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**Testimony to NYC Department of Buildings
Proposed Rule Change on Challenges to Building Permits
(Proposed Rule 105-03)
March 6, 2009**

My name is Rosie Mendez, and I am the Councilwoman for District 2. Thank you for the opportunity to testify on the Proposed Rule Change #105-03. Over the past several years, my district has sustained considerable new development. Some of this development has been out of scale and upon occasion some of it has ultimately been determined either by DOB or BSA to not comply with the zoning ordinance. My staff and I have contacted the DOB numerous times to obtain and review the plans for such buildings in order to make informed objections. I have become quite familiar with DOB practices and procedures.

First, I want to express genuine appreciation to DOB for the aspects of this rule that increase the on-line availability of plans and back-up documentation of the approval process. I have long been an advocate of posting all information on-line, including a full copy of the plans so that elected officials, community board representatives, and members of the public can fully review and understand the DOB's determinations in either granting or denying a permit. One year ago I introduced legislation in the City Council calling upon DOB to do exactly that – "make all department records... available to the public for inspection over the internet... Such records shall include electronic copies of all applications received, construction documents, permits, and certificates issues... objections sheets, reconsiderations and variances." Based on my current understanding of what will soon be available on line, it appears that the proposed rules will enhance this transparency objective.

Secondly, I want to express my appreciation for the recent decision to defer the enactment of these rules for 30 days to allow for clarification or possibly modification prior to its implementation. There has not yet been insufficient opportunity for elected officials or members of the public to become fully acquainted with the proposed changes, to ask questions and get clear answers to their concerns. A 30 day turnaround period for the DOB to analyze and consider the comments of elected officials and the public at large, I would submit, is the minimum necessary to provide real dialogue.

Now, let me describe the numerous questions and concerns I have about the way in which these rules curtail the public's right to comment on plans which may not comply with the zoning ordinance.

As previously mentioned, my office has had occasion several times to bring zoning compliance issues to the attention of DOB, and upon more than one occasion our observations have proven to be correct – buildings were found to not comply with the zoning. In most of these cases, the initial observations

were not made within 30 days of the approval of the permit. Under the strict written provisions of this proposed rule, we would not have been able to raise our objections.

Most of our objections have surfaced because neighborhood residents raised issues after they saw work begin on buildings – not because they had either the time or the technical knowledge to regularly check a website for drawings. Most community members do not learn of new buildings or major alterations until there are permits posted on the work site.

After construction is observed the constituent calls our office and we investigate the situation and often contact volunteer experts to help us determine if a building appears compliant. All of this takes time – 30 days is certainly not sufficient.

But even if the process I just described could be done in 30 days, the proposed rule starts the clock at the approval of plans – not at the posting of a permit. Developers often do not “pull permits” and begin work for quite some time after the plans are approved. Neither the public nor elected officials have the time or resources to continuously check for new approvals on the DOB website when there may be no on-site physical evidence that an approval has been obtained.

DOB has asserted that it will allow for re-opening of challenges if new evidence arises that a building may be out of compliance. If that is the case, I feel very strongly that at minimum that provision should be written into the rules.

I am also concerned about how the New York City Charter mandated right of appeal to the Board of Standards and Appeals would be effectuated after the initial challenge. In my experience, a “final determination letter” signed by the Commissioner or Borough Commissioner has been required for an appeal to the BSA. The rules state that such a determination letter would come from a challenge made only during this initial period. I am eager to obtain clarification from the BSA that they would accept an appeal application without a final determination letter.

I have several other concerns about the proposed rule, including:

- the Borough Commissioner review period should be limited as opposed to having a “target date”;
- following this review, the DOB should notify those who have challenged to make them aware that their 15 day appeal period has commenced;
- a full set of the building plans subject to review and approval should be posted online starting when application is filed;
- applicable use group information and zoning calculations should be included in the images posted online;
- DOB should provide the public with a communication tool to receive notices when permits are being considered. The burden must not lay solely on the public to monitor every new building and major alteration permit in their neighborhoods.

I am very hopeful, now that the implementation date for the proposed rules has been extended, that DOB will engage in serious discussion with all of the concerned parties that are represented at this hearing here today. I believe that it is possible to modify these rules in a manner that will indeed achieve the stated objective of transparency without curtailing the public’s right to comment. I thank you for your consideration.