Housing program. Many of the buildings within the proposed rezoning area have densities greater than 10.0 FAR and are located near excellent public transportation.
- The proposed M1-6D district would modify the Inclusionary Housing bonus formula in order to encourage a range of non-residential uses in addition to affordable housing. In R10 and equivalent districts within Inclusionary Housing designated areas, the base FAR allowed for a zoning lot containing any residences, such as in a mixed-use building, is 9.0. This reduces the as-of-right 10.0 FAR allowed for commercial and community facility uses in the M1-6D district. Additionally, the current formula requires that 20% of the floor area of a building (excluding the ground floor) be reserved for affordable

housing, regardless of whether the building contains non-residential uses above the ground floor. These factors make it less likely that buildings of a true mixed-use nature would be developed, contrary to this district’s goals.

Therefore, in order to help encourage the mixing of residential and non-residential uses, the base FAR would be set at 9.0 plus 0.25 FAR for each 1.0 FAR of non-residential floor area in the building, up to a maximum base FAR of 10.0. For example, a building with 0 FAR of non-residential uses would be allowed a maximum base FAR of 9.0; a building with 1.0 FAR of non-residential uses would be allowed a maximum base FAR of 9.25; a building with 2.0 FAR of non-residential uses would be allowed a maximum base FAR of 9.5; a building with 3.0 FAR of non-residential uses would be allowed a maximum base FAR of 9.75; and a building with 4.0 FAR of non-residential uses would be allowed a maximum base FAR of 10.0.

This amendment would still require that 20% of the *residential* floor area be reserved for affordable housing in order to achieve the Inclusionary Housing bonus.

Building Form

The below chart highlights the most significant bulk controls for developments in the proposed M1-6D district. These controls are intended to produce development that respects and complements existing buildings in the proposed rezoning area.

Feature	Requirement	Intent
Maximum Building Height	Narrow Street: 210 feet Wide Street: 290 feet	Generally match the heights of the taller buildings that currently exist in the proposed rezoning area and allow for the proposed density.
Streetwalls	Street walls are required to be located at the street line. Recesses, up to 30 inches in depth, are allowed on the ground floor to	Complement the strong streetwall character that currently exists in the area.

	provide building access and would be allowed above the level of the second story.	
Maximum Base Height	Narrow Street: 85 - 125 feet Wide Street: 125 - 150 feet	Generally match the base heights of buildings in the proposed rezoning area and allow for the proposed density.
Setbacks	Above the maximum base height, buildings could not penetrate a sky exposure plane with a ratio of 4 vertical feet to 1 horizontal foot (4:1). However, no sky exposure plane would be required beyond 15 feet of the streetline.	Allow for buildings to gradually set back from the street as they rise, similar to the tiered building tops that currently exist in the proposed rezoning area and along 7 th Ave.
Penthouse	The floor plates of the top two floors of a building would be limited to 80% of the gross area of the story below.	Ensure that there is additional articulation at the top of the building, further helping to break up the massing of the building.
Dormers	As in other high density districts, dormers may penetrate the sky exposure plane and maximum base height. Dormers would also be allowed to penetrate the rear yard setback.	This would allow for further design flexibility and articulation in the façade, in keeping with the rich architectural texture of buildings in the area.
Rear Yard Setback	As with other contextual zoning districts, for buildings with residential uses, a rear yard setback of 10 feet would be required above the maximum base height (125 feet for M1-6D). In M1-6D districts on narrow streets however, the ten foot setback could be split between two five foot setbacks to be located at the same distance from the base height.	Ensure that there is still adequate light and air to the rear of the building while allowing some additional flexibility in the layout of floor plates in its mid-section. The multiple rear yard setbacks would also mirror the existing character of many buildings in the proposed rezoning area.
Maximum Building Width	Any story located entirely above 150 feet in height cannot exceed 150 feet in length	Prevents excessively wide towers. Additional measure to improve light and air to street and enhance building forms.

An application for a zoning map amendment (100063 ZMM) was filed by 249 W 28th Street Properties, LLC to rezone the midblock portions of two blocks bounded by West 28th Street, West 30th Street, Eighth Avenue, and Seventh Avenue, in Manhattan Community District 5, from an M1-5 district to M1-6D. That application is being considered concurrently with the subject zoning text change, along with a related special permit (C 100064 ZSM) to allow an attended public parking garage with a maximum capacity of 325 spaces, pursuant to Sections 13-562 and 74-52 of the Zoning Resolution. The proposed zoning text amendment would include two provisions directly related to the proposed mapping of the M1-6D zoning district by 249 W. 28th Street Properties, LLC.

- **Inclusionary Housing Designated Area:** In order to create incentives for affordable housing development, the proposed text amendment would include the area proposed to be rezoned through the parallel application (C 100063 ZMM) within an inclusionary housing designated area.
- **Seventh Avenue Bulk Controls:** In order to ensure that any future development along the west side of Seventh Avenue, adjacent to the proposed rezoning area, complements the type of development allowed pursuant to the M1-6D regulations, such development must provide minimum streetwalls at the street line between 125 to 150 feet in height.

ENVIRONMENTAL REVIEW

This application (N 110285 ZRY) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The lead is the City Planning Commission. The designated CEQR number is 10DCP004M.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on April 25, 2011.

PUBLIC REVIEW

On April 25, 2011, this application (N 110285 ZRY) was referred to Community Board 5 and the Borough President in accordance with the procedure for referring non-ULURP matters.

Community Board Review

Community Board 5 held a public hearing on this application on June 9, 2011, and on that date, by a vote of 36 to 0 with 1 abstention, adopted a resolution recommending approval of the application. In its recommendation, Community Board 5 requested that the Department consider the following:

- changing the threshold for requiring the replacement of non-residential space to 40,000 sf from 50,000 sf;
- looking closely at the criterion used to determine need for new schools;
- monitoring and evaluating how community facility development might conflict with mixed-use goals as development under M1-6D proceeds;
- requiring off-street loading and trash pick-up for all new development;
- evaluating the potential applicability of M1-6D in other manufacturing districts in CB5, except for the Garment Center; and
- continuing working with CB5 in evaluation of other locations for M1-6D

Borough President Recommendation

This application (N 110285 ZRY) was considered by the Office of the Manhattan Borough President, which issued a recommendation approving the application on July 13, 2011, subject to the conditions described below:

- the benchmark for determining a “qualifying building” be lowered from 50,000 square feet to 40,000 square feet;
- the hotel special permit be extended to zoning lots with “qualifying buildings” to protect Class B and C office space;
- the hotel special permit is modified to ensure that only new residential units count toward meeting the residential development goal;
- the mandatory retail requirement not count toward raising the base residential FAR of the inclusionary housing bonus;
- the plaza bonus is maintained along Seventh Avenue in the M1-6 district and the contextual controls only apply if the plaza bonus is not utilized.

City Planning Commission Public Hearing

On July 13, 2011 (Calendar No. 10), the City Planning Commission scheduled July 27, 2011 for a public hearing on this application (N 110285 ZRY). The hearing was duly held on July 27, 2011 (Calendar No. 14). There were nine speakers in favor and none in opposition.

Three representatives of Manhattan Community Board 5 expressed their support for the proposed text amendment, the goals it intends to achieve, and summarized their recommendations to make it stronger. Two representatives of the applicant for the proposed zoning map amendment noted their support for the proposed text amendment and described the project it would help facilitate.

The Director of Land Use for the Manhattan Borough President expressed support for proposed zoning text amendment and noted that the application should be modified to reflect the recommendations of the Borough President.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this zoning text amendment (N 110285 ZRY), as modified, is appropriate. The Commission believes that the proposed M1-6D zoning district can begin to address long-standing challenges facing high density areas currently zoned for manufacturing uses. These districts, predominantly located in the Midtown South area of Manhattan, have gradually transitioned from manufacturing centers to lower rent commercial office and light industrial districts and provide affordable space for a variety of small businesses. The Commission recognizes the importance of this reservoir of commercial space to the vitality, diversity, and resiliency of New York City's economy and believes that the M1-6D regulations requiring replacement of non-residential floor area are a powerful step toward protecting this resource.

The Commission believes that the existing manufacturing zoning has stifled equally important goals, including the development of new housing, the provision of new retail services, and the integration of these areas into the evolving fabric of surrounding neighborhoods. The Commission also believes that the changed character of these districts, the extensive network of public transportation infrastructure, and the availability of development sites, provides an appropriate framework for creating a vibrant mixed use environment. The Commission notes that the proposed M1-6D district would encourage housing development, including affordable housing and ancillary retail services, on those sites that are most suitable for such uses.

The Commission notes that under the certified application, only those zoning lots which contain buildings with less than 50,000 square feet of floor area will be allowed to develop residential uses as-of-right and that residential development on zoning lots with buildings that contain more than 50,000 square feet of floor area will require the replacement of non-residential uses, if such building is demolished or converted. The Commission believes this provision will focus housing development on the most underutilized sites, while preserving existing concentrations of commercial and light industrial space.

The Commission also believes that the proposed special permit for hotels with more than 100 rooms would make it more likely that the underutilized sites in any particular area would be developed with residential uses. While the Commission believes that hotels are a compatible use in a mixed use environment, they should not be developed to the exclusion of creating a meaningful residential presence. Since the framework for allowing residential uses in M1-6D districts limits the universe of sites that could be redeveloped for such uses, as noted above, the Commission believes that the proposed special permit would provide an effective way to insure the goals of housing development, including affordable housing development, are met.

Furthermore, the Commission believes that pairing the M1-6D district with an inclusionary housing designated area, as is contemplated in the subject text amendment application, is an effective way to facilitate housing development, both at market *and* affordable levels. The Commission believes that wherever practicable, M1-6D should be utilized together with an

inclusionary housing designated area to ensure that where residential development is allowed, incentives are provided to develop affordable housing as well. The Commission believes that the proposed modification to the base FAR for inclusionary housing designated areas in M1-6D districts, which would link the amount of affordable housing to be provided to the residential floor area of a mixed-use building, would avoid penalizing mixed-use developments with both commercial and residential uses in an inclusionary housing designated area.

Finally, the Commission believes that the requirement to provide ground floor retail uses on zoning lots with more than 50 feet of frontage will help to create an active, vibrant, streetscape and help provide needed neighborhood services for the new residential population.

The Commission believes that the proposed M1-6D district would ensure that new development fits in with its surrounding context by limiting building heights and requiring buildings to line up at the street line. The Commission notes that much of the building stock in the manufacturing districts of Midtown South consist of pre-war loft-style buildings with strong, relatively high streetwalls and relatively consistent building heights. The Commission believes that streetwalls are an essential element of this area's character and notes that recent hotel development, facilitated under the existing zoning districts, has failed to fit in.

The Commission further notes that with respect to the area proposed to be rezoned as part of the separate private application (the two midblocks between West 28th and West 30th streets, between Seventh and Eighth avenues), the proposed M1-6D district combines contextual bulk controls (required streetwalls with minimum base heights and overall maximum building heights) with the concept of a sky exposure plane, in order to encourage new development that resembles the existing large commercial buildings in this area, with their multiple setbacks and articulated tops. The Commission recognizes that in order to achieve the maximum 12.0 FAR allowed on a narrow street pursuant to the M1-6D bulk regulations, multiple setbacks and dormers will likely be required building features.

The Commission acknowledges that these specific narrow street height and setback regulations, since they were developed to reflect the specific building typology found in one particular area of Midtown South, may not translate perfectly to other areas where M1-6D might be mapped in the future. Consequently, the Commission notes that further study would be necessary, and regulations may need to be adapted, to ensure that new buildings in other areas are developed in context with existing built character.

While the Commission believes that the proposed M1-6D district consists of a thoughtful and comprehensive set of regulations, the Commission believes the following set of modifications would help make the proposed regulations even stronger and more effective in achieving its goals.

The Commission believes that the proposed threshold for requiring replacement of non-residential floor area should be modified from zoning lots with buildings containing 50,000 square feet of floor area to zoning lots with buildings containing 40,000 square feet of floor area. The Commission notes that this change reflects a significant comment made by both Community Board 5 and the Borough President, and would have the immediate effect of making these regulations applicable to one additional building, with approximately 45,000 square feet of floor area, within the M1-6D zoning district proposed to be mapped on the midblocks between West 28th Street, West 30th Street, Seventh and Eighth avenues pursuant to the related private application (C 100063 ZMM). The Commission notes that this building is a fully occupied commercial building that is slightly smaller, both in width and height, but otherwise very similar in character, to other buildings in the proposed rezoning area that would be subject to the replacement requirements. Additionally, the Commission believes that this change would further support the goal of protecting the supply of affordable office space, something particularly important in the Midtown South area of Manhattan, and would not affect the sites that were identified as most suitable for residential development. The Commission notes that with this modification, more than 80 percent of all existing commercial space within the proposed M1-6D district would be subject to replacement requirements.

With respect to the regulations proposed as part of the text amendment application for the west side of Seventh Avenue between West 28th Street and West 30th Street, in the M1-6 zoning district, the Commission agrees with the recommendation of the Borough President and believes a modification to restore the plaza bonus is appropriate. The Commission notes that the original intent of proposed text amendment was to ensure that development in this area reflects the strong streetwall character that currently exists. However, the Commission also believes that public plazas can provide a significant open space amenity in dense areas of the City and could help green this stretch of Seventh Avenue; therefore, the Commission believes that an exception to the street wall provisions could be made to allow new public plazas.

The Commission also believes a modification to clarify, to the greatest extent possible, that only new residential units should count toward the residential development goal is appropriate. The Commission acknowledges that there may be interim multiple dwelling units in a M1-6D zoning district and that such units legalized after the adoption of the M1-6D zoning district should not count toward the residential development goal. The Commission notes that a modification to take this into account would be consistent with the original intent of the residential development goal and addresses a concern raised by the Borough President.

Finally, the Commission is modifying the proposed text to clarify the Department of Building's process for reviewing proposed applications for development under the proposed M1-6D regulations and eliminating a provision related to yard regulations that had become redundant since the approval of the Key Terms Clarification Text Amendment (N 110090 ZRY).

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and consideration described in this

report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter in underline is new, to be added;

Matter in ~~strikeout~~ is to be deleted;

Matter with # # is defined in Section 12-10;

* * * indicates where unchanged text appears in the Zoning Resolution

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Article 1

General Provisions

Chapter 1

Title, Establishment of Controls and Interpretation of Regulations

* * *

11-122

Districts established

In order to carry out the purposes and provisions of this Resolution, the following districts are hereby established:

* * *

Manufacturing Districts

* * *

M1-6 Light Manufacturing District (High Performance)

M1-6D Light Manufacturing District (High Performance)

M1-6M Light Manufacturing District (High Performance)

* * *

Chapter 5

Residential Conversion of Existing Non-Residential Buildings

* * *

15-012

Applicability within C6-1G, C6-2G, M1-5A, ~~or~~ M1-5B or M1-6D Districts

#Conversions# in #buildings#, or portions thereof, in C6-1G or C6-2G Districts shall be permitted only by special permit pursuant to Section 74-782 (Residential conversion within C6-1G, C6-2G, C6-2M, C6-4M, M1-5A, M1-5B, M1-5M and M1-6M Districts).

Except as specifically set forth in Sections 15-013 and 15-026, the provisions of this Chapter are not applicable in M1-5A or M1-5B Districts.

In M1-6D Districts, the conversion to #dwelling units# of non-#residential buildings# erected prior to January 1, 1977, or portions thereof, shall be permitted subject to Sections 15-11 (Bulk Regulations), 15-12 (Open Space Equivalent) and 15-30 (Minor Modifications), paragraph (b), except as superseded or modified by the provisions of Section 42-481 (Residential uses).

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Article II Residence District Regulations

Chapter 3 Bulk Regulations for Residential Buildings in Residence Districts

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23-90 INCLUSIONARY HOUSING

* * *

23-954 Additional requirements for compensated developments

- (a) Height and setback in #Inclusionary Housing designated areas#
- (1) In #Inclusionary Housing designated areas#, except within:
- (i) #Special Mixed Use Districts#;
 - (ii) R10 Districts without a letter suffix; and
 - (iii) #large-scale general developments# in C4-7 Districts within the boundaries of Manhattan Community District 7, subject to the provisions of a restrictive declaration; ;

the #compensated development# must comply with the height and setback regulations of Sections 23-633 (Street wall location and height and setback

regulations in certain districts) or 35-24 (Special Street Wall Location and Height and Setback Regulations in Certain Districts), as applicable.

- (2) In #Inclusionary Housing designated areas# within #Special Mixed Use Districts#, the #compensated development# must comply with the provisions of paragraphs (a) or (b) of Section 123-662 (All buildings in Special Mixed Use Districts with R6, R7, R8, R9 and R10 District designations), as applicable. However, where the #Residence District# designation is an R6 District without a letter suffix, the #compensated development# must comply with the height and setback regulations of Section 23-633, regardless of whether the #building# is #developed# or #enlarged# pursuant to the Quality Housing Program.

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Article IV Manufacturing District Regulations

Chapter 1 Statement of Legislative Intent

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41-10 PURPOSES OF SPECIFIC MANUFACTURING DISTRICTS

41-11 M1 Light Manufacturing Districts (High Performance)

These districts are designed for a wide range of manufacturing and related uses which can conform to a high level of performance standards. Manufacturing establishments of this type, within completely enclosed buildings, provide a buffer between Residence (or Commercial) Districts and other industrial uses which involve more objectionable influences. ~~New residential development is~~ New residences are excluded from these districts, except for:

- (a) joint living-work quarters for artists in M1-5A and M1-5B Districts;
- (b) dwelling units in M1-5M and M1-6M Districts;~~and~~
- (c) dwelling units in M1-1D, M1-2D, M1-3D, M1-4D and M1-5D Districts, where authorized by the City Planning Commission, both to protect residences from an undesirable environment and to ensure the reservation of adequate areas for industrial development;and

(d) dwelling units in M1-6D Districts.

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**Chapter 2
Use Regulations**

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**42-02
Residential Use**

In M1-1D, M1-2D, M1-3D, M1-4D and M1-5D Districts, the #use# regulations governing M1 Districts shall apply, except that #residential uses# may be permitted by authorization of the City Planning Commission in accordance with the provisions of Section 42-47 (Residential Uses in M1-1D through M1-5D Districts), subject to the regulations of Sections 43-61 (Bulk Regulations for Residential Uses in M1-1D through M1-5D Districts) and 44-28 (Parking Regulations for Residential Uses in M1-1D through M1-5D Districts).

In the M1-1 District bounded by 95th Avenue, 148th Street, 97th Avenue and 147th Place in Community District 12 in the Borough of Queens, the #use# regulations of an M1 District shall apply, except that #residential use# is allowed subject to the #bulk# regulations of Section 43-01 (Applicability of this Chapter) and the #accessory# off-street parking regulations of Section 44-024 (Applicability of regulations in an M1-1 District in Community District 12 in the Borough of Queens).

In M1-6D Districts, #residences# shall be permitted in accordance with the #use# regulations set forth in Section 42-48, the #bulk# regulations set forth in Section 43-62, and the parking regulations applicable in C6-4 Districts as set forth in Article III, Chapter 6, and as modified, pursuant to Article I, Chapter 3 (Comprehensive Off-Street Parking Regulations in Community Districts 1, 2, 3, 4, 5, 6, 7 and 8 in the Borough of Manhattan and a Portion of Community Districts 1 and 2 in the Borough of Queens).

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**42-10
USES PERMITTED AS-OF-RIGHT**

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**42-131
M1-5A and M1-5B Districts**

M1-5A M1-5B

The regulations governing M1 Districts shall apply in M1-5A and M1-5B Districts except where the special #use# regulations set forth in Section 42-14, paragraph D(D) (Special Uses in M1-5A and M1-5B Districts) provide otherwise.

* * *

42-133

Provisions for dwelling units in certain M1-5 or M1-6 Districts

- (a) In M1-5 and M1-6 Districts, except for M1-6D Districts, located within the rectangle formed by West 23rd Street, Fifth Avenue, West 31st Street, and Eighth Avenue, no new #dwelling units# shall be permitted. However, #dwelling units# which the Chairperson of the City Planning Commission determines were occupied on September 1, 1980 shall be a permitted #use# provided that a complete application to permit such #use# is filed by the owner of the #building# or the occupant of a #dwelling unit# in such #building# not later than June 21, 1983.

Such #dwelling units# shall comply with the requirements of Sections 15-026 or 15-22, where applicable and with Section 15-23. For the purposes of Article 7C of the New York State Multiple Dwelling Law, such a determination of #residential# occupancy on September 1, 1980, shall be deemed to permit #residential use# as-of-right for such #dwelling units#.

- (b) In M1-6 Districts located within the rectangle formed by West 35th Street, Fifth Avenue, West 40th Street and Sixth Avenue, no #dwelling units# shall be permitted, except that:
- (1) #dwelling units# which the Chairperson of the City Planning Commission determines were occupied on May 18, 1981 shall be a permitted #use# provided that a complete application to permit such #use# is filed by the owner of the #building# or the occupant of the #dwelling unit# not later than June 21, 1983. For the purposes of Article 7C of the New York State Multiple Dwelling Law, such a determination of #residential# occupancy shall be deemed to permit #residential use# as-of-right for such #dwelling unit#; ~~and~~
- (2) in any #building# for which an alteration application for #conversion# of #floor area# used for non-#residential use# to #dwelling units# or for an #extension# or minor #enlargement# of existing #residential use#, was filed prior to May 18, 1981, #dwelling units# shall be permitted, provided that such alterations shall comply with the regulations in effect on the date of such filing. The right to #convert# to #dwelling units# or #extend# or #enlarge# existing #residential use# pursuant to the provisions of this subsection shall expire one year from July

23, 1981, unless a temporary or permanent certificate of occupancy has been issued-; and

- (3) in M1-6D Districts, #residential use# shall be permitted as-of-right subject to the supplemental #use# regulations set forth in Section 42-48 (Supplemental Use Regulations in M1-6D Districts).

* * *

42-40
SUPPLEMENTARY USE REGULATIONS AND SPECIAL PROVISIONS APPLYING ALONG DISTRICT BOUNDARIES

* * *

42-47
Residential Uses in M1-1D through M1-5D Districts

In M1-1D, M1-2D, M1-3D, M1-4D and M1-5D Districts, new #residences# or #enlargements# of existing #residences# may be permitted by authorization of the City Planning Commission provided the #zoning lot# existing on June 20, 1988, meets the criteria of paragraph (a), (b), or (c) of this Section.

* * *

42-48
Supplemental Use Regulations in M1-6D Districts

All permitted #uses# in M1-6D Districts, as set forth in Section 42-10 (USES PERMITTED AS-OF-RIGHT), shall comply with the provisions set forth in this Section, inclusive.

42-481
Residential use

#Residential use# shall be permitted in M1-6D Districts only in accordance with the provisions of this Section. For the purposes of this Section, a “qualifying #building#” shall be any #building# that existed on April 25, 2011, and which contained at least 40,000 square feet of #floor area# on such date.

- (a) Residential use as-of-right

#Residential use# shall be permitted as-of-right on any #zoning lot# that, on April 25, 2011, was not occupied by a qualifying #building#. Such absence of a qualifying #building# on the #zoning lot# shall be demonstrated to the satisfaction of the Department of Buildings.

(b) Residential use by certification

#Residential use# shall be permitted on a #zoning lot# that, on April 25, 2011, was occupied by one or more qualifying #buildings#, only upon certification by the Chairperson of the City Planning Commission that the #zoning lot# will contain at least the amount of non-#residential floor area# that existed within qualifying #buildings# on the zoning lot on April 25, 2011, provided that:

- (1) preservation of non-#residential floor area# within existing non-qualifying #buildings# on the #zoning lot# shall not be counted toward meeting the requirements of this certification; and
- (2) #floor area# from #community facility uses# with sleeping accommodations shall not be counted toward meeting the requirements of this certification.

However, non-#residential floor area# converted to #residential# vertical circulation and lobby space need not be replaced as non-#residential floor area#.

A restrictive declaration acceptable to the Department of City Planning shall be executed and recorded, binding the owners, successors and assigns to provide the amount of non-#residential floor area# that existed within qualifying #buildings# on April 25, 2011, on the #zoning lot#. Such restrictive declaration shall be recorded in the Office of the City Register. A copy of such declaration shall be provided to the Department of Buildings upon application for any building permit related to a change in #use# from non-#residential# to #residential#, or for a new #building# containing #residences#.

42-482

Community facility uses

The #community facility use# regulations applicable in M1 Districts shall not apply in M1-6D Districts. In lieu thereof, all #community facility uses# listed in Use Groups 3 and 4 shall be permitted, except that #community facilities# with sleeping accommodations shall only be permitted in accordance with paragraphs (a) or (b) of this Section, as applicable.

For the purposes of this Section, a “qualifying #building#” shall be any #building# that existed on April 25, 2011, and which contained at least 40,000 square feet of #floor area# on such date.

- (a) #Community facilities# with sleeping accommodations shall be permitted as-of-right on any #zoning lot# that, on April 25, 2011, was not occupied by a qualifying #building#. Such absence of a qualifying #building# on the #zoning lot# shall be demonstrated to the satisfaction of the Department of Buildings.
- (b) #Community facilities# with sleeping accommodations shall be permitted on a #zoning lot# that, on April 25, 2011, was occupied by one or more qualifying #buildings#, only upon certification by the Chairperson of the City Planning Commission that the #zoning lot# will contain at least the amount of non-#residential floor area# that existed within qualifying #buildings# on the zoning lot on April 25, 2011, provided that:
 - (1) preservation of non-#residential floor area# within existing non-qualifying #buildings# on the #zoning lot# shall not be counted toward meeting the requirements of this certification; and
 - (2) #floor area# from #community facility uses# with sleeping accommodations shall not be counted toward meeting the requirements of this certification.

However, non-#residential floor area# converted to vertical circulation and lobby space associated with a #community facility# with sleeping accommodations need not be replaced as non-#residential floor area#.

A restrictive declaration acceptable to the Department of City Planning shall be executed and recorded, binding the owners, successors and assigns to provide the amount of non-#residential floor area# that existed within qualifying #buildings# on April 25, 2011, on the #zoning lot#. Such restrictive declaration shall be recorded in the Office of the City Register. A copy of such declaration shall be provided to the Department of Buildings upon application for any building permit related to a change in #use# from non-#residential# to #community facility# with sleeping accommodations, or for a new #building# containing a #community facility# with sleeping accommodations.

- (c) On #narrow streets#, ground floor #community facility uses# shall be subject to the streetscape provisions set forth in Section 42-485 (Streetscape Provisions).

42-483
Commercial uses

The #commercial use# regulations applicable in M1 Districts shall apply in M1-6D Districts, except:

- (a) #Transient hotels# shall be allowed, except that #developments# or #enlargements# of #transient hotels# with greater than 100 sleeping units on #zoning lots# where #residential use# is permitted as-of-right, in accordance with paragraph (a) of Section 42-481, shall only be allowed upon certification by the Chairperson of the City Planning Commission to the Commissioner of Buildings that the residential development goal has been met for the area in which such #transient hotel# is located, as set forth in this paragraph, (a), or where such residential development goal has not been met, by special permit pursuant to Section 74-802 (In M1-6D Districts).

The residential development goal shall be met when at least 865 #dwelling units#, permitted pursuant to the provisions of Section 42-481 (Residential use), on #zoning lots# located within an area bounded by West 28th Street, West 30th Street, a line 100 feet west of Seventh Avenue, and a line 100 feet east of Eighth Avenue, have received temporary or final certificates of occupancy subsequent to [date of enactment].

- (b) Food stores, including supermarkets, grocery stores, and delicatessen stores, shall not be limited as to size of establishment.
- (c) On #narrow streets#, ground floor #commercial uses# shall be subject to special streetscape provisions, as set forth in Section 42-485 (Streetscape Provisions).
- (d) All #uses# listed in Use Group 10 shall be permitted without limitation, except as provided for in paragraph (c) of this Section.

42-484

Manufacturing uses

In M1-6D Districts, the #manufacturing use# regulations applicable in #Special Mixed Use Districts#, as set forth in Section 123-22 (Modification of Use Groups 16, 17 and 18), inclusive, shall apply.

42-485

Streetscape Provisions

On #narrow streets#, for #zoning lots# with #street# frontage of 50 feet or more, ground floor #uses# limited to Use Groups 6A, 6C, 7B, 8A, 8B, 9A, 10A, 12A and 12B shall have a depth of at least 30 feet from the #street wall# and shall extend along a minimum of 50 percent of the

width of the #street# frontage of the #zoning lot#. The remainder of the #street# frontage of the #zoning lot# may be occupied by any permitted #uses#, lobbies, or entrances to parking spaces, except that lobbies shall be limited to a total width of 40 feet. No minimum 30 foot depth requirement shall apply where a reduction in such depth is necessary in order to accommodate a #residential# lobby or vertical circulation core.

Enclosed parking spaces, or parking spaces covered by a #building#, including such spaces #accessory# to #residences#, shall be permitted to occupy the ground floor, provided they are located beyond 30 feet of the #street wall#.

For any #development# or #enlargement# that includes a ground floor #street wall#, each ground floor #street wall# occupied by #uses# listed in Use Groups 1 through 15, not including #dwelling units#, shall be glazed with transparent materials which may include show windows, transom windows or glazed portions of doors. Such transparency shall occupy at least 50 percent of the surface area of that portion of the ground floor #street wall# located between a height of two feet and 12 feet, or the height of the ground floor ceiling, whichever is higher, above the level of the adjoining sidewalk. The lowest point of any such required transparency shall not be higher than four feet above the level of the adjoining sidewalk, with the exception of transom windows, and the minimum width of any such required transparency shall be two feet. In addition, the maximum width of a portion of the ground floor level #street wall# without transparency shall not exceed ten feet. However, the transparency requirements of this Section shall not apply to that portion of the ground floor level #street wall# occupied by an entrance to a parking facility.

* * *

**42-50
SIGN REGULATIONS**

* * *

**42-59
Sign Regulations in M1-6D Districts**

In M1-6D Districts, #signs# are permitted subject to the signage regulations applicable in C6-4 Districts, as set forth in Section 32-60 (Sign Regulations), inclusive.

* * *

**Chapter 3
Bulk Regulations**

* * *

**43-01
Applicability of this Chapter**

* * *

In M1-1D, M1-2D, M1-3D, M1-4D and M1-5D Districts, the #bulk# regulations governing M1 Districts shall apply to #community facility#, #commercial#, and #manufacturing uses#, and the regulations of Section 43-61 (Bulk Regulations for Residential Uses in M1-1D through M1-5D Districts) shall apply to #residential uses# authorized pursuant to Section 42-47 (Residential Uses in M1-1D through M1-5D Districts). M1-6D Districts shall be subject to the #bulk# regulations set forth in Section 43-62 (Bulk Regulations in M1-6D Districts).

* * *

**43-12
Maximum Floor Area Ratio**

M1 M2 M3

In all districts, as indicated, for any #zoning lot#, the maximum #floor area ratio# shall not exceed the #floor area ratio# set forth in the following table, except as otherwise provided in the following Sections:

- Section 43-121 (Expansion of existing manufacturing buildings)
- Section 43-122 (Maximum floor area ratio for community facility buildings)
- Section 43-13 (Floor Area Bonus for Public Plazas)
- Section 43-14 (Floor Area Bonus for Arcades)
- Section 43-15 (Existing Public Amenities for which Floor Area Bonuses Have Been Received)
- Section 43-16 (Special Provisions for Zoning Lots Divided by District Boundaries)
- Section 43-61 (Bulk Regulations for Residential Uses in M1-1D through M1-5D Districts)
- Section 43-62 (Bulk Regulations in M1-6D Districts)

Any given #lot area# shall be counted only once in determining the #floor area ratio#.

Maximum Permitted #Floor Area Ratio#	Districts
1.00	M1-1
2.00	M1-2 M1-4 M2-1 M2-3 M3

5.00 M1-3 M1-5 M2-2 M2-4

10.00 M1-6

For #zoning lots# containing both #community facility use# and #manufacturing# or #commercial use#, the total #floor area# used for #manufacturing# or #commercial use# shall not exceed the amount permitted in the preceding table or by the bonus provisions in Sections 43-13 or 43-14.

Notwithstanding any other provisions of this Resolution, the maximum #floor area ratio# in an M1-6 District shall not exceed 12.0.

* * *

43-122
Maximum floor area ratio for community facilities

M1

In the districts indicated, for any #community facility use# on a #zoning lot#, the maximum #floor area ratio# shall not exceed the #floor area ratio# set forth in the following table:

Maximum Permitted #Floor Area Ratio#	Districts
2.40	M1-1
4.80	M1-2
6.50	M1-3 M1-4 M1-5
10.00	M1-6

In M1-1D, M1-2D, M1-3D, M1-4D and M1-5D Districts, for any #zoning lot# containing both #residential use# and #community facility use#, the total #floor area# used for #residential use# shall not exceed the amount permitted in Section 43-61 (Bulk Regulations for Residential Uses in M1-1D through M1-5D Districts).

* * *

43-13
Floor Area Bonus for Public Plazas

M1-6

In the district indicated, except for M1-6D Districts, for each square foot of #public plaza# provided on a #zoning lot#, in accordance with the provisions of Section 37-70, inclusive, the total #floor area# permitted on that #zoning lot# under the provisions of Section 43-12 (Maximum Floor Area Ratio) may be increased by six square feet.

43-14
Floor Area Bonus for Arcades

M1-6

In the district indicated, except for M1-6D Districts, for each square foot of #arcade# provided on a #zoning lot#, the total #floor area# permitted on the #zoning lot# under the provisions of Section 43-12 (Maximum Floor Area Ratio) may be increased by three square feet. However, the provisions of this Section shall not apply to #zoning lots# that are both within 100 feet of the western #street line# of Seventh Avenue and between West 28th and West 30th Streets in the Borough of Manhattan.

* * *

43-43
Maximum Height of Front Wall and Required Front Setbacks

M1 M2 M3

In all districts, as indicated, if the front wall or any other portion of a #building or other structure# is located at the #street line# or within the #initial setback distance# as set forth in the following table, the height of such front wall or other portion of a #building or other structure#, except as otherwise set forth in this Section, shall not exceed the maximum height above #curb level# set forth in the following table. Above such maximum height and beyond the #initial setback distance#, the #building or other structure# shall not penetrate the #sky exposure plane# set forth in the following table.

The regulations of this Section shall apply except as otherwise provided in Sections 43-42 (Permitted Obstructions), 43-44 (Alternate Front Setbacks) or 43-45 (Tower Regulations). In M1-1 Districts, for #community facility buildings# the maximum height of a front wall shall be 35 feet or three #stories#, whichever is less, and the height above the #street line# shall be 35 feet, and in M1-4 Districts, for #community facility buildings#, the maximum height of a front wall shall be 60 feet or six #stories#, whichever is less.

For #zoning lots# in M1-6 Districts that are both within 100 feet of the western #street line# of Seventh Avenue and between West 28th and West 30th Streets in the Borough of Manhattan, the following #streetwall# regulations shall apply to #street# frontages not occupied by a #public plaza#. The #street wall# of a #building# shall be located on the #street line# and extend along the entire #street# frontage of the #zoning lot# up to a minimum height of 125 feet or the height of the #building#, whichever is less, and a maximum height of 150 feet. Above a height of 150 feet, no portion of a #building# may penetrate a #sky exposure plane# except for towers, pursuant to Section 43-45 (Tower Regulations). The #sky exposure plane# shall begin at a height of 150 feet above the #street line# and rise over the #zoning lot# at a slope of 5.6 feet of vertical distance for each foot of horizontal distance on a #wide street#, and at a slope of 2.7 feet of vertical distance for each foot of horizontal distance on a #narrow street#. The provisions of Section 43-44 (Alternate Front Setbacks) shall not apply. On the ground floor, recesses shall be permitted where required to provide access to the #building#, provided such recesses do not exceed three feet in depth as measured from the #street line#. Above the level of the second #story#, up to 30 percent of the #aggregate width of street walls# may be recessed beyond the #street line#. However, no recesses shall be permitted within 20 feet of an adjacent #building# and within 30 feet of the intersection of two #street lines#.

* * *

43-61

Bulk Regulations for Residential Uses in M1-1D through M1-5D Districts

The following regulations shall apply to any #development# or #enlargement# authorized pursuant to Section 42-47 (Residential Uses in M1-1D through M1-5D Districts):

- (a) The total amount of #residential floor area# permitted on any #zoning lot# shall not exceed a #floor area ratio# of 1.65.

On #zoning lots# containing both #residential use# and #community facility#, #manufacturing# or #commercial use#, the maximum #floor area# shall be the maximum #floor area# permitted for either the #commercial# or #manufacturing use# as set forth in Sections 43-12 (Maximum Floor Area Ratio) through 43-14 (Floor Area Bonus for Arcades), or the #community facility use# as set forth in Section 43-122 (Maximum floor area ratio for community facility buildings), or the #residential use# as set forth in this Section, whichever permits the greatest amount of #floor area#.

On #zoning lots# containing both #residential use# and #manufacturing# or #commercial use#, the total #floor area# used for #manufacturing# or #commercial use# shall not exceed the amount permitted by Sections 43-12 through 43-14.

- (b) The maximum number of #dwelling units# shall equal the total #residential floor area# provided on the #zoning lot# divided by 675. Fractions equal to or greater than three quarters resulting from this calculation shall be considered to be one #dwelling unit#.
- (c) The maximum #building# height above #curb level# shall be 32 feet.
- (d) No such #development# or #enlargement# shall be permitted within 30 feet of the #rear lot line#.
- (e) The maximum distance from the #street line# to the #street wall# of such #development# shall be ten feet, unless modified by the Commission pursuant to Section 44-28 (Parking Regulations for Residential Uses in M1-1D through M1-5D Districts).
- (f) No #side yards# shall be required. However, if any open area extending along a #side lot line# is provided at any level it shall have a width of not less than eight feet. However, #enlargements# of #single-family# or #two-family residences# existing as of June 20, 1988, shall be exempt from this requirement, provided such #enlarged building# does not exceed a height of two #stories#.

* * *

43-62

Bulk Regulations in M1-6D Districts

43-621

Floor area regulations in M1-6D Districts

- (a) The maximum #floor area# ratio for #zoning lots# shall be 10.0, and no #floor area# bonuses shall apply, except as set forth in paragraph (b) of this Section.
- (b) In #Inclusionary Housing designated areas#

For M1-6D Districts mapped within an #Inclusionary Housing designated area#, the provisions of Section 23-90 (INCLUSIONARY HOUSING) applicable to R10 Districts without a letter suffix shall apply, as modified in this Section.

- (1) For #zoning lots# that do not contain #residences#, the maximum #floor area ratio# shall be 10.0.
- (2) The maximum base #floor area ratio# for #zoning lots# containing #residences# shall be 9.0 plus an amount equal to 0.25 times the non-#residential floor area ratio# provided on the #zoning lot#, provided that such base #floor area ratio#

does not exceed 10.0. Such #floor area ratio# may be increased to a maximum of 12.0 only through the provision of #lower income housing#, pursuant to Section 23-90 (INCLUSIONARY HOUSING), inclusive.

43-622

Maximum lot coverage in M1-6D Districts

Any #story# of a #building# containing #dwelling units# shall not exceed a maximum #lot coverage# of 70 percent for #interior# or #through lots# and 100 percent for #corner lots#. However, where any such level contains parking spaces or non-#residential uses#, such level shall be exempt from #lot coverage# regulations.

43-623

Density in M1-6D Districts

The provisions of 35-40 (APPLICABILITY OF DENSITY REGULATIONS TO MIXED BUILDINGS) shall apply. The applicable factor shall be 790.

43-624

Height and setback in M1-6D Districts

In M1-6D Districts, the height and setback provisions of this Section shall apply to all #buildings#.

(a) Rooftop regulations

(1) Permitted obstructions

The provisions of Section 33-42 (Permitted Obstructions) shall apply to all #buildings#, except that elevator or stair bulkheads, roof water tanks, cooling towers or other mechanical equipment (including enclosures) may penetrate a maximum height limit or #sky exposure plane#, provided that either the product, in square feet, of the #aggregate width of street walls# of such obstructions facing each #street# frontage, times their average height, in feet, shall not exceed a figure equal to eight times the width, in feet, of the #street wall# of the #building# facing such frontage; or the #lot coverage# of all such obstructions does not exceed 20 percent of the #lot coverage# of the #building#, and the height of all such obstructions does not exceed 40 feet.

In addition, on #narrow streets#, a maximum base height or #sky exposure plane# may be penetrated, as follows:

(i) Structural columns

Structural columns may penetrate a maximum height limit or #sky exposure plane#, provided that such columns are one story or less in height, have a #street wall# no greater than 30 inches in width, and are spaced not less than 15 feet on center.

(ii) Dormers

(a) On any #street# frontage, the aggregate width of all dormers at the maximum base height shall not exceed 60 percent of the length of the #street wall# of the highest #story# entirely below the maximum base height. For each foot of height above the maximum base height, the aggregate width of all such dormers shall be decreased by one percent of the #street wall# width of the highest #story# entirely below the maximum base height.

(b) The aggregate width of dormers at the maximum base height facing the #rear yard line# or #rear yard equivalent# shall not exceed 60 percent of the length of wall of the #building# facing a #rear yard line# at the highest #story# entirely below the maximum base height. For each foot of height above the maximum base height, the aggregate width of all such rear dormers shall be decreased by one percent of the width of the #building# wall facing the #rear lot line#, at the level of the highest #story# entirely below the maximum base height.

Where two rear setbacks are provided as set forth in paragraph (b)(3)(ii) of this Section, the aggregate width of rear dormers, measured separately within each setback, shall not exceed 60 percent of the length of #building# wall facing a #rear yard line# at the highest #story# entirely below each rear setback. For each foot of height that a dormer is above the level of a setback, the aggregate width of dormers within such setback shall be decreased by one percent of the width of the highest #story# entirely below such setback.

In the case of a #through lot# on which a #rear yard equivalent# is provided, the requirements of this Section shall apply as if such #rear yard equivalent# were two adjoining #rear yards#.

(2) Screening requirements for mechanical equipment

For all #developments# and #enlargements#, and #conversions# of #non-residential buildings# to #residences#, all mechanical equipment located on any roof of a #building or other structure# shall be fully screened on all sides. However, no such screening requirements shall apply to water tanks.

(b) Height and setback

(1) #Street wall# location

The #street wall# shall be located on the #street line# and extend along the entire #street# frontage of the #zoning lot# up to at least the minimum base height specified in paragraph (b)(2) of this Section. On the ground floor, recesses shall be permitted where required to provide access to the #building#, provided such recesses do not exceed three feet in depth as measured from the #street line#.

Above the level of the second #story#, up to 30 percent of the #aggregate width of street walls# may be recessed beyond the #street line#. However, no recesses shall be permitted within 20 feet of an adjacent #building# and within 30 feet of the intersection of two #street lines#.

(2) Base height

On #wide streets#, and on #narrow streets# within 50 feet of their intersection with a #wide street#, the #street wall# of a #building# shall rise without setback to a minimum base height of 125 feet and a maximum base height of 150 feet.

On #narrow streets#, beyond 50 feet of their intersection with a #wide street#, the #street wall# of a #building# shall rise without setback to a minimum base height of 85 feet and a maximum base height of 125 feet.

As an alternative, the minimum and maximum base heights applicable to a #wide street# may apply along a #narrow street# to a distance of 100 feet from a #wide street#.

(3) Required setbacks and maximum #building# heights

(i) Along #wide streets#

The provisions of this paragraph, (b)(3)(i), shall apply to #buildings#, or portions thereof, located on #wide streets# and on #narrow streets# within 100 feet of a #wide street#. The portion of such #building# above a height of 150 feet shall be set back from the #street wall# of the #building# at least 10 feet along a #wide street# and at least 15 feet along a #narrow street#, except such dimensions may include the depth of any permitted recesses in the #street wall#. The maximum height of such #buildings# shall be 290 feet. In addition, the gross area of each of either the highest two or three #stories# of such #building# shall not exceed 80 percent of the gross area of the #story# directly below such highest two or three #stories#.

(ii) Along #narrow streets#

The provisions of this paragraph, (b)(3)(ii), shall apply to #buildings#, or portions thereof, located on #narrow streets# beyond 100 feet of a #wide street#. No portion of such #building or other structure# shall penetrate a #sky exposure plane# which begins at a height of 125 feet above the #narrow street line# and rises over the #zoning lot# with a slope of four feet of vertical distance for every foot of horizontal distance. The maximum height of such #buildings# shall be 210 feet. However, any portion of such #building or other structure# that is located beyond 15 feet of the #street line# may penetrate such #sky exposure plane#, provided such portion does not exceed a height of 210 feet. In addition, the gross area of each of the top two #stories# of a #building# may not be greater than 80 percent of the gross area of the #story# directly below such top two #stories#.

In addition, for #buildings# containing #residences#, no portion of such #building# exceeding a height of 125 feet shall be nearer to a #rear yard line# than ten feet. Alternatively, a pair of setbacks may be provided in accordance with the following:

- (a) a setback of five feet from the #rear yard line# shall be provided between a height of 85 feet and 125 feet; and

(b) a setback of ten feet from the #rear yard line# shall be provided between a height of 125 and 165 feet.

However the heights of such setbacks shall be vertically equidistant from a height of 125 feet.

In the case of a #through lot# on which a #rear yard equivalent# is provided, the requirements of this Section shall apply as if such #rear yard equivalent# were two adjoining #rear yards#.

(4) Maximum length of #building# wall

The maximum length of any #story# located entirely above a height of 150 feet shall not exceed 150 feet. Such length shall be measured in plan view by inscribing within a rectangle the outermost walls at the level of each #story# entirely above a level of 150 feet.

43-625

Courts in M1-6D Districts

Residential portions of #buildings# shall be subject to the court provisions applicable in R10 Districts as set forth in Section 23-80 (Court Regulations, Minimum Distance between Windows and Walls or Lot Lines and Open Area Requirements), inclusive.

* * *

Chapter 4

Accessory Off-Street Parking and Loading Regulations

* * *

44-022

Applicability of regulations in Community Districts 1, 2, 3, 4, 5, 6, 7 and 8 in the Borough of Manhattan and a portion of Community Districts 1 and 2 in the Borough of Queens

Special regulations governing permitted or required #accessory# off-street parking are set forth in Article I, Chapter 3.

44-023

Applicability of regulations in M1-1D through M1-5D Districts

In M1-1D, M1-2D, M1-3D, M1-4D and M1-5D Districts, the parking regulations governing M1 Districts shall apply to #manufacturing#, #commercial# or #community facility uses#, and the regulations of Section 44-28 (Parking Regulations for Residential Uses in M1-1D through M1-5D Districts) shall apply to #residential uses# authorized pursuant to Section 42-47 (Residential Uses in M1-1D through M1-5D Districts).

44-024

Applicability of regulations in M1-6D Districts

In M1-6D Districts, the parking regulations governing M1 Districts shall apply to #commercial# and #manufacturing uses#. For #residential# and #community facility uses#, the parking regulations applicable in C6-4 Districts as set forth in Article III, Chapter 6, shall apply.

In addition, parking regulations shall be modified by Article 1, Chapter 3 (Comprehensive Off-Street Parking Regulations in Community Districts 1, 2, 3, 4, 5, 6, 7 and 8 in the Borough of Manhattan and a Portion of Community Districts 1 and 2 in the Borough of Queens), as applicable.

44-024 44-025

Applicability of regulations in an M1-1 District in Community District 12 in the Borough of Queens

In the M1-1 District bounded by 95th Avenue, 148th Street, 97th Avenue and 147th Place in Community District 12 in the Borough of Queens, the #accessory# off-street parking regulations of an M1 District shall apply, except that the #accessory# off-street parking regulations for an R5 District set forth in Article II, Chapter 5, shall apply to #residential uses#.

* * *

44-28

Parking Regulations for Residential Uses in M1-1D through M1-5D Districts

In M1-1D, M1-2D, M1-3D, M1-4D and M1-5D Districts, the regulations of this Section shall apply to #residential uses# authorized pursuant to Section 42-47 (Residential Uses in M1-1D through M1-5D Districts).

* * *

52-46

Conforming and Non-conforming Residential Uses in M1-1D through M1-5D Districts

In M1-1D, M1-2D, M1-3D, M1-4D and M1-5D Districts, a #building# containing conforming or #non-conforming residential uses# may be #enlarged# and the #residential uses extended#

thereby, provided that no non-residential uses exist above the level of the first story ceiling.

Such enlargement is subject to all of the following regulations:

- (1) There shall be no increase in the number of dwelling units in the building beyond the lawful number in existence on December 21, 1989.
- (2) The total amount of residential floor area in the building shall not exceed 500 square feet additional to the residential floor area in existence on December 21, 1989, or a floor area ratio of 1.65, whichever is less.
- (3) No residential enlargement shall be permitted within 30 feet of the rear lot line.
- (4) No enlarged portion shall exceed a height of 32 feet above curb level.
- (5) No side yards shall be required. However, if any open area extending along a side lot line is provided at any level it shall have a width of not less than eight feet. However, enlargements of single-family or two-family residences existing as of June 20, 1988 shall be exempt from this requirement, provided such enlarged building does not exceed a height of two stories.

Enlargements in excess of those permitted above, and enlargements that create additional dwelling units may be permitted by authorization of the City Planning Commission, pursuant to the regulations of Sections 42-47 (Residential Uses in M1-1D through M1-5D Districts) and 42-48 (Supplemental Use Regulations in M1-6D Districts).

* * *

**52-50
DAMAGE OR DESTRUCTION**

* * *

**52-53
Buildings or Other Structures in All Districts**

* * *

**52-531
Permitted reconstruction or continued use**

In all districts, if any building, except a building subject to the provisions of Section 52-54 (Buildings Designed for Residential Use in Residence Districts), or of Section 52-56 (Multiple Dwellings in M1-D Districts), which is substantially occupied by a non-conforming use is

damaged or destroyed by any means, including any demolition as set forth in Sections 52-50 et seq., to the extent of 50 percent or more of its total #floor area#, such #building# may either:

* * *

For the purposes of this Section, any #single-family# or #two family residence# located within an M1-1D, M1-2D, M1-3D, M1-4D, ~~M1-5D~~ or M1-6D District and existing on June 20, 1988 shall be a conforming #use#.

* * *

52-56
Multiple Dwellings in M1-1D through M1-5D Districts

In the case of damage or destruction of less than 75 percent of the total #floor area# of a #non-conforming building# containing three or more #dwelling units# in an M1-1D, M1-2D, M1-3D, M1-4D or M1-5D District, such #building# may be repaired or reconstructed, and its #residential use# continued, subject to the following regulations:

- (a) there shall be no increase in the number of #dwelling units# in the #building# beyond the lawful number in existence prior to such damage and destruction; and
- (b) there shall be no increase to the pre-existing amount of #floor area# except as expressly provided in Section 52-46 (Conforming and Non-conforming Residential Uses in M1-D Districts).

#Enlargements# in excess of those permitted above, and #enlargements# that create additional #dwelling units# may be permitted by authorization of the City Planning Commission pursuant to the regulations of Section 42-47 (Residential Uses in M1-1D through M1-5D Districts).

* * *

52-62
Buildings Containing Residences in M1-1D through M1-5D Districts

In M1-1D, M1-2D, M1-3D, M1-4D and M1-5D Districts, vacant #floor area# in a #building# originally designed as #dwelling units# or #rooming units# may be occupied by a #residential use# provided that the requirements of either paragraph (a) or (b) are met.

* * *

74-80
Transient Hotels

74-80 74-801

Transient Hotels In R10H Districts

In R10H Districts, the City Planning Commission may permit #transient hotels#. Where a #building# in existence on December 15, 1961, is located on a #zoning lot#, a substantial portion of which is located in an R10H District and the remainder in a #Commercial District#, the Commission may also permit the #conversion# of specified #floor area# within such #building# from #residential use# to #transient hotel use# without regard to the #floor area#, supplementary #use# or density regulations otherwise applicable in the #Commercial District#. The Commission may also allow any subsequent #conversion# of such specified #floor area# to and from #residential# or #transient hotel use# to occur without further Commission approval, subject to the conditions of the special permit.

* * *

74-802

In M1-6D Districts

In M1-6D Districts, in areas that have not met the residential development goal set forth in paragraph (a) of Section 42-483 (Commercial uses), the City Planning Commission may permit #developments# or #enlargements# of #transient hotels# with greater than 100 sleeping units on #zoning lots# where #residential use# is permitted as-of-right, in accordance with Section 42-481 (Residential use), provided the Commission finds that:

- (a) sufficient development sites are available in the area to meet the residential development goal; or
- (b) a harmonious mix of #residential# and non-#residential uses# has been established in the area, and such #transient hotel# resulting from a #development# or #enlargement# is consistent with such character of the surrounding area.

The Commission may prescribe additional conditions and safeguards to minimize adverse effects on the character of the surrounding area.

* * *

APPENDIX F: Inclusionary Housing Designated Areas

The boundaries of #Inclusionary Housing designated areas# are shown on the maps listed in this Appendix F. The #Residence Districts# listed for such areas shall include #Commercial

Districts# where #residential buildings# or the #residential# portion of #mixed buildings# are governed by the #bulk# regulations of such #Residence Districts#. Where #Inclusionary Housing designated areas# are mapped in #Commercial Districts#, the residential district equivalent has instead been specified for each map.

Table of
Inclusionary Housing Designated Areas
by Zoning Map

Zoning Map	Community District	Maps of Inclusionary Housing Designated Areas
1d	Bronx CD 7	Map 1
3b	Bronx CD 4	Map 1
3c	Bronx CD 6	Map 1, Map 2, Map 3
3c	Bronx CD 7	Map 1
3d	Bronx CD 6	Map 2, Map 3, Map 4
5d	Manhattan CD 7	Map 1
6a	Manhattan CD 9	Map 1
6a	Manhattan CD 10	Map 1
6a	Manhattan CD 11	Map 1
6a	Bronx CD 1	Map 1
6a	Bronx CD 4	Map 1
6b	Manhattan CD 10	Map 1
6b	Manhattan CD 11	Map 1
8b	Manhattan CD 4	Map 1
8c	Manhattan CD 4	Map 2
8c	Manhattan CD 7	Map 2
8d	Manhattan CD 4	Map 3, Map 4
8d	Manhattan CD 5	Map 1
8d	Manhattan CD 6	Map 1
8d	Queens CD 2	Map 3
9a	Queens CD 1	Map 1
9b	Queens CD 1	Map 2
9b	Queens CD 2	Map 1
9d	Queens CD 2	Map 1, Map 2
12a	Manhattan CD 1	Map 1
12c	Manhattan CD 3	Map 1
12c	Brooklyn CD 1	Map 1, Map 2
12d	Brooklyn CD 1	Map 2, Map 3
12d	Brooklyn CD 2	Map 1, Map 4
13a	Brooklyn CD 1	Map 1, Map 2
13b	Brooklyn CD 1	Map 2, Map 4

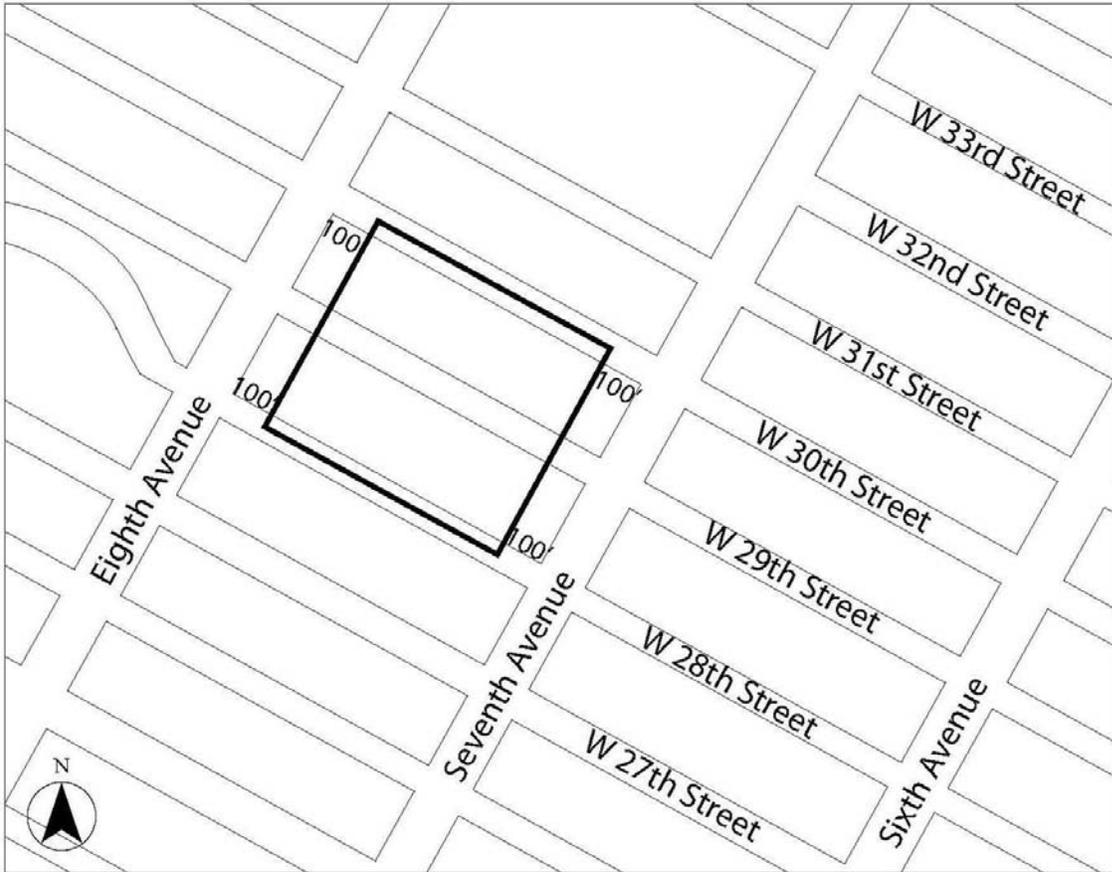
14d	Queens CD 8	Map 1
14d	Queens CD 12	Map 1
16b	Brooklyn CD 7	Map 2
16c	Brooklyn CD 2	Map 1, Map 2, Map 3
16c	Brooklyn CD 3	Map 1
16c	Brooklyn CD 6	Map 1
16d	Brooklyn CD 7	Map 1
16d	Brooklyn CD 14	Map 2
17a	Brooklyn CD 3	Map 1, Map 2
17b	Brooklyn CD 14	Map 2
22a	Brooklyn CD 7	Map 2
22c	Brooklyn CD 7	Map 2
22c	Brooklyn CD 14	Map 1, Map 2, Map 3
23a	Brooklyn CD 14	Map 2
28d	Brooklyn CD 13	Map 1

* * *

Manhattan, Community District 5

In the M1-6D Districts within the areas shown on the following Map 1:

Map 1



Map _____. Portion of Community District 5, Manhattan

* * *

The above resolution (N 110285 ZRY), duly adopted by the City Planning Commission on August 24, 2011 (Calendar No. 16), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
RICHARD W. EADDY, Vice Chairman,
ANGELA M. BATTAGLIA, RAYANNE BESSER, IRWIN G. CANTOR, P.E.,
ALFRED C. CERULLO, III, NATHAN LEVENTHAL, ANNA HAYES LEVIN,
SHIRLEY A. MCRAE, KAREN A. PHILLIPS, Commissioners

ORLANDO MARIN, Commissioner, ABSTAINING

MANHATTAN COMMUNITY BOARD FIVE

Vikki Barbero, Chair

450 Seventh Avenue, Suite 2109
New York, NY 10123-2199
212.465.0907 f-212.465.1628

Wally Rubin, District Manager

June 10, 2011

Hon. Amanda Burden
Chair
Department of City Planning
22 Reade Street, Room 2E
New York, NY 10007

Re: A PROPOSAL BY THE DEPARTMENT OF CITY PLANNING FOR AN AMENDMENT TO THE ZONING TEXT TO CREATE A NEW ZONING DISTRICT: M1-6D.

Dear Chair Burden:

At the regularly scheduled monthly meeting of Community Board Five on Thursday, June 9, 2011, the Board passed the following resolution by a vote of 36 in favor, 0 opposed, 1 abstaining:

WHEREAS, There are areas in New York City, including within Community Board Five, that were once important centers for manufacturing and light industry but due to changes in technology, economics, and demographic conditions, as well as zoning restrictions, have evolved into commercial areas for small and creative businesses while at the same time suffer from receiving little or no new investment, despite their desirable locations; and

WHEREAS, The Department of City Planning (DCP) is proposing to create a new M1-6D zoning district intended to preserve these existing concentrations of Class B and C office and light industrial spaces while also encouraging new investment by allowing residential and mixed-use development on currently under-built sites; and

WHEREAS, The first M1-6D district is proposed to be mapped with a private rezoning application for an area south of Penn Station, on the midblock portions of two blocks bounded by West 28th Street, Eighth Avenue, West 30th Street, and Seventh Avenue; and

WHEREAS, The proposed M1-6D zoning district would require that zoning lots that contain buildings with at least 50,000 square feet of non-residential use maintain the amount of commercial or light manufacturing space that existed on the zoning lot at the time of the referral of this application (April 25, 2011), whether by keeping an existing building in place or in new construction; and

WHEREAS, Residential use would be permitted as-of-right on zoning lots with less than 50,000 square feet of existing floor area, encouraging the development of parking lots and underutilized sites; and

WHEREAS, The proposed M1-6D district would allow a maximum FAR of 10 for community facilities, commercial and light manufacturing uses, and a maximum FAR for residential of 9.0 with an additional 3.0 FAR in exchange for the provision of 20% of the building's floor area as affordable housing as a part of the City's expanded Inclusionary Housing Program, the first such provision in CB5; for buildings with a mixture of residential and commercial/manufacturing floor area the maximum base FAR for a building with residential use would be 9.0 with an additional 0.25 FAR for each 1.0 FAR of non-residential floor area in the building, up to a maximum base FAR of 10.0; and

WHEREAS, The M1-6D zoning district will have height and setback regulations that recognize, and are contextual to, the large pre-war buildings that are typical in the areas that may be suitable for rezoning, including a maximum building height of 210 feet; to help guarantee a vibrant streetscape, a new development with 50 feet or more street frontage will be required to have 50% street front retail use, and for all permitted ground floor uses, transparent material must be used for at least 50% of the surface area; and

WHEREAS, Despite the fact that certain neighborhoods could be well suited for hotel development, in order to encourage mixed-use in M1-6D zoning districts, until the residential goal for an area has been met, in this case, 865 residential units, hotels with more than 100 rooms would require a Special Permit, with hotels with fewer than 100 rooms allowed as-of-right; and

WHEREAS, Consistent with the limitation on hotel development, because the new M1-6D zoning district would permit the full-range of community facility uses, Community Board Five recommends that the Department of City Planning likewise monitor and evaluate how such uses could potentially interfere with the zoning change's stated goal of achieving mixed-use and diversity while protecting Class B and C office space, and

WHEREAS, Community Board Five strongly urges the Department of City Planning to lower the new M1-6D zoning lot minimums to 40,000 from 50,000 square feet to further protect existing commercial and light industrial uses and the businesses and jobs therein, because a notable portion of the existing buildings in areas suitable for M1-6D zoning are older and smaller and thus vulnerable to demolition; in the case of the first proposed M1-6D district, we endorse how the 50,000 square foot target would protect a concentrated portion of the area's commercial and industry use, saving 80% of the existing space, we ask that DCP reconsider the target by reducing it to 40,000 square feet, thereby protecting two additional buildings, comprising 27% of the remaining 20%; and

WHEREAS, Because the creation of M1-6D districts will as much encourage residential development as it will protect commercial and light industrial space, it is inevitable that new M1-6D districts will create demand for, and add to, Manhattan's already overcrowded public schools; as such, Community Board Five strongly urges that the new criteria for schools analysis in the CEQR technical manual be carefully monitored in order to ensure that development does not further exacerbate the existing school overcrowding, and as each future M1-6D district is mapped the Department of City Planning partner with the appropriate City agencies in particular the School Construction Authority and the Department of Education to address City service demands *before* residential units are added, not after; and

WHEREAS, In addition to school capacity, other City services will experience significant increases in demand and consumption from new residential development including vehicular traffic and sanitation, and as such, Community Board Five recommends that all new M1-6D residential buildings include off-street solutions for trash pick-up and loading; and

WHEREAS, Community Board Five does not believe the M1-6D district would be suitable to every area that has manufacturing and commercial use, including the Garment Center where substantial review is already underway to explore potential solutions and where residential use is not appropriate; however, Community Board Five believes that other manufacturing districts within CB5 might benefit from similar reevaluation once the efficacy of the M1-6D district has been evaluated; and

WHEREAS, Community Board Five acknowledges and is appreciative of how the Department of City Planning is attempting to address concerns we have had for many years pertaining to our District's loss of Class B and C office space and we further state our wish to work with the Department to investigate other neighborhoods and blocks within our Midtown district where an M1-6D zoning district can be an effective protection against the loss or threat of loss of Class B and Class C office space, while encouraging the development of residential units, including the opportunity for affordable housing, including but not limited to the neighborhood between W. 34th and W. 23rd Streets along Broadway, and we look forward to the opportunity to work with Department; therefore be it

RESOLVED, That Community Board Five **approves** the proposal by the Department of City Planning to create a new zoning district: M1-6D.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero
Chair



Katherine McDonough
Chair, Land Use and Zoning Committee

Borough President Recommendation

City Planning Commission
22 Reade Street, New York, NY 10007
Fax # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission, Room 2E at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Application #: **C 100063 ZMM, C 100064 ZSM, N 110285 ZRY**

Docket Description:

(C 100063 ZMM) In the matter of an application submitted by 249 W 28th Street Properties, LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map Section No. 8d, by changing an M1-5 District to an M1-6D* District property bounded by West 30th Street, a line 100 feet westerly of Fashion Avenue (7th Avenue), West 28th Street and a line 100 feet easterly of Eight Avenue

(C 100064 ZSM) In the matter of an application submitted by 249 W 28th Street Properties, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 13-562 and 74-52 of the Zoning Resolution to allow an attended Public Parking Garage with a maximum capacity of 325 spaces on portions of the ground floor, cellar level and sub-cellar level of a proposed mixed-use development on property located at 241-251 West 28th Street a.k.a. 240-250 West 29th Street (Block 778, Lots 13, 16, 18 & 66), in an M1-6D District.

(N 110285 ZRY) In the matter of an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter, for an amendment of the Zoning Resolution of the City of New York to create a new zoning district, M1-6D, and to modify related Sections pertaining to the establishment of the new district; and to modify Appendix F to facilitate a new Inclusionary Housing designated area.

COMMUNITY BOARD NO:

5

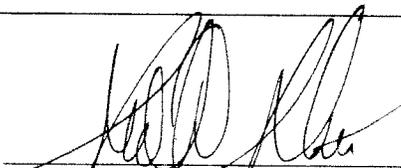
BOROUGH: Manhattan

RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

See Attached


BOROUGH PRESIDENT

7-13-11
DATE



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT STRINGER
BOROUGH PRESIDENT

July 13th, 2011

Recommendation on
ULURP Application Nos. C 100063 ZMM, C 100064 ZSM, N 110285 ZRY–
M1-6D/West 28th Street Rezoning
by 249 West 28th Street Properties, LLC and
the New York City Department of City Planning

PROPOSED ACTION

249 West 28th Street Properties, LLC¹ seeks approval of **Zoning Map changes** (C 100063 ZMM) relating to an area bound by West 28th and West 30th streets between a line 100 foot east of 8th Avenue and a line 100 foot west of 7th Avenue. The map amendment would change an existing M1-5 zoning district to a M1-6D zoning district to be created in a related action N 110285 ZRY by the New York City Department of City Planning (“DCP”).

In a related action, DCP has filed a **Zoning Text amendment** (N 100285 ZRY) to modify the New York City Zoning Resolution (ZR) in order to create a new M1-6D zoning district and to modify bulk regulations of the M1-6 zoning district along 7th Avenue between West 28th and West 30th streets. The text amendment will primarily modify Article 4 Chapter 2 (Use Regulations in Manufacturing Zoning Districts) and Article 4 Chapter 3 (Bulk Regulations in Manufacturing Zoning Districts). Generally these amendments will:

1. create a new M1-6D zoning district;
2. establish uses and contextual bulk controls for such district;
3. introduce a new inclusionary housing bonus for such district;
4. establish new controls to preserve existing large commercial buildings in such district;
5. create a new special permit for hotel uses in the rezoning area; and
6. create new height and setback regulations for the M1-6 zoning district on 7th Avenue between West 28th and West 30th streets.

Additionally 249 West 28th Street Properties, LLC seek an approval of a **special permit** pursuant to sections ZR §§ 13-562 and 74-52 to allow an attended public parking garage with a maximum capacity of 325 spaces on portions of the ground floor, cellar and sub cellar of a property located at 241-251 West 28th Street (Block 778, Lots 13, 16, 18 and 66) in an M1-6D District, Borough of Manhattan.

¹ 249 West 28th Street Properties, LLC is a subsidiary of Edison Parking Corporation, LLC whose president is Jerry Gottesman

In order for a special permit to be granted, the City Planning Commission (“CPC”) must find that the garage will not adversely impact or affect the growth or development of other uses in the area; will not create or contribute to serious traffic congestion or pedestrian flow; will not draw traffic through areas which are primarily residential; contains adequate reservoir space; is surrounded by streets that are adequate for generated traffic; and, where rooftop parking is permitted, is so located as not to impair the essential character, future use or development of adjacent areas.

PROJECT DESCRIPTION

249 West 28th Street Properties, LLC and DCP seek a zoning text amendment and related mapping action to rezone an existing M1-5 manufacturing district to a new M1-6D, mixed use zoning district. The zoning district would be created by DCP and mapped by 249 West 28th Street Properties, LLC in an area between West 28th and West 30th streets between a line 100 foot east of 8th Avenue and a line 100 foot west of 7th Avenue. The new zoning district would increase the total density, introduce a range of new potential uses, create new bulk controls to match the prevailing character of the area, and create a new inclusionary housing bonus for the proposed district. The district also proposes to introduce new protection on existing manufacturing and commercial spaces and introduces a new hotel special permit for the area. In addition, DCP seeks to add new bulk controls for the M1-6 District between West 28th and West 30th streets along 7th Avenue.

The current zoning for the area is M1-5. M1-5 zoning districts are medium-density, light manufacturing and industrial zoning districts, which allow high performance industrial uses and a range of commercial uses. This manufacturing district allows a maximum allowable FAR of 5.0 for manufacturing and commercial uses and 6.5 for certain community facilities. The M1-5 district does not contain requirements for street wall and building heights. Residential development is generally not allowed as of right. The remaining zoning districts on the block are a C6-2A (a contextual, mid-density commercial district) along 8th avenue and M1-6 (a high-density manufacturing district) along 7th Avenue.

The subject area historically served as a center for the fur industry. However, as fur manufacturing and sales have evolved from production to wholesale, the area’s character has become more varied. The rezoning area consists of 52 privately owned lots. Businesses in the area include offices (45%), retail (15%), light industrial (5%), wholesale uses (11%), creative industry (23%) and one hotel (2%). The fur industry comprises 31 businesses in the area. In addition, the area has 216 residential units located in 17 buildings.

Most of the businesses are located in class B and C office space in loft buildings many dating from the early twentieth century. These buildings have a range of densities and heights, many of which are non-conforming with the existing zoning. Almost half of the buildings (46%) are built to a larger bulk than would be allowed under the existing zoning.

The neighborhood surrounding the area has a varied character, containing a wide range of uses and densities. North of the site is the central business district and the Hudson Yards Special

district. These areas are marked by the highest densities in the City and including the recently approved 15 Penn Plaza on 7th Avenue and West 33rd Street. Immediately to the West of the rezoning area is mixed residential district and Penn South, a large tower-in-the-park, residential complex. The area is also immediately south of the Pennsylvania Station and near Herald Square – two regional and local transportation hubs. The surrounding area includes a variety of zoning including residential (mid-density), manufacturing (mid- to high-density) and commercial (mid- to very high-density).

In a related action, 249 West 28th Street Properties, LLC seeks a special permit for a 325 space public parking garage with 218 monthly parking spaces. The proposed garage would replace two public parking lots and a public parking garage with 371 public parking spaces. The new garage will have an entrance on West 28th street and an entrance/egress on West 29th. The garage will be located on the ground floor, cellar and sub-cellars of two buildings on a through lot (Block 778, Lots 13, 16, 18 and 66) with up to 407 units of housing (82 affordable units) and ground floor retail. The building would have a maximum height of 210 feet and would be built according to the rules of the proposed M1-6D zoning district.

Proposed Zoning Districts

DCP proposes to create the M1-6D zoning district to achieve five core goals:

- support a vibrant mixed use district;
- protect concentrations of existing class B and C office and light manufacturing uses;
- encourage the introduction of residential uses on underutilized sites;
- promote the creation of affordable housing; and
- ensure that new development reflects the existing built character.

To achieve these five goals, the new zoning district would allow commercial, manufacturing, community facility and residential uses as-of-right. It will introduce new contextual bulk regulations, an affordable housing component through the inclusionary housing bonus, a special permit for hotel uses and protections to preserve large commercial buildings. Finally, as part of the application DCP proposes to create contextual bulk controls for the M1-6 area located on 7th Avenue between West 28th and 30th streets.

Bulk Regulations

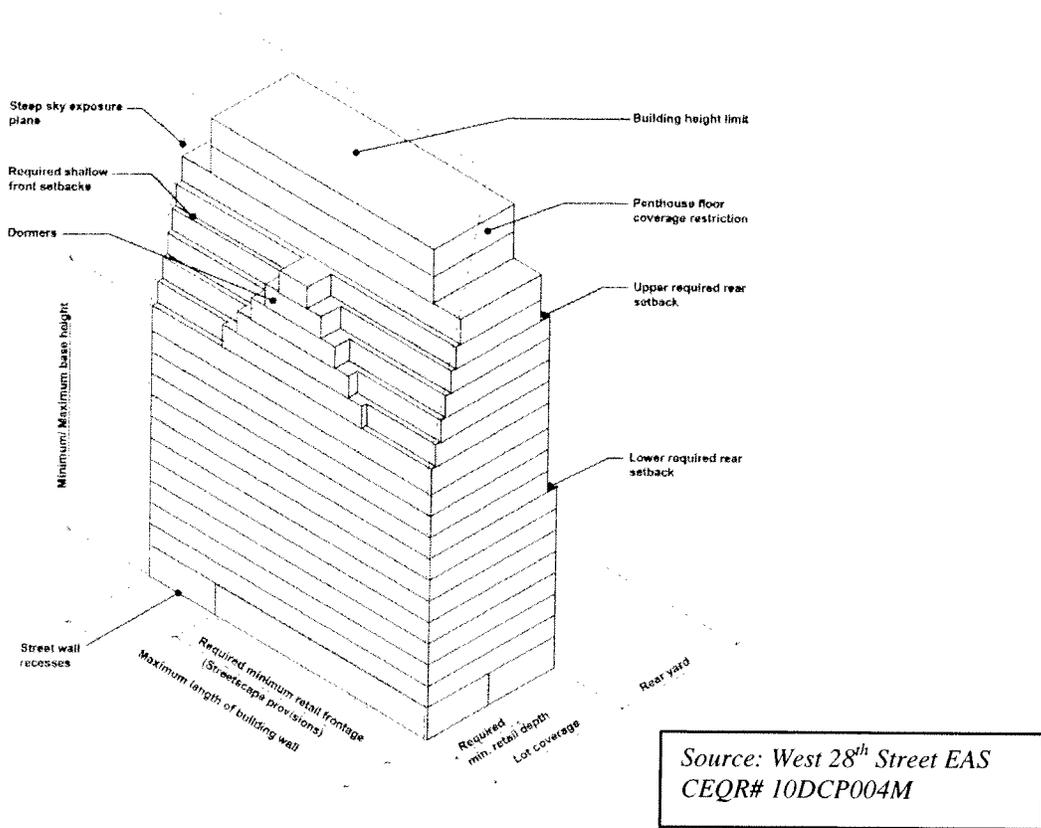
The newly proposed zoning district will generally allow residential, commercial, community facility and light manufacturing uses as-of-right. The proposed uses will be allowed at a maximum floor area ratio of 10.0 for commercial, community facility and light manufacturing uses. Residential uses will be allowed at a density up to 12.0 under the inclusionary housing program.

The new district will require buildings to be built on the street line (known as a “streetwall”) with a maximum base height of between 85 and 125 feet. Buildings would then be able to rise to a maximum building height of up to 210 feet. Above the maximum base height, buildings would be required to set back according to a sky exposure plane. However, dormers would be allowed to break the sky exposure plane for up to 60% of the streetwall width. The dormers will

be required to narrow by 1% of the streetwall width for each foot they rise above the maximum base height. Additionally, the top two floor plates of any building would be limited to 80% of the gross area of the story below and buildings would need to have a rear yard set back of 10 feet.²

The proposed building form is intended to produce buildings that closely mimic the existing large loft-style office buildings in the area. Many of these buildings were built under the 1916 zoning resolution in the early part of the 20th Century.

Illustrative Building Form:



Protections for commercial and manufacturing uses

A primary goal of the proposed zoning district is to protect existing commercial and manufacturing uses, while introducing greater development flexibility. To achieve this important goal, the DCP proposes to create a new protection for zoning lots that contain buildings with more than 50,000 SF of density, known as “Qualifying Buildings.” While on most zoning lots residential density is allowed as-of-right, Qualifying Buildings are not allowed new residential density unless the new development maintains or replaces the existing non-residential density.

² The rear yard set back could be split into two five foot setbacks located equidistance from the base height.

To demonstrate that the non-residential uses are being maintained/replaced, developers will be required to receive a certification from the City Planning Commissioner. The maintained/replaced non-residential density can be used for commercial, manufacturing or community facility uses regardless of the original use in the Qualifying Building. However, community facilities uses with sleeping accommodations, such as dormitories, could not occupy the preserved space.

Hotels

In order to encourage a vibrant residential presence, the proposed district would limit hotels greater than 100 rooms on zoning lots where residential uses are allowed as-of-right. Large hotels would only be allowed by special permit. To grant the special permit, the City Planning Commission (“CPC”) must find that there is sufficient development sites available to meet the residential development goal of 865 residential units for the area and that a harmonious mix of residential and non-residential uses has been established. Once the residential goal of 865 residential units for the area is met, hotels will be allowed as-of-right on all zoning lots.

Inclusionary Housing Bonus

Sites within the new M1-6D zoning district would be eligible for a residential density bonus under the City’s Inclusionary Housing Program. The residential density would have a base FAR of 9.0 and a maximum FAR of 12.0 if affordable housing is provided. The maximum FAR can only be achieved if the developer provides 20 percent of the density as permanent affordable housing to households earning up to 80 percent of the Area Median Income (“AMI”). The affordable housing may be located in the development, within one-half mile, or elsewhere in the community district. Even if the Inclusionary Housing bonus is utilized, the development must still conform to the contextual envelope.

Additionally, the proposed M1-6D would have a unique provision in order to encourage mixed use buildings. Developers would be able to raise their residential base by .25 FAR for every 1 FAR of non-residential density provided.³ The residential base could be raised to a maximum FAR of 10.0. The non-residential density would not count towards the affordability requirement and the total density of the building would remain at a maximum of 12.0.

Ground floor retail/transparency

In order to encourage an active pedestrian environment, the proposed zoning text will introduce new requirements for ground floor retail. Zoning lots with more than 50 feet of frontage will be required to have commercial retail spaces at a minimum depth of 30 feet. Additionally, 50% of the ground floor street wall will be required to be made of glazed, transparent materials.

7th Avenue Bulk Controls

³ For example, if a developer provided 2 FAR of non-residential uses, the residential base would be a 9.50 FAR in stead of 9.0.

Finally, as part of the proposed text amendment DCP proposes to add new bulk controls for the M1-6 zoning districts on 7th Avenue between West 28th and West 30th streets. The new bulk controls will require streetwalls and a base height between 125 and 150 feet. After the required base, developments may continue to rise provided that they either comply with tower regulations or the existing sky exposure plane. Additionally, as part of the proposed text amendment, developments along 7th Avenue would no longer be able to use the public plaza bonus. The public plaza bonus allows developments to increase their total density in exchange for providing privately owned, publicly accessible open spaces.

Anticipated Development under the Reasonable Worst Case Scenario Development

The Environmental Assessment Statement (“EAS”) indicates that under a Reasonable Worst Case Scenario Development, the proposed actions would result in 10 “projected” development sites⁴ and 4 “potential” development sites. It is anticipated that the development of the 10 projected sites would result in a net increase (from a “No-Action” condition) of 1,134 dwelling units (approximately 949,403 SF), of which approximately 220 would be affordable housing units. There would also be an anticipated net increase of 42,206 SF of retail space. In addition, the EAS estimates that there would be a net decrease of 15,153 SF of office space, 8,596 SF in industrial/light manufacturing uses, and 56,700 SF of hotel uses. On April 4, 2011, the City Planning Department certified that the proposed actions will have no significant adverse effect on the quality of the environment.⁵

COMMUNITY BOARD’S RECOMMENDATION

At its Full Board meeting on June 9, 2011, Manhattan Community Board 5 recommended **approval** of applications by a unanimous vote of 36 in favor, 0 opposed and 1 abstained.

While the approval was without condition, in the resolution the community board requested the following modifications be made to the application:

1. that DCP monitor and evaluate how community facility uses could potentially interfere with the zoning change’s stated goal of achieving a mixed use district while protecting Class B and C office space;
2. that the zoning district be modified to protect buildings of 40,000 SF or more instead of 50,000 SF or more in order to protect an additional 2 commercial buildings of similar character;
3. that City Planning work with the Department of Education to prevent school overcrowding in the area as the proposed rezoning will add new residential units; and
4. that all new residential buildings include off street solutions for trash pick-up and loading.

⁴ Projected developments are considered more likely to occur during the analysis period than potential developments.

⁵ As part of the Negative Declaration, (E) designations were placed on 13 properties for hazardous materials; 11 properties for air quality; and on 14 properties for noise to ensure there would be no significant adverse effect.

Further, the board noted that they are appreciative of City Planning's efforts to protect class B and C office space, which has been a long standing Community Board concern and is interested in exploring other areas that may be appropriate for the new M1-6D zoning district.

Additionally, the community board noted that they endorsed the proposed mixed use development by 249 West 28th Street Properties, LLC and requested that:

1. the new buildings be built to achieve a minimum of LEED silver;
2. that the tenants for the retail space in the buildings be locally oriented commercial uses such as play places for children and/or pet daycare/veterinarian services;
3. that the buildings be built with noise-blocking glass;
4. that the rear yard of the building have neighborhood access such as by hosting neighborhood events or serving as a depot for a neighborhood Community Supported Agriculture (CSA); and
5. that they continue to work with the board on future applications to achieve the most successful and residential and mixed use developments.

BOROUGH PRESIDENT'S COMMENTS

The proposed rezoning area has had a long history as one of the City's economic generators. The area is characterized by its industrial and commercial uses, in particular its high concentration of class B and C office space. It successfully serves a multitude of industries including the fur industry, the creative sector, traditional office uses, and light manufacturing. These businesses employ over 3,100 individuals over a varied set of industries. Areas, such as this one, are critical to maintaining New York's diverse economy and require special attention and consideration of the City.

Despite the area's economic vibrancy in existing buildings, many lots in the area remain under- or un-developed, with 16 lots built to less than 50% of the allowable density. Since 1928, only one new development has occurred in the area – a non-contextual building with a hotel. While the existing zoning is not encouraging new development, any development pursued would likely follow suit—non-contextual buildings favoring hotel uses. Such development would fail to encourage the vibrant mixed uses and create additional pressures on the existing class B and C office space.

The M1-6D zoning district is generally appropriate as it encourages new development and allows a wide range of uses while protecting the existing commercial spaces. The surrounding area is well served by mass transit and appropriate for new growth. Additionally, many of the existing buildings are built to significantly higher density and height than would be allowed under the existing zoning. The proposed district will bring the area in greater compliance zoning bulk regulations. Without a zoning change, it is unlikely that the area will see new contextual development.

The proposed district will introduce a variety of new use and bulk controls ensuring a vibrant neighborhood with contextual form. Additionally, the district's new protections for existing large commercial buildings and hotel special permit will direct new growth towards a 24-hour community while preventing displacement of the area's economic generators. Finally, the

district's affordable housing provisions will meet a long standing City-wide and Borough-wide need.

After thorough review, the community board unanimously approved the zoning district based on its stated goals. However, the community has expressed valid concerns over impacts on essential residential infrastructure and made concrete recommendations to strengthen the mechanisms particularly as they relate to the protection of class B and C office space.

While the proposed density, bulk and zoning goals are generally appropriate, the City is proposing new zoning mechanisms to achieve these goals. It is, therefore, important that these mechanisms get a careful and thorough review to ensure that they will meet the stated goals.

Preservation of Concentrations of Class B and C Office Space

One of the most unique aspects of the proposed rezoning is its protections for existing commercial and manufacturing spaces. The proposal aims to balance the need to encourage new development on vacant or substantially under-built sites, while maintaining a minimum of non-residential uses in the area. The area is characterized by its class B and C office space. Class A office space competes for prime office users with above average rents and a definitive market presence. Class B office space, however, is complete for a wide range of office users with average rents. Class C office space competes for tenants requiring functional space at below average rents.

Class B and C offices are essential to the overall health and vitality of the City as they allow a wide range of users and support a wide range of industries. In midtown, for example, class B office spaces charge an average rent around 40 dollars per square foot compared to class A office space, which charges around 60 dollars per square foot. Maintaining this more affordable space is essential to continuing to grow many of the City's businesses.

Under DCP's proposal any building with at least 50,000 SF of existing density must maintain their non-residential density in perpetuity. After a thorough review of the existing buildings in the area, the community board has requested that the protection be extended to include buildings of at least 40,000 SF.

Lowering the proposed density will allow two additional buildings to be protected. These buildings have a similar character and use to the other loft style buildings that qualify for the protections. Further, reducing the benchmark for Qualify Buildings will ensure that over 85% of the existing commercial space in the area remains protected. Additionally, according to the EAS these buildings are not projected or potential development sites and therefore should not impede any projected development in the area. As such, lowering the square footage of buildings qualifying for commercial/manufacturing protections is appropriate and in line with the zoning's stated goals of protecting class B and C office space.

Unfortunately, while the rezoning intends to protect class B and C office space, certain proposed zoning mechanisms may create new pressures on the protected commercial spaces. The proposed hotel special permit applies only to zoning lots where residential is allowed as-of-right, and therefore does not apply to zoning lots with protected commercial buildings. As hotels will

not be allowed on the substantially vacant lots, there will be additional pressure to locate them on zoning lots with Qualifying Buildings. This pressure will increase the risk that the Qualified Buildings will be converted to or replaced with hotels and cause the City will continue to lose its class B and C office space.

As currently written, the proposed text amendment does not do enough to protect class B and C office space. The proposed special permit for hotels should be extended to all zoning lots in this area, not just those where residential is allowed as-of-right.

Hotel Special Permit

The proposed special permit for hotels will serve as an important measure to ensure sound growth in the rezoning area. Currently, the special permit will apply in the West 28th Street area until 865 residential units are developed. Each residential unit is considered to count towards the residential goal when it receives a new Certificate of Occupancy. The intention of this benchmark is to allow hotels only when roughly 75% of the projected developments in the area are developed with affordable housing, based on the EAS.

While the intention is to capture new developments, the proposed residential goal, as currently written, may additionally capture existing units in the area. Many of the 261 existing residential units in the area are in buildings built prior to the City requiring certificates of occupancy and others are simply illegal uses. These units would now be eligible to be legalized and would, if legalized, effectively lower the residential goal to 604 units. This is contrary to the intention of the text as it would lower the benchmark to 50% of the projected developments, not 75%.

Therefore, in order to ensure the hotel special permit encourages a mixed use neighborhood, as originally intended, the text should be modified to either only count units in new buildings to meet the residential goal or the residential goal should be raised by 261 units.

Inclusionary Housing FAR

Inclusionary housing text amendment is an essential tool to meeting the City's affordable housing goals. The proposed M1-6D text introduces a new inclusionary housing mechanism, which is intended to incentive the creation of mixed use buildings. The text encourages developers to add non-residential density to new buildings by raising the base residential FAR by .25 FAR for every 1 FAR of non-residential density provided.

The proposed FAR mechanism reduces the total amount of affordable housing provided, but as a trade off increases the total amount of floor area that contributes to the City's economic base. As the area serves as an economic generator for the City, the proposed text is appropriate. However, the new inclusionary housing mechanism applies to all non-residential development, including the mandatory retail requirement. While it is appropriate to create incentives for mixed buildings in this area, the text should not reward developments for providing the mandatory amount of ground floor retail. Therefore, the proposed text should be modified to exclude the mandatory retail from the commercial uses that qualify to alter the residential base FAR.

In addition to the proposed M1-6D district, the City is proposing changes to the M1-6 zoning district along 7th Avenue between West 28th and West 30th streets. The proposed bulk changes are intended to ensure that the Seventh Avenue portions of the block are developed with contextual forms similar to the M1-6D requirements. In addition, the proposed text eliminates the plaza bonus, which encourages developments to set back from the street and creates a non-uniform street wall.

The proposed bulk changes are generally appropriate; however, the elimination of the plaza bonus potentially removes a needed community resource. Community District 5 is underserved in the amount of total open space and public plazas can serve an important amenity to both businesses and residents in the area. These open spaces will likely be in higher demand as the area is redeveloped and the City should continue to encourage their creation. Further, the community board in its statement of district needs has requested that the creation of new public plazas and green parks be an integral part of planning and new development.

Therefore, DCP should explore maintaining the existing public plaza bonus along Seventh Avenue and only if the public plaza bonus is not utilized should the new contextual bulk restrictions apply.

Residential Infrastructure

Comprehensive planning must be greater than comprehensive zoning and requires the coordination of multiple City agencies. The proposed rezoning is not anticipated to have any significant negative impacts. However, the community has expressed a valid concern that the environmental review process is not quantifying the incremental effect of multiple discrete rezonings. These rezonings have caused significant residential growth which has impacted many types of residential infrastructure including open space quality and sanitation services. However, the impacts are acutely pronounced in the public school system. School District 2, where this proposed rezoning is located, is one of the most overcrowded school districts in the City.

According to the EAS, absent the proposed action, elementary schools will be at 213.5% utilization by 2019. With the proposed action, the neighboring public elementary schools will be at 218.4% utilization. This change is below the threshold that would trigger a significant impact. However, the projected condition of the school system is simply unacceptable. The City cannot continue to ignore the potential detrimental environmental conditions created by the lack of comprehensive, strategic planning.

The City needs to develop new strategies to tackle the strain new residents will continue to place on all residential infrastructure, particularly the public school system. Failing to do so will drive families out of New York City to other nearby municipalities and reduce our ability to contend with our regional and national competitors.

Public Parking Garage

The proposed 325 space public parking garage is replacing existing public parking of 375 spaces. As the garage reduces the total number of spaces, the garage should not introduce new adverse

impact on the environment. The proposed garage is compatible with the surrounding uses in the area. In addition, the nearby streets, some of which are major City arterials, can adequately handle traffic generated by the garage.

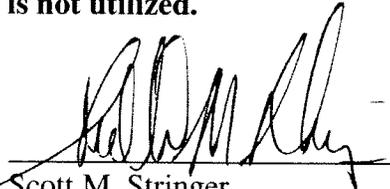
Of the 325 public parking spaces, 218 are proposed to be reserved for monthly parkers. The proposed number of monthly parkers will adequately cover the residential demand anticipated from the residential development. Further, Edison Parking Corporation, as one of the largest garage operators in the City, has in place existing systems to identify monthly parkers and can reasonably anticipate meeting 218 monthly parkers based on their current lot's usage.

BOROUGH PRESIDENT'S RECOMMENDATION

The proposed densities, height and bulk controls are appropriate. In addition, the proposed rezoning strives to meet many important goals including preserving existing commercial uses and allowing a wide range of new users. While the proposed zoning text is generally appropriate, the text should be modified to ensure that the rezoning sufficiently meets its goals.

Therefore, the Manhattan Borough President recommends conditional approval of ULURP Application Nos. C 100063 ZMM, C 100064 ZSM, N 110285 ZRY provided that:

- 1. The benchmark for determining a Qualifying Building be lowered from 50,000 SF to 40,000 SF;**
- 2. The hotel special permit be extended to zoning lots with Qualifying Buildings to protect class B and C office space;**
- 3. The hotel special permit is modified to ensure that only new residential units count towards meeting the residential development goal;**
- 4. The mandatory retail requirement not count toward raising the base residential FAR of the inclusionary housing bonus;**
- 5. The plaza bonus is maintained along 7th Avenue in the M1-6 District and the contextual controls only apply if the plaza bonus is not utilized.**


Scott M. Stringer
Manhattan Borough President