CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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District Manager

December 6, 2010

Director Amanda M. Burden
Department of City Planning
22 Reade Street
New York, New York 10007

Re: N 110090 ZRY – Key Terms Clarification Text Amendment

Dear Director Burden:

At the recommendation of its Chelsea Preservation and Planning Committee, Manhattan Community Board No. 4 recommends approval of the Key Terms Clarification Text Amendment, N 110090 ZRY, subject to our comments below.

The core of the proposed amendment is formed by new definitions for "Building" and "Development," their impacts distributed throughout the Zoning Resolution, and various miscellaneous changes that have been waiting patiently for a vehicle for their implementation. We applaud the Department of City Planning for their efforts and are in general agreement with the changes to the Zoning Resolution. We note, however, that the number and scope of the changes make a comprehensive review impossible for us. Accordingly, we have focused on the changes we believe will have the greatest impact on Community District 4 and offer the following comments, recommendations and reservations.

I. "Building" and Exemptions

The Zoning Resolution currently defines a "Building" as being bounded by either open area or a zoning lot line. As a result, what in common experience would be considered multiple, independent, abutting buildings on a single zoning lot are treated as a single building. The proposed amendment changes the definition of a "Building" to be bounded by open area or a fire wall, whereby abutting buildings on a single zoning lot would be considered to be independent buildings. This change affects multiple aspects of building form, including the height of sliver buildings, the size of dormers, and recesses and street wall continuity, as well as the location of residential uses in buildings abutting buildings with commercial uses on higher floors.

We believe that this change confirms the definition of a building to common experience and is appropriate. Our one concern is that some old row houses may have demising walls that are not fire walls as proposed to be defined. The proposed solution for cases where a demising wall may not be a fire wall is a cumbersome process involving the Commissioner of the Department of Buildings. In order to make such recourse as infrequent as possible we suggest adding the tax lot line as an additional determinant of a building's boundary.

Recognizing that this change may create unfair situations for some owners, the amendment proposes exemptions for building permits issued before the effective date of the Amendment, and for buildings that are damaged or destroyed. In each case abutting buildings on a single zoning lot could be treated as a single building for the purpose of determining what could be built or rebuilt, thus reverting to the current definition of a building.

We agree that buildings for which a building permit has been issued before the effective date of the amendment should be exempt from the changed definition. This would be fair to owners who planned and proceeded under the existing definition and should apply only to a limited number of buildings and for a limited period of time.

The case for damaged or destroyed buildings is more difficult and is likely to apply to a greater number of buildings and to last substantially longer. The principal issue is whether when a damaged or destroyed building that does not comply with the existing zoning is rebuilt, should it be constrained by existing zoning or should it be permitted to be rebuilt to its former, non-complying form. In effect, such an exemption is a variance from zoning. In principal we believe that responsible zoning developed with community participation should guide development, and that variances should be rare and should only permit minor deviations from the underlying zoning. We recognize that the proposed change in definition could have an adverse impact on the value of a building or lot, but we believe this is offset by the wider benefits conferred by complying with the zoning. We recommend that the exemption for destroyed buildings be eliminated, and that the exemption for a building damaged to the extent that its pre-existing, non-conforming FAR is significantly reduced also be eliminated

II. Residential Buildings and Uses

The proposed amendment makes two troubling changes to definitions that apply to residences or residential buildings. While we appreciate the intent of the changes and the clarity they may bring to the Zoning Resolution, we are concerned that there may be significant consequences, perhaps unintended, that erode the special protections afforded residences, residential buildings and residential districts that will adversely affect many CD4 residents.

Residence, or residential (9/9/04) (Current)

A "residence" is a #building# or part of a #building# containing #dwelling units# or #rooming units#, including one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#.

Residential building (Proposed)

A "residential building" is a #building# used only for a #residential use#.

Mixed building (Proposed)

A "mixed building" is a #building# in a #Commercial District# used partly for #residential use# and partly for #community facility# or #commercial use#.

- **Non-Residential Uses in Residential Districts**

CD4's housing stock is different from small scale, purely residential areas found elsewhere in the city. Although we have small areas of townhouses that would not be affected by this change, many of our residences are found in buildings that would be transformed from residential buildings in residential districts to something else, perhaps undefined, by these new definitions. For example, many residential buildings have ground floor health-related or community facilities. Under the new definition, such buildings would not be residential buildings, nor would they be mixed buildings.

The Department of City Planning believes they have successfully differentiated between a "wholly residential" building and a building that is at least partially residential – a #building# containing #residences# - on a case-by-case basis throughout the Zoning Resolution. While we respect DCP's expertise and appreciate the work that was required to write the amendment, we believe that calling a twenty two story building, located in a Residential District, with nearly 200 residential units and a single doctor office on the ground floor anything other than a "Residential building" is nonsensical and is more likely to cause problems in the long run than to solve them.

We suggest that the definition of a "Residential building" proposed by DCP be expanded to include a building in a "Residential District" used only for "residential use" and such other "uses" permitted in a "Residential District." Since community facilities can be large, it may be desirable to include a maximum percentage of floor area for non-residential use. We ask DCP to reconsider the consequences of these new definitions as they pertain to CD4 and similar areas of the city, and specifically to consider our suggested alternative.

- **Residential Uses in Non-Residential Districts**

Much of CD4's housing stock is located in commercial zones, either in commercial overlays on the avenues, or, increasingly, in purely commercial districts created during recent rezonings. Under the proposed amendment, these buildings would become "Mixed buildings." We have written before about problems caused by using commercial

zoning to create residential districts, including permitting the location of public parking garages in predominantly residential areas. Again, we appreciate the competing forces at work and do not have an ideal solution.

Another, potentially acute, problem for functionally residential buildings in commercial districts is the loss of ground floor rear yards. Currently, the required rear yard in a mixed use building may not be higher than the floor level of the lowest residential story. This means that a functionally residential building with a ground floor rear yard can find itself with multi-story, windowless walls from one or both adjacent buildings with rear yards above ground level, as well as the building opposite. The proposed amendment exacerbates this by mandating that the required rear yard be at the lowest residential story that has a window facing onto the rear yard. This eliminates any possibility that a rear yard could be placed at the level of the ground floor, lower than the lowest residential story, thus ensuring the loss of light and air for adjacent buildings. Furthermore, the addition of a requirement for a window in a dwelling unit to be facing the rear yard creates the possibility that the rear yard could be at an even higher level.

Section 35-53 Modification of Rear Yard Requirements

Current:

C1 C2 C3 C4 C5 C6
In the districts indicated, for a #residential# portion of a #mixed building#, the required #rear yard# may be provided at any level not higher than the floor level of the lowest #story# used for #residential use#.

Proposed:

C1 C2 C3 C4 C5 C6
In the districts indicated, for a #residential# portion of a #mixed building#, the required #residential rear yard# shall be provided at the floor level of the lowest #story# used for #dwelling units# or #rooming units#, where any window of such #dwelling units# or #rooming units# faces onto such #rear yard#.

III. Special Purpose Districts

Section 11-12 is particularly important to us because CD4 contains several special districts. We find the revised section confusing and wish to clarify the intent and presentation of the changes.

Currently, Section 11-12 establishes each of the residence, commercial and manufacturing districts, as well as each of the Special Districts. The proposed Amendment introduces a new Section 11-121, District names, that presents general nomenclature, a new Section 11-122, Districts established, and a new Section 11-123, Special Purpose Districts, that refers to the Special Purpose Districts listed in 11-122.

It appears that the text currently found in Section 11-12 establishing each of the districts is intended to be moved to 11-122. We wish to confirm that the text presented in the proposed Amendment as 11-122 is an abbreviated version of the text currently found in 11-12 and that the new 11-122 will establish each of the residence, commercial and manufacturing districts, as well as each of the Special Districts, as 11-12 currently does.

IV. Conversion

Finally, we note an apparent oversight in the definition of "Conversion." In order to be complete, the definition, beginning "A 'conversion' is a change of #use#...," should be followed by, "To 'convert' is to create a #conversion#." This makes the definitions of the noun and verb forms consistent with those for "Development, or to develop."

Again, we would like to commend DCP for the thoughtful work that went into the writing of the proposed amendment. We hope that the comments presented above will be considered before approval, and we look forward to working with DCP on the "reclarifications" that such an extensive amendment inevitably will require.

Sincerely,

John Weis, Chair

J. Lee Compton, Co-Chair
Chelsea Preservation and Planning

cc: NYC Council Speaker Christine Quinn
NYC Council Speaker Quinn's Office –Melanie Larocca
NYC Council Land Use Division – Danielle DeCerbo
NYS Senator Thomas K. Duane
NYS Assemblyman Richard Gottfried
MBP Scott Stringer
MBPO – Brian Cook, Deborah Morris