



## **CITY PLANNING COMMISSION**

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September 29, 2010/Calendar No. 3

N 100424 ZRM

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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, concerning Article IX, Chapter 3 (Special Hudson Yards District), Article IX, Chapter 6 (Special Clinton District), Article IX, Chapter 8 (Special West Chelsea District), and Article XII, Chapter 1 (Special Garment Center District), Borough of Manhattan, Community District 4.

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This application (N 100424 ZRM) for an amendment of the Zoning Resolution relating to Article IX, Chapter 3 (Special Hudson Yards District), Article IX, Chapter 6 (Special Clinton District), Article IX, Chapter 8 (Special West Chelsea District), and Article XII, Chapter 1 (Special Garment Center District) was filed by the Department of City Planning on May 26, 2010.

### **BACKGROUND**

The Department of City Planning has proposed a text amendment to the Special Hudson Yards (SHYD), Clinton (SCD), West Chelsea (SWCD) and Garment Center (SGCD) districts in order to facilitate the construction of the above-grade infrastructure necessary for access and operation of the No. 7 Subway extension, and to address community concerns that the significant growth forecasted for Hudson Yards and the adjacent areas, should it occur, could result in development pressure that may affect housing that has historically provided an affordable housing resource for area residents.

### **Transit Provisions**

Construction of the No. 7 Subway extension requires the development of a number of above-

grade support facilities at key locations in proximity to the subway infrastructure. These facilities include ventilation systems, substations, HVAC equipment and communication rooms. As part of the planning for the No. 7 Subway that was undertaken by the City and the Metropolitan Transportation Authority (MTA) as part of the 2005 Hudson Yards Development Program it was recognized that these facilities would be co-located on some of the major development sites in the SHYD together with commercial and residential development. Co-located development on these sites, which are located in close proximity to the subway, is a key feature of the transit-oriented development that the SHYD regulations are designed to facilitate.

Construction of the No. 7 Subway extension began in December 2007 and is scheduled to be completed and open to the public in December 2013. A critical component of the ability to build and complete the Subway extension under this design and timetable is the successful conclusion of agreements among the property owners, the City and the MTA with regard to the co-location of MTA infrastructure and development on affected sites.

The text amendment would facilitate these agreements in several respects by confirming that the floor space within the above-grade transit facilities is not treated as floor area and thereby does not affect the development capacity of the sites. This was recognized in the 2005 Hudson Yards Development Program FGEIS (N 040500 (A) ZRM), which analyzed the affected sites on the basis that they would utilize all available floor area under the rezoning for commercial and residential use. The existing provisions of Section 93-65 (Transit Easements) recognized that subway entrances located in buildings would not count toward zoning floor area; however, this same concept was not clearly applied towards the transit facilities themselves. The amendment

would therefore provide that floor area within four defined areas utilized exclusively for subway-related uses would be excluded from the definition of floor area.

The amendment would also update provisions governing the future Tenth Avenue subway station entrances. The current text in the SHYD references an earlier location for an additional entrance to the future station at the southeast corner of West 41st Street and Tenth Avenue. This additional entrance for the future station reflects an earlier design for the subway and this entrance is not included in the current plan. Therefore, the amendment would remove this required easement for the entrance from the zoning text. The amendment would also provide detail on the future entrance location in the SCD that is being provided on West 42nd Street between Tenth and Dyer avenues. This entrance location was also a subject of the 2008 text amendment that allowed space within the above-grade portion of the easement to not count as floor area in order to encourage development of active uses at this location until the subway entrance was required. This amendment would add detail regarding the easements dimensions and process for recordation – to make it similar to how other subway easements are described in the text.

Further, the amendment would revise Section 93-14 (Retail Continuity Along Designated Streets) so that subway-related uses included in the defined easements described above are exempted from the retail continuity requirements of the SHYD. Currently, buildings subject to such requirements must provide commercial uses for certain percentages of their ground floor frontages, except for a series of exempted uses that include lobbies and subway station entrances. Construction of other subway-related uses along these ground floor frontages cannot be

accommodated on sites under the current requirements. There is one site where subway-related uses are necessary and retail continuity requirements apply – the west side of Hudson Park and Boulevard at West 33rd Street. With the construction of subway infrastructure, a future private ‘overbuild’ at this location would not comply with the zoning requirements for retail continuity along this frontage. In order to avoid this unintended result, the amendment would extend the retail continuity exemption currently allowed for subway entrances to subway-related uses within the defined easements.

The amendment would also clarify that the maximum lobby and entranceway dimensions on such frontages would not apply to both subway station entrances and subway-related uses. The current text contains maximum dimensions for lobbies and “entranceways”, but is unclear whether this provision applies to subway station “entrances”. The amendment would ensure that lobbies are not inadvertently made unbuildable on these frontages due to the presence of subway infrastructure.

### **Demolition Provisions**

This portion of the amendment is intended to address community concerns that the significant growth forecasted for Hudson Yards, West Chelsea and adjacent areas, should it occur, could result in development pressure that may affect housing that has historically provided an affordable housing resource for residents.

Under the December 2009 Western Rail Yard Points of Agreement between the Administration and the City Council, the Department committed to refer this portion of the text amendment for public review on or prior to July 1, 2010.

Over the last five years, the City has made a series of changes to the zoning of the area, including the Hudson Yards rezoning (N 040500A ZRM), and the West Chelsea rezoning (N 050161A ZRM). The two rezonings together are, by far, the largest in terms of expected floor area undertaken by the City in recent history - with more than 18,000 new housing units and 26 million square feet of new commercial development expected over the long-term. The approvals of these two rezonings and their associated infrastructure projects (the No. 7 Subway Line and new streets and open spaces, including the High Line), followed by the 2009 approval of the rezoning of the Western Rail Yard Project (C 090433 ZMM), have led to concerns from local residents that the significant new development anticipated for the area will put development pressure on the remaining tenement housing stock, causing demolition and resident displacement.

The bulk of the remaining tenement buildings are located in SHYD subareas D4 and D5, SGCD Preservation Area P-2 and the SWCD. The City's rezoning of these areas as part of the Hudson Yards and West Chelsea projects envisioned that nearly all the residential buildings to which the proposed amendment would apply would remain as new, predominantly residential, medium- and high-density development occurred on other vacant or underutilized non-residential sites. More specifically, the regulations of SHYD Subareas D4 and D5 were intended to extend the predominantly-residential character on 9th Avenue to the midblocks to the west – which currently contain a mix of residential, low-scale industrial, commercial uses, vacant lots and the Lincoln Tunnel approaches. To accomplish this, the area was rezoned from a manufacturing district to a medium-density residential area with a commercial overlay. Likewise, the SGCD's

Preservation Area P-2 was rezoned from M1-6 to C6-4M in order to encourage the redevelopment of underused sites by allowing new residential or community facility buildings, in addition to already-permitted commercial and manufacturing uses. The entirety of the West Chelsea area was rezoned from a group of predominantly low- to medium-density manufacturing districts to a series of medium- to high-density commercial districts, while retaining some manufacturing districts, in order to encourage and guide the development of the area as a dynamic mixed-use neighborhood that includes new residential construction.

The amendment would restrict issuance of demolition permits for pre-1974 residential buildings with three or more units, unless certain conditions are met, in SHYD subareas D4 and D5, SGCD Preservation Area P-2 and the SWCD. The conditions - similar to those in the SCD's Perimeter Area - would provide an extra level of scrutiny to ensure that any demolition of these area's affected residential buildings could only occur when rehabilitation is infeasible under any active governmentally-funded program and harassment of tenants has not occurred or has been rectified.

Specifically, the amendment would restrict issuance of a permit for the demolition of multiple-dwellings - or alterations that would decrease residential floor area by more than 20 percent - located in the four areas, unless:

- The building is deemed to be unsafe and demolition is required pursuant to the City's Administrative Code, or

- The Commissioner of the Department of Housing Preservation and Development (HPD) certifies compliance with the anti-harassment provisions of Section 93-90 (Harassment), and that either:

- the building will be preserved but an alteration requiring demolition of a limited amount of floor area is required, or
- the building will not be preserved but HPD has determined that rehabilitation is not feasible under an active government program.

The following would be exempted from these provisions: city-owned buildings; buildings that take part in certain HPD programs and have received exemption from the agency; buildings constructed after January 1, 1974 (except for interim multiple dwellings pursuant to Article 7C of the Multiple Dwelling Law); or, buildings used as hotels, clubhouses, dormitories or institutional residences. Based on the existing administrative record, the Department expects 102 lots with buildings would be subject to the requirements of the text amendment.

In addition, the amendment would update references in the SCD regulations to Administrative Code provisions governing the demolition of buildings.

The amendment would be unlikely to result in an increase or reduction in the amount of future development previously projected in the Hudson Yards, Garment Center and West Chelsea areas under their respective rezonings. However, in the event that, as a consequence of the significant

level of development forecasted in the SHYD, SGCD and SWCD areas – unprecedented in its scale in the City – increased development pressure on the area’s existing pre-1974 residential buildings with three or more units does arise, the amendment would operate in a manner similar to the way comparable provisions have been applied in the SCD’s Perimeter Area and provide an additional level of review to ensure that any demolition of the area’s affected buildings only occurs when rehabilitation is infeasible and harassment of tenants has not occurred or been rectified.

### **ENVIRONMENTAL REVIEW**

The application (N 100424 ZRM) 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 10DCP045M. The lead is the City Planning Commission.

A Notice of Minor Modification was issued on June 7, 2010, which determined that the text changes set forth in the application would not result in any new or additional significant adverse impact not already set forth in the Final Generic Environmental Impact Statement for Hudson Yards and the Final Environmental Impact Statement for West Chelsea.

### **PUBLIC REVIEW**

On June 7, 2010, this application (N 100424 ZRM) was duly referred to Community Board 4 and the Borough President for information and review in accordance with the procedures for non-ULURP matters.

### **Community Board Review**

Community Board 4 held a public hearing on the application on March 3, 2010, and on that date, unanimously voted to adopt a resolution to approve the application, subject to the following conditions:

#### *Transit Provisions*

- “Review No. 7 line maps to ensure no disparity in easement locations;
- Impose a time limit on commercial use of transit easement excluded floor area
  - Require that private use of exempt floor area be subject to a specific time limit and then be limited to community facility use;
- Transit facilities – design and context
  - Require public art and façade treatments on street frontages
  - Require street tree planting
  - Coordinate between DCP, DOB, DOT, and ConEd about vault placement
  - Create a design which contributes to the future public park for the currently proposed blank wall at West 33rd Street; and
- Eliminate the transit easement on the SE corner of 10th Avenue and West 41st Street as long as it has no impact on the creation of the future No. 7 41st Street subway stop”

### *Demolition Provisions*

- “DCP report eligible properties via Block and Lot designations to HPD and DCP
- DOB flags its BIS system by block and lot to ensure compliance with Section 93-90”

### **Borough President Review**

This application was considered by the Borough President, who issued a recommendation in support of the application on July 9, 2010.

### **City Planning Commission Public Hearing**

On July 28, 2010 (Calendar No. 9), the City Planning Commission scheduled August 11, 2010 for a public hearing on this application (N 100424 ZRM). The hearing was duly held on August 11, 2010 (Calendar No. 20). There was one speaker in favor of the application and none in opposition.

A representative from the Manhattan Borough President’s office spoke in favor of the application.

There were no other speakers and the hearing was closed.

### **CONSIDERATION**

The Commission believes that the zoning text amendment (N 100424 ZRM), as modified herein, is appropriate. The Commission notes that the transit and demolition provisions, while affecting areas in the same zoning districts, are unrelated and therefore will consider them separately.

### *Transit Provisions*

The Commission notes that the construction of the No. 7 subway extension – a critical feature of the Hudson Yards project and a major City initiative – involves the development of a number of above-grade support facilities. Further, the Commission notes that the 2005 Hudson Yards Development Program recognized that these facilities would be co-located with commercial and residential floor area on some of the major development sites in the area – and that this was a key feature of the proposed transit-oriented development. The Commission understands that for the subway to achieve its scheduled opening in December 2013, agreements between the various property owners, the City and the MTA with regard to the co-location of the MTA facilities on the affected sites, must be successfully concluded and that the amendment facilitates these agreements in several respects.

The Commission believes that treating the floor space within the above-grade transit facilities as exempt from floor area calculations – and thus not affecting the development capacity of the sites – is appropriate. The Commission notes that this was recognized in the 2005 Hudson Yards FGEIS which analyzed the affected sites on the basis that they would utilize all their available floor area under the rezoning for commercial and residential use. The Commission further notes that the existing provisions of Section 93-65 (Transit Easements) recognized that subway

entrances located in buildings would not count toward zoning floor area; however, this same concept was not clearly applied toward the transit facilities themselves.

The Commission believes that an approval which would limit the applicability of this floor area exemption to the specific volumes where the facilities are being constructed is appropriate. The Commission, however, notes that the agreements between the MTA and affected property owners governing such facilities can take other forms besides easement volumes, such as fee dispositions. The Commission therefore modifies the text to refer to both easements “or other agreements” herein. The Commission further notes that the dimensions in the referred text described the location of the third transit facility at the corner of West 41<sup>st</sup> Street and Dyer Avenue did not take into account an existing outparcel which encompasses the sidewalk and part of the roadway. In order to accurately describe the site’s location, the Commission modifies the text herein to instead reference tax lot 2 on block 1051 as existing upon the date of the text’s enactment, which encompasses the entirety of the transit facility’s location.

The Commission believes the modifications to Section 93-14 (Retail Continuity Along Designated Streets) to accommodate subway-related uses on the applicable frontages are appropriate. The Commission notes that the current text requires buildings at defined locations to provide commercial uses for certain percentages of their ground floor frontages, except for a series of exempted uses that include lobbies and subway station entrances. The Commission further notes that other subway-related uses along these ground floor frontages would effectively not be permitted, in so far as future private ‘overbuild’ development on sites with the transit facilities could not comply with the zoning requirements. The Commission believes that

expanding the retail continuity exemption allowed for subway entrances to subway-related uses within the defined locations would avoid this unintended result. The Commission also believes the clarification to the maximum lobby and entranceway dimensions on such frontages for the purpose of ensuring that lobbies are not inadvertently made unbuildable on these frontages due to the presence of subway infrastructure is appropriate.

With regard to Community Board 4's request for a design review process for the transit facilities, the Commission notes that the facilities are being constructed by the MTA, a state authority, and that their design and construction is not subject to zoning. In addition, the facilities are being constructed on an expedited timetable and the facilities' designs are expected to be completed before this text amendment process has ended. The Commission, however, notes that the MTA has shared its designs with the Community Board and the Department and has been responsive to comments and concerns. The Commission believes these informal processes should continue.

The Commission shares the Community Board's view that street trees should be planted around the MTA facilities to improve the pedestrian's experience along their facades. The Commission understands that the planting of street trees will not be undertaken by the MTA as part of their construction, but is pleased that the Department of Parks and Recreation is studying these locations for street trees as part of the City's "MillionTreesNYC" initiative.

The Commission believes the changes to the provisions governing the future 10<sup>th</sup> Avenue subway station entrances are appropriate. The Commission notes that the current text in the SHYD references a location for an additional entrance to the future station at the southeast

corner of West 41<sup>st</sup> Street and 10<sup>th</sup> Avenue and that this entrance reflects an earlier design for the subway and is not included in the current plan - where the entrance is provided on West 42<sup>nd</sup> Street between 10<sup>th</sup> and Dyer avenues. The Commission understands that removing the additional entrance easement on West 41<sup>st</sup> Street would not impact the construction of a future station at this location. Therefore, the Commission believes that removing this additional easement is appropriate. The Commission also believes the further detail regarding the West 42<sup>nd</sup> Street entrance's actual dimensions and process for recordation is appropriate as it will confirm the final location of the entrance and ensure it is treated in a fashion similar to the other subway facilities in these districts.

The Commission understands Community Board 4's concerns regarding the future use of space constructed and reserved for transit entrances in the event, however unlikely, that the MTA decides they no longer need such space. This concern relates to both the West 42<sup>nd</sup> Street entrance to the future 10<sup>th</sup> Avenue subway station, as well as a future entrance to the 8<sup>th</sup> Avenue subway at West 40<sup>th</sup> Street. The current text allows the entrance areas to be occupied by floor area pending their eventual use for the No. 7 line, but does not include provisions to address the status of the space in the event that the MTA extinguishes the easements. Under this scenario, the continued use of the easement areas could result in the buildings in which they are located being overbuilt under zoning. The Commission believes that the text should be modified to address this situation, should it occur. However, the Commission notes that such an additional change to the text is appropriately addressed through a future text amendment and is pleased that the Department will work with Community Board 4 to create a future amendment proposal.

Finally, the Commission modifies the text to include a series of other technical clarifications and corrections to ensure the intent is clear to the reader.

### *Demolition Provisions*

The Commission recognizes that the amendment is intended to address community concerns that the significant growth forecasted for Hudson Yards, West Chelsea, and adjacent areas - should it occur - could result in development pressure that may affect housing that has historically provided an affordable housing resource for residents.

The Commission understands the amendment is intended to address these concerns by restricting issuance of demolition permits for pre-1974 residential buildings with three or more units, unless certain conditions are met, in SHYD subareas D4 and D5, SGCD Preservation Area P-2 and the SWCD – where the bulk of the overall area’s pre-1974 residential buildings with three or more units are located. The Commission notes that the conditions which must be met are similar to those in the SCD’s Perimeter Area and would provide that any demolition of these areas’ affected buildings could only occur when rehabilitation is infeasible and harassment of tenants has not occurred or has been rectified.

The Commission notes that City’s long-term vision for the areas where the provisions would apply envisions the great majority of the affected buildings remaining as new predominantly-residential medium- and high-density development occurs on other vacant or under-utilized non-residential sites. The Commission further notes that, based on the existing administrative record, the applicability of the provision is limited to 102 lots with residential buildings, and that the

environmental analysis for the amendment found that it would be unlikely to result in an increase or reduction in the amount of future development previously projected in the Hudson Yards, Garment Center and West Chelsea areas under their respective rezonings.

The Commission nevertheless understands that the 2005 Hudson Yards and West Chelsea rezonings taken together are, by far, the largest in terms of expected floor area undertaken by the City in recent history – with more than 18,000 new housing units and 26 million square feet of new commercial development expected over the long term. The Commission therefore believes that in the event increased development pressure on the area’s pre-1974 residential buildings with three or more units, including demolition and resident displacement, arises as a consequence of this significant level of forecasted development – unprecedented in its scale in the City - the amendment’s additional level of review is appropriate.

The Commission’s modifications to this portion of the amendment include a series of technical clarifications and corrections to ensure the intent of the text is clear to the reader.

## **RESOLUTION**

**RESOLVED**, that the City Planning Commission has determined that the action described herein will have no significant adverse 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 the 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 old, to be deleted;

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

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

## Article IX - Special Purpose Districts

### Chapter 3

#### Special Hudson Yards District

\* \* \*

#### 93-03

##### District Plan and Maps

\* \* \*

Map 5 – Transit Facilities ~~Easements and Subway Entrances~~

\* \* \*

#### 93-14

##### Ground Floor Level Requirements

The following provisions shall apply to all Subdistricts in the #Special Hudson Yards District#, except that the provisions of this Section shall not apply along the northern #street# frontage of West 35th through West 39th Streets within 100 feet of Eleventh Avenue, as shown on Map 2 (Mandatory Ground Floor Retail) in Appendix A of this Chapter. However, any #zoning lot# fronting on such #streets# and partially within 100 feet of Eleventh Avenue may, as an alternative, apply the provisions of this Section to the entire West 35th, West 36th, West 37th, West 38th or West 39th Street frontage of the #zoning lot#.

- (a) Retail continuity along designated streets in Subdistricts A, B, C, D and E

Map 2 in Appendix A of this Chapter specifies locations where the special ground floor #use# and transparency requirements of this Section apply. Such regulations shall apply along either 100 percent or 50 percent of the building's #street# frontage, as indicated on Map 2.

#Uses# located on the ground floor level or within five feet of #curb level#, and within 50 feet of the #street line# shall be limited to #commercial uses# permitted by the underlying district, but not including #uses# listed in Use Groups 6B, 6E, 7C, 7D, 8C, 8D, 9B, 10B, 11 or 12D.

A building's #street# frontage shall be allocated exclusively to such #uses#, except for lobby space, entryways or entrances to subway stations, or other subway-related #uses# as described in Section 93-65 (Transit Facilities). In no event shall the length of #street# frontage (exclusive of any portion of such #street# frontage allocated to entrances to subway stations and other subway-related #uses#) occupied by lobby space or entryways exceed, in total, 40 feet or 25 percent of the building's total #street# frontage, whichever is less, except that the width of a lobby need not be less than 20 feet.

For any new #development# or #enlargement# on such designated #streets#, glazing shall be provided in accordance with the provisions set forth in paragraph (c) of this Section.

\* \* \*

### 93-65 Transit Facilities

(a) Any #development# or #enlargement# on a #zoning lot# that includes the ~~locations listed below southwest corner of West 40<sup>th</sup> Street and Eighth Avenue~~ shall provide an easement for ~~subway-related #use# and~~ public access to the subway mezzanine or station as illustrated on Map 5 (Transit Facilities) in Appendix A of this Chapter. The easement shall accommodate a relocated subway entrance from the adjoining sidewalk to a location within the #development# or #enlargement#.

~~(a) The area bounded by Tenth Avenue, West 41st Street, a line 190 feet east of and parallel to Tenth Avenue, and a line 55 feet south of and parallel to West 41st Street. The entrance shall be accessed from Tenth Avenue.~~

~~(b) For any #development# or #enlargement# on a #zoning lot# that includes the southwest corner of West 40th Street and Eighth Avenue, the transit easement shall accommodate a relocated subway entrance from the adjoining sidewalk to a location within the #development# or #enlargement#.~~

~~These locations are illustrated on Map 5 (Transit Easements and Subway Entrances) in Appendix A of this Chapter.~~

The Chairperson of the City Planning Commission shall certify that a plan has been submitted indicating the volume of the easement necessary for future construction of a subway entrance. Such plan shall be developed in consultation with and the approval of the Transit Authority. The Chairperson may alternately certify that a plan has been submitted whereby the applicant agrees to provide the required easement, at the applicant's expense, within two years of request by the Transit Authority or by its designee.

An instrument establishing such transit easement, or agreement to provide one within two years of request by the Transit Authority, once certified, shall be filed and duly recorded in the Borough Office of the City Register of the City of New York, indexed against the property in the form of a legal instrument providing notice of such certification. Such filing and recording of the instrument shall be a precondition for the filing for or issuance of any building permit for any #development# or #enlargement# on the #zoning lot#. The recording information shall be included on the certificate of occupancy for any #building#, or portion thereof, on the #zoning lot# issued after the recording date.

Floor space within ~~such any required~~ transit easement shall be excluded from the definition of #floor area#, and may be temporarily used by the owner of the #zoning lot# for any permitted #uses# until such time as required by the Transit Authority or by its designee for subway purposes. Improvements or construction of a temporary nature within the easement volume for such temporary #uses# shall be removed by the owner of the #zoning lot# prior to the time at which public #use# of the easement area is required. A minimum notice of six months in writing shall be given by the Transit Authority to the owner of the #zoning lot# in order to vacate the tenants of such temporary #uses#.

(b) For the locations listed in this paragraph (b), floor space devoted to subway-related #uses# consisting of ventilation facilities and other facilities or services used or required in connection with the operation of a subway line or station, which are established pursuant to easement or other agreement, shall be excluded from the definition of #floor area#:

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- (1) The volume bounded by Eleventh Avenue, a line 52 feet north of and parallel to West 33rd Street, the western boundary of the #public park#, and West 33rd Street, up to a height of 82 feet, as illustrated on Map 5.
  - (2) The volume bounded by Eleventh Avenue, West 36th Street, a line 95 feet east of and parallel to Eleventh Avenue, and a line 95 feet south of and parallel to West 36th Street, up to a height of 129 feet, as illustrated on Map 5.
  - (3) The tax lot located at Block 1051, Lot 2, existing on DATE OF ENACTMENT, up to a height of 73 feet, as illustrated on the District Map in Appendix A of the #Special Clinton District#.
  - (4) The volume bounded by a line 37 feet east of and parallel to Eleventh Avenue, West 26th Street, a line 100 feet east of and parallel to Eleventh Avenue, and a line 95 feet south of and parallel to West 26th Street, up to a height of 60 feet, as illustrated on the District Map in Appendix A of the #Special West Chelsea District#

Any transit easement or other agreement for such subway-related #use# shall be filed and duly recorded in the Borough Office of the City Register of the City of New York, and indexed against the property.

\* \* \*

### **93-91** **Demolition**

The Department of Buildings shall not issue a permit for the demolition of a #multiple dwelling#, as defined in Section 93-90 (HARASSMENT), paragraph (a)(14), located within Subareas D4 or D5 in the Hell's Kitchen Subdistrict D or within Preservation Area P-2 of the #Special Garment Center District#, or an alteration permit for the partial demolition of a #multiple dwelling# located within Subareas D4 and D5 or within Preservation Area P-2 of the #Special Garment Center District#, where such partial demolition would decrease the amount of residential #floor area# in such #multiple dwelling# by 20 percent or more, unless:

(a) such #multiple dwelling# is an unsafe #building# and demolition is required pursuant to the provisions of Title 28, Chapter 2, Article 216, of the New York City Administrative Code; or

(b) the Commissioner of the Department of Housing Preservation and Development, after providing sixty days notice and opportunity to comment to the local Community Board, has certified:

(1) if such #multiple dwelling# is to be substantially preserved, that an alteration permit is required to allow the removal and replacement of 20 percent or more of the #floor area#;

(2) if such #multiple dwelling# is not to be substantially preserved, that the Department of Housing Preservation and Development has determined that the rehabilitation of such #multiple dwelling# is not feasible under any active governmentally-funded program; and

(3) that the Department of Housing Preservation and Development has issued a #certification of no harassment# pursuant to Section 93-90, paragraph (c), or has certified compliance with the cure provisions of Section 93-90, paragraph (d).

(c) the following structures shall be exempt from the provisions of this Section:

(1) any city-owned #multiple dwellings#;

(2) any #multiple dwelling# which is the subject of a program approved by the Department of Housing Preservation and Development for the provision of housing for persons of low or moderate income and has been exempted from

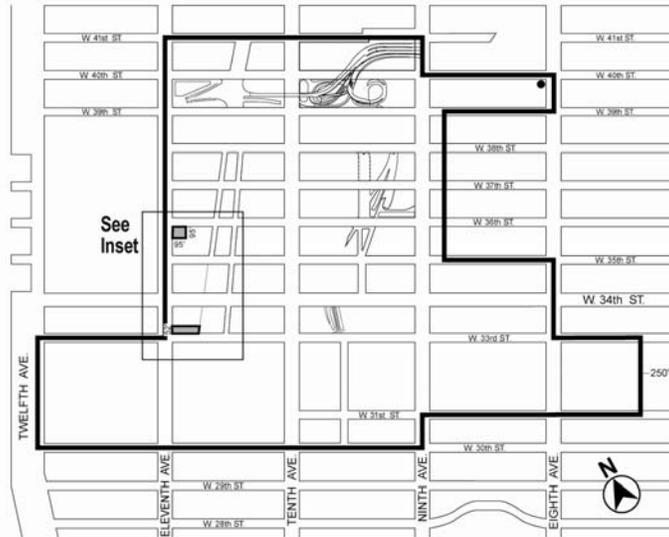
the provisions of this Section by written determination of the Department of Housing Preservation and Development;

- (3) any #multiple dwelling# initially occupied for residential purposes after January 1, 1974, except for #buildings# which are or have been interim #multiple dwellings#, pursuant to Article 7C of the Multiple Dwelling Law;
- (4) any #exempt hotel# as defined in Section 93-90;
- (5) any #multiple dwelling# in which occupancy is restricted to clubhouse or school dormitory #use# and occupancy was restricted to clubhouse or school dormitory #use# on June 21, 2004; or
- (6) any #exempt institutional residence#, as defined in Section 93-90.

\* \* \*

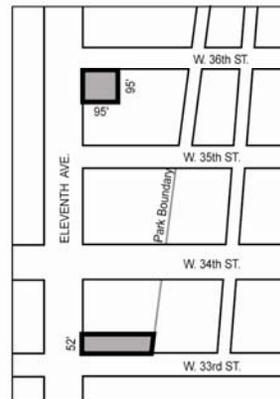
## **Appendix A**

### Map 5. Transit Facilities



-  Special Hudson Yards District
-  Subway Entrance
-  Transit Facility

**Inset**



\* \* \*

## Article IX - Special Purpose Districts

### Chapter 6 Special Clinton District

\* \* \*

#### 96-108

#### Demolition of buildings

No demolition permit or alteration permit for partial demolition involving a decrease of more than 20 percent in the amount of #residential floor area# in a #building# shall be issued by the Department of Buildings for any #building# containing #dwelling units# within the Preservation Area, unless it is an unsafe #building# and demolition is required pursuant to the provisions of Title 28, Chapter 2, Article 216, Title 26, Sub-chapter 3, Article 8 of the New York City Administrative Code.

\* \* \*

**96-21  
Special Regulations for 42<sup>nd</sup> Street Perimeter Area**

\* \* \*

(b) Floor area regulations

\* \* \*

(2) Floor area regulations in Subarea 2

In Subarea 2 of the 42nd Street Perimeter Area, as shown in Appendix A of this Chapter, the basic #floor area ratio# of any #development# or #enlargement# shall be 10.0. However, the #floor area ratio# of any #development# or #enlargement# containing #residential use# may exceed 10.0 to a maximum of 12.0 only in accordance with the provisions of Section 23-90, except that any units for which a #floor area# increase has been earned pursuant to Section 23-90 shall be within the #Special Clinton District#. For #developments# or #enlargements# that have fully utilized the Inclusionary Housing Program, the maximum permitted #floor area ratio# may be increased from 12.0 to 15.0 for new legitimate theater use in accordance with the provisions of Section 96-25 (Floor Area Bonus for New Theater Use).

Any #development# or #enlargement# on a #zoning lot# that includes the area bounded by a line 129 feet east of and parallel to Tenth Avenue, West 42nd Street, a line 184 feet east of and parallel to Tenth Avenue, and a line 50 feet south of and parallel to West 42nd Street shall provide an easement or other agreement for public access to the subway mezzanine or station, as illustrated on the District Map in Appendix A of this Chapter

An instrument establishing such transit easement or other agreement shall be filed and duly recorded in the Borough Office of the City Register of the City of New York, and indexed against the property.

Floor space within the volume governed by such transit easement or other agreement shall be excluded from the definition of #floor area#, and may be temporarily used by the owner of the #zoning lot# for any permitted #uses# until such time as required by the Transit Authority or by its designee for subway purposes. Improvements or construction of a temporary nature within the volume governed by such transit easement or other agreement for such temporary #uses# shall be removed by the owner of the #zoning lot# prior to the time at which public #use# of the volume area is required. A minimum notice of six months in

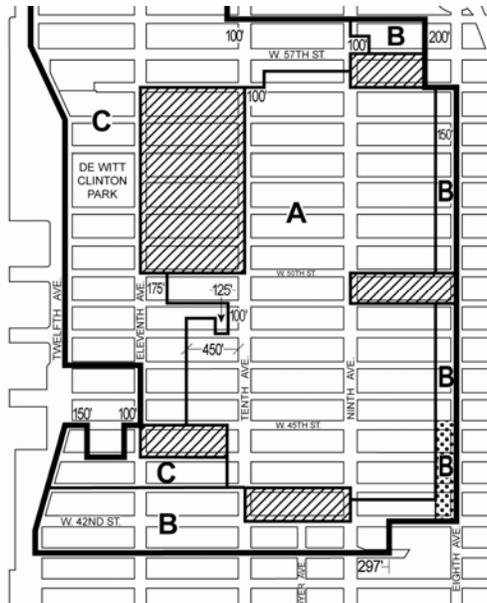
writing shall be given by the Transit Authority to the owner of the #zoning lot# in order to vacate the tenants of such temporary #uses#.

The provisions of paragraph (b) of Section 93-65 (Transit Facilities) shall apply to any subway-related #uses# consisting of ventilation facilities and other facilities or services used or required in connection with the operation of a subway line or station on the tax lot located at Block 1051, Lot 2, existing on DATE OF ENACTMENT, up to a height of 73 feet, as illustrated on the District Map in Appendix A of this Chapter.

~~Where a transit easement volume is required on a #zoning lot# in Subarea 2, such easement volume may be temporarily used by the owner of the #zoning lot# for any permitted #uses# until such time as required by the Transit Authority or by its designee for subway purposes. Any such floor spaces occupied by such transit easement volume shall not count as #floor area#. Improvements or construction of a temporary nature within the easement volume for such temporary #uses# shall be removed by the owner of the #zoning lot# prior to the time at which public #use# of the easement area is required. A minimum notice of six months in writing shall be given by the Transit Authority to the owner of the #zoning lot# to vacate the tenants of such temporary #uses#.~~

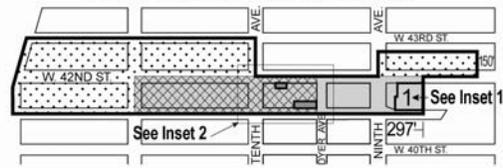
\* \* \*

**Appendix A**  
Special Clinton District Map

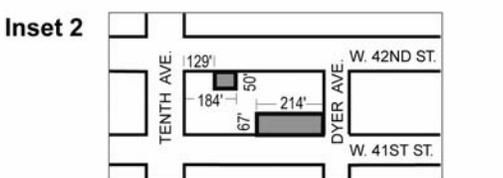


- Special Clinton District Boundary
- Area Boundary
- Preservation Area
- Perimeter Area
  - Portion of Perimeter Area B also subject to additional 42nd Street Perimeter Area regulations. (See map below)
  - Portion of Perimeter Area B also subject to Article VIII, Chapter 1 (Special Midtown District)
- Other Area
- Excluded Area

**42nd Street Perimeter Area**



- Subarea 1 of 42nd St. Perimeter Area
- Subarea 2 of 42nd St. Perimeter Area
  - Portion of Subarea 2 of 42nd St. Perimeter Area where Theater Bonus applies
  - Site 1 Where Special Parking Regulations apply
  - Transit Facility (See Inset 2)



\* \* \*

**Article IX - Special Purpose Districts**

**Chapter 8  
Special West Chelsea District**

\* \* \*

**98-23  
Special Floor Area and Lot Coverage Rules for Zoning Lots Over Which the High Line Passes**

That portion of the #zoning lot# that lies directly beneath the #High Line# shall be exempt from #lot coverage# requirements below the level of the #High Line bed#. The remaining portion of the #zoning lot# shall be considered a separate #zoning lot# for the purposes of calculating maximum #lot coverage#. Easement volumes provided in accordance with the provisions of Section 98-60 (SPECIAL ACCESS REGULATIONS FOR CERTAIN ZONING LOTS) and access structures constructed therein, as well as any structure required pursuant to Appendix D or E in relation to an increase in the basic maximum #floor area ratio# of a #zoning lot# pursuant to Section 98-25 (High Line Improvement Bonus), shall not be considered #floor area# or #lot coverage#.

\* \* \*

**98-33  
Transfer of Development Rights from the High Line Transfer Corridor**

\* \* \*

(d) Stairway easement requirement

As a condition for the transfer of #floor area#, an easement volume to facilitate pedestrian access to the #High Line# via stairway shall be provided in accordance with the provisions of Sections 98-60 (SPECIAL ACCESS REGULATIONS FOR CERTAIN ZONING LOTS) and 98-63 (Recording of the High Line Access Easement Volume).

\* \* \*

**98-60  
SPECIAL ACCESS REGULATIONS FOR CERTAIN ZONING LOTS**

\* \* \*

**98-65  
Transit Facilities**

The provisions of paragraph (b) of Section 93-65 (Transit Facilities) shall apply to any subway-related #use# on a #zoning lot# that includes the volume bounded by a line 37 feet east of and parallel to Eleventh Avenue, West 26th Street, a line 100 feet east of and parallel to Eleventh Avenue, and a line 95 feet south of and parallel to West 26th Street, up to a height of 60 feet, as illustrated on the District Map in Appendix A of this Chapter.

\* \* \*

**98-70**

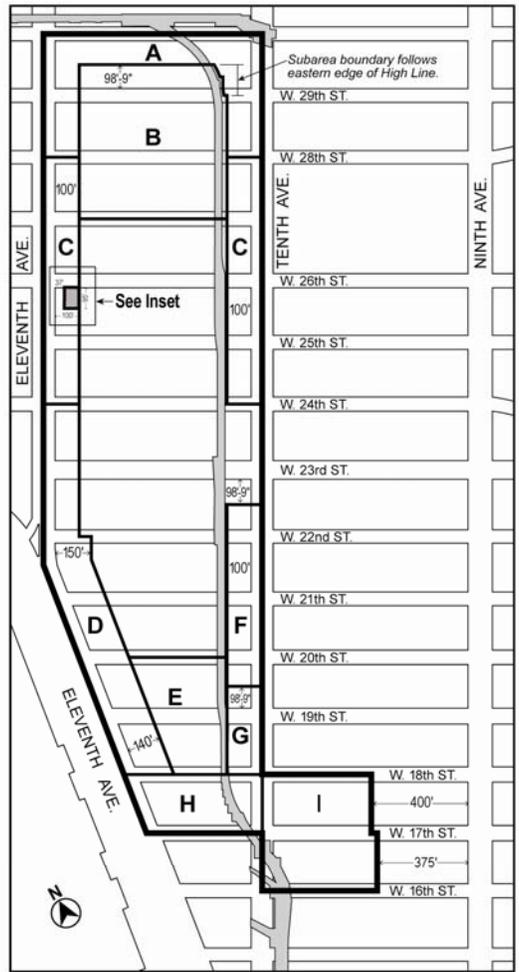
**Supplemental Regulations**

- (a) In the #Special West Chelsea District#, the provisions of paragraphs (a) through (d), inclusive, of Section 93-90 (HARASSMENT) shall apply as modified in this Section.
- (b) In the #Special West Chelsea District#, the provisions of Section 93-91 (Demolition) shall apply.

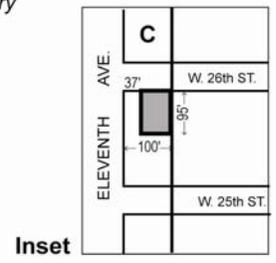
For the purposes of this Section, the following definitions in Section 93-90 shall be modified:

\* \* \*

**Appendix A**  
**Special West Chelsea District and Subareas**



- Special West Chelsea District boundary
- Subarea boundary
- High Line
- Transit Facility



\* \* \*

**Article XII - Special Purpose Districts**

**Chapter 1**

**Special Garment Center District**

\* \* \*

**121-50**

**Supplemental Regulations in Preservation Area P-2**

In Preservation Area P-2, the provisions of Section 93-90 (HARASSMENT) and Section 93-91 (Demolition), inclusive, shall apply.

\* \* \*

The above resolution (N 100424 ZRM), duly adopted by the City Planning Commission on May September 29, 2010 (Calendar No. 3), 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**  
**KENNETH J. KNUCKLES, Esq., Vice Chairman**  
**ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,**  
**ALFRED C. CERULLO, III, BETTY Y. CHEN,**  
**MARIA M. DEL TORO, NATHAN LEVENTHAL,**  
**ANNA HAYES LEVIN, KAREN A. PHILLIPS, Commissioners**



CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

330 West 42<sup>nd</sup> Street, 26<sup>th</sup> floor New York, NY 10036  
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www.nyc.gov/mcb4

**JOHN WEIS**  
Chair

**ROBERT J. BENFATTO, JR., ESQ.**  
District Manager

July 21, 2010

Amanda M. Burden, AICP  
Chair  
City Planning Commission  
22 Reade Street  
New York, NY 10007  
Dear Chair Burden:

**Re: Special Hudson Yards District  
Special Garment Center District  
Special West Chelsea District  
Follow Up Corrective Actions  
Text Amendments  
Transit Volume Easements and Demolition Restrictions  
ULURP No. N100424ZRM**

Dear Chair Burden:

Manhattan Community Board 4 (CB4) welcomes the opportunity to comment on the above referenced proposed Text Amendments to the New York City Zoning Resolution. At its full Board meeting on July 21, 2010, CB4 voted unanimously in favor of the proposed text amendment subject to the conditions listed below.

The proposed text amendments modify the sections of the Special Hudson Yards (SHYD), Special West Chelsea (SWCD), and Special Garment Center (SGCD) District Zoning Resolutions to:

- 1) facilitate construction of above-grade infrastructure related to the #7 Subway Line extension; and
- 2) restrict demolition of sound residential housing in the SHYD, SGCD and SWCD similar to the requirements currently in effect for the Preservation Area of the Special Clinton (SCD).

**# 7 Subway Line Transit Volume Easements**

This proposed follow-up text amendment seeks to clarify provisions of the original text amendment and proposes changes, including that the subway easements will now be transit volume easements. As it is currently written, the Zoning Resolution only excludes the floor area of subway entrances and *not the transit facilities themselves*, from overall

floor area. Furthermore, it requires retail continuity along street frontages. The provisions of this text amendment will allow these easements to be fully integrated into the built environment. These modifications will facilitate construction of necessary above-grade transit-related uses by:

- 1) expanding ZR Section 93-65 to permit that floor area used not just for subway entrances, but for all transit facilities be excluded from the overall calculation of development floor area, and;
- 2) eliminating the retail continuity requirement of ZR Section 93-14 as it pertains to these transit-related uses.

The proposed amendment modifies the transit easement text in relation to the easements at:

- West 41<sup>st</sup> Street and Dyer Avenue
- West 33rd Street and Eleventh Avenue
- West 36<sup>th</sup> Street and Eleventh Avenue
- West 26<sup>th</sup> Street and Eleventh Avenue.

At the June 2010 meeting of CB4's Hell's Kitchen/Clinton Land Use (C/HKLU) Committee, a representative of the Department of City Planning (DCP) made a clear and thoughtful presentation illustrating the need to amend the Zoning Resolution to facilitate additional transit-related uses. CB4 supports and agrees with those modifications, but the Board requests that the following specific adjustments be made:

- **Time Limit on Commercial Use of Transit Easement Excluded Floor Area**  
ZR Section 93-65(a) permits the owner of the development to utilize the transit easement excluded floor area for commercial use until such time as it is needed for transit-related uses. These transit easements are not subject to inclusion as floor area, since a public benefit, namely an easement for public transit, is being provided. However, if no such easement is ever used by the Metropolitan Transportation Authority (MTA), what happens with that space? Post-completion of the # 7 subway line, CB4 requests that commercial use of excluded floor area be subject to a specific time limit. After that time limit passes and the MTA has certified that it will not make use of the excluded floor area *that floor area should continue to provide a public benefit*. Excluded floor area intended for public benefit, once that specific public benefit is no longer needed, should not benefit a private developer. After that time limited period, CB4 requests that the space be reserved for community facility use, rented to a not for profit, at a below market rental rates.
- **Transit Facilities—Design and Context**  
Transit-related uses are often large and unwelcoming in appearance. CB4 understands that transit relates uses such as driveways, ventilation systems, and

substations prohibit full retail continuity and supports clarifications to the easements as they both bring predictability and assure integration with the surrounding environment. While CB4 supports this exemption from retail continuity requirements, sites with above grade transit uses must include:

- **Public Art, Façade and Contextual Design**
  - Without measures in place to regulate appearance, street frontages may be left blank or become hostile spaces. CB4 requests that street level frontages be required to include public art and façade treatments that are subject to review by both DCP and CB4.
  - For the currently proposed blank wall at West 33<sup>rd</sup> Street/West 34<sup>th</sup> Street on the west side of the planned Hudson Boulevard, CB4 requests a façade design that will contribute to the future adjacent public park.
- **Street Tree Planting**
  - CB4 requests that the street tree planting requirements of ZR Sections 93-62 be incorporated into the amendment.
  - Past experience has shown that sidewalk vaults can create a significant obstacle to street tree planting. CB4 requests that DCP coordinate with DOB, ConEd, and DOT on vault placement so that street tree planting ability is maximized.
- **#7 Subway Line Stop at 41<sup>st</sup> Street**

Finally, CB4 continues to support a # 7 line stop at West 42<sup>nd</sup> Street and 10<sup>th</sup> Avenue. The easement affecting this location is currently mapped on the NW corner of West 41<sup>st</sup> Street and Dyer Avenue. CB4 supports eliminating the existing easement at the SE corner of 10<sup>th</sup> Avenue and West 41<sup>st</sup> Street as long as it has no impact on the creation of the future #7 41<sup>st</sup> Street subway stop. We look forward to seeing updated maps from DOB depicting placement of this and each of the easements affected by this amendment.

### **Demolition Restrictions**

The need for the proposed text amendment of ZR Section 93-90 restricting the demolition of sound residential housing in certain areas of the SWCD, SGCD, and SHYD, originated in 2004 during the public review of the Hudson Yards rezoning. The Board raised concerns, given then proposed dramatic upzoning of the Hell's Kitchen/Hudson Yards area, the development pressure on the existing structure, predominately tenements, and long term community residents who occupy them would be severe. The Board sought enhanced protection for those building and their residents. Although agreement was reached in December 2004 with the Mayor and the Council, the implantation of these protections was long delayed.

Now, with language of that text amendment agreed on and certified for public review, CB4 is pleased to offer its full support of this important text amendment. ensure the preservation of approximately 1291 units of housing in 86 buildings in Hudson Yards and approximately 250 units of housing in 22 buildings in West Chelsea.

The proposed text amendment prevents demolition of multiple dwellings, (those residential buildings with 3 or more dwelling units), unless the Commissioner of the NYC Department of Housing Preservation and Development (HPD) certifies that following conditions are met:

- If substantially preserved, an alteration permit is required to allow the removal and replacement of 20% or more of the floor area;
- If demolition is proposed, HPD must determine that rehabilitation is not feasible under existing housing rehabilitation programs; and
- HPD must issue a Certification of No Harassment or certified compliance with the Harassment Cure provisions of Section 93-90(d).

CB4 focus on review of this amendment is twofold:

- accurate identification of eligible multiple dwellings in the SHYD, SGCD and SWCD.
- Implementation of an enforcement mechanism at the Department of Buildings, to accurately identify these buildings as subject to this new zoning provision.

Therefore, CB 4 has compiled a complete list of eligible buildings by block and lot with accompanying maps (see attached). Furthermore, ***the respective block and lots must be flagged in the DOB Building Information System (BIS) to trigger the requirement for certification by the Commissioner of HPD prior to issuance of a demolition permit.***

Therefore, Manhattan Community Board 4 voted unanimously to approve the proposed Text Amendment, ULURP No. N100424 ZRM, subject to the following conditions:

### **Transit Easements**

- Review No. 7 line maps to ensure no disparity in easement locations;
- Impose a time limit on commercial use of transit easement excluded floor area
  - Require that private use of exempt floor area be subject to a specific time limit and then be limited to community facility use;
- Transit facilities – design and context
  - Require public art and façade treatments on street frontages
  - Require street tree planting
  - Coordinate between DCP, DOB, DOT, and ConEd about vault placement
  - Create a design which contributes to the future public park for the currently proposed blank wall at West 33rd Street; and

- Eliminate the transit easement on the SE corner of 10<sup>th</sup> Avenue and West 41<sup>st</sup> Street as long as it has no impact on the creation of the future #7 41<sup>st</sup> Street subway stop

**Demolition Restriction**

- DCP report eligible properties via Block and Lot designations to HPD and DCP
- DOB flags its BIS system by block and lot to ensure compliance with section 93-90

Thank you for the opportunity to submit comments on these proposed Zoning Text Amendments. We look forward to their successful implementation.

Sincerely,



John Weis, Chair  
Manhattan Community Board 4



Elisa Gerontianos, Co-Chair  
Clinton/Hell's Kitchen Land Use Committee



Sarah Desmond, Co-Chair  
Clinton/Hell's Kitchen Land Use Committee

cc: NYC Council Speaker Christine Quinn  
NYS Senator Thomas K. Duane  
NYS Assemblyman Richard Gottfried  
Congressman Jerrold Nadler  
NYC Council Member Gale Brewer  
Manhattan Borough President Scott Stringer  
Department of City Planning – David Karnovsky, Edith Hsu-Chen, Frank Ruchala



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

**SCOTT M. STRINGER**  
BOROUGH PRESIDENT

July 9, 2010

Amanda M. Burden, FAICP  
Chair  
City Planning Commission  
22 Reade Street  
New York, NY 10007

**Re: Hudson Yards/West Chelsea Follow-up Text Amendment (N 100424 ZRM)**

Dear Chair Burden:

Thank you for providing the opportunity to comment on the application submitted by the Department of City Planning (“the Department”) for a text amendment to the Special Hudson Yards District (“SHYD”), the Special Garment Center District (“SGCD”) and the Special West Chelsea District (“SCWD”). This amendment has two purposes: to facilitate the construction of the transit stations and infrastructure for the access and operation of the No. 7 line extension; and to respond to community concerns about development pressures on the area’s older housing stock.

The Department’s proposed amendment resolves ambiguity surrounding the regulations of street-level infrastructure for the No. 7 line extension. The amendment clarifies that above-grade No. 7 line transit facilities, which will be used for above-grade ventilation facilities and utilities, will not be considered as zoning floor area. These subway facilities will be located on the northeast corners of Eleventh Avenue and West 26<sup>th</sup>, West 33<sup>rd</sup> and West 36<sup>th</sup> streets as well as the northwest corner of West 41<sup>st</sup> Street and Dyer Avenue. In addition, the amendment prescribes the maximum volumes for these facilities.

The proposed text also resolves ambiguity surrounding entrances for subway stations that are not included in the existing No. 7 line construction plans. Specifically, the text defines the maximum volume of a potential station entrance at West 42<sup>nd</sup> Street between Tenth and Dyer avenues. The text amendment would allow for the consideration of the new station at this site in the future. While the text retains the potential for a new subway station, another potential station entrance at the southeast corner of West 41<sup>st</sup> Street and



**Amanda M. Burden, FAICP**

**July 9, 2010**

**Page 2 of 2**

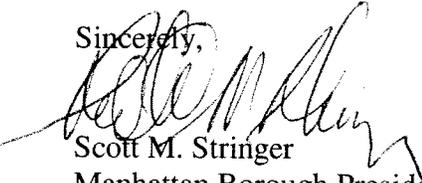
Tenth Avenue is no longer necessary. This amendment would remove the easements for this station entrance from the text.

Additionally, the proposal clarifies that the SHYD retail continuity requirements do not apply to subway-related uses within the transit easements. The retail continuity requirements currently affect a proposed transit facility site between Eleventh Avenue and the Hudson Park Boulevard between West 34<sup>th</sup> Street and West 33<sup>rd</sup> Street. Without this clarification, the above-ground transit facilities would be non-complying and therefore not permitted. While it is necessary to remove the retail continuity requirement, the goals of the requirement, to provide a vibrant street life, should be upheld. The MTA should continue to work with the Department and the local community on the design of the transit infrastructure to ensure a vibrant and interesting streetscape.

Further, the proposed text amendment creates a heightened level of scrutiny and review prior to the demolition of pre-1974 residential buildings within SHYD subareas D4 and D5, SGCD Preservation Area P-2, and the SWCD. Taken together, these changes reinforce the original intent of the regulations in these special districts and respond directly to community concerns about the protection of historically affordable housing.

These clarifications are necessary to allow the construction of the No. 7 line extension and the surrounding development to move forward. The proposed text amendment addresses long-standing community concerns related to demolition of the existing historic buildings. I thank the Department for developing the provisions in this text amendment and for following through on the City's Western Rail Yard commitments.

Sincerely,



Scott M. Stringer

Manhattan Borough President