



## RESOLUTION

**Date: November 4, 2015**

**Committees of Origin: Land Use and Housing**

**Re: Mandatory Inclusionary Housing (MIH) text amendment.**

**Full Board Vote: 35 In Favor 0 Against 0 Abstentions 0 Present**

*Joint Committees: 8-3-0-0.*

We want to state unequivocally that we endorse the concept of MIH, but cannot approve the proposal as presented without several important changes that are required for it to have a successful roll-out and meet its objectives. Community Board 7/Manhattan opposes MIH unless certain changes outlined below are incorporated and the issues addressed are appropriately incorporated in a revised proposal.

**Triggering MIH** – The proposed text of the zoning amendment does not create any Mandatory Inclusionary Housing, nor does it set forth the conditions under any particular type of Mandatory Inclusionary Housing would be required to be adopted for any site or district in our City. DCP has stated that it intends to implement MIH in connection with any significant rezoning and any private application for a special permit which creates an opportunity for additional housing. However, this dictum will not have the force of law, and leaves too many of the particulars of what type of Inclusionary housing and what type of building will provide it to the results of negotiations and discussions that would precede any opportunity for public review. If implemented limiting MIH to a district in which upzoning is enacted or special permits requested, but no other districts, the proposal would exacerbate the current condition that allows massive new as-of-right construction that would completely avoid any need to participate in MIH. In any event, as a minimum, the conditions triggering MIH and the specifics of how it would be implemented should be spelled out in a binding legal document.

**Offsite vs. Onsite** – The current proposal allows for affordable units to be built either: onsite, in a truly separate building on the same lot, or offsite in the CB district or within ½ mile of the site. One of the most important benefits of MIH is to maintain economic diversity in our neighborhoods and in individual buildings, and thus we want to encourage developers to exercise the onsite option. If offsite housing, which is less desirable in terms of economic integration and which is likely to be less expensive to build than onsite housing, is to be an option, developers who exercise the offsite option must be required to produce additional affordable housing in exchange for this less desirable option than they would if they were to provide the affordable housing on-site. The off-site option must be further amended to provide reliable assurances that the off-site building would be adequately funded both as to day-to-day operations and on-going maintenance and repairs.

The poor door solution: The proposed MIH zoning amendment prohibits the use of separate entrances in a single building for market rate and affordable units, but substitutes the option of providing two buildings on the same zoning lot, one for each class of occupants. This option is, if anything, more demeaning than the so-called poor door option, and should be deleted as an option. It is one thing to permit a developer to build affordable housing on a separate zoning lot; it is quite another thing to permit segregation of units on the same zoning lot.

**Workforce Option** – MCBs 1-8 are excluded from the workforce option of 30% affordable at 120% AMI. CB7 believes in producing affordable units for all segments of society and see the fostering of middle-class housing as part of the optimal mix of units in our neighborhood, which see new market-rate housing catering only to the most affluent. CB7 would want the option available to use the 120% AMI level. However, this would require the corresponding increase in the percentage of affordable housing produced. Possibly, something like 35% affordable at 120% AMI for CBs 1-8.

**BSA Safety Valve** – We support the concept of a safety valve being included in MIH to account for scenarios where the program places a true hardship on a developer. However, we strongly oppose any role for the Board of

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Standards and Appeals in this process. BSA has adopted an arbitrary and unrealistic method of computing return on investment in connection with ZR 72-21 which employs formulas and computations in the place of actual costs and income that are unrelated to the developer's true experience, resulting in conclusions as to the developer's expected profits that fail to comport with the reality on the ground or common sense. In addition, BSA has not historically adjudicated cases involving affordable housing. We would recommend HPD or another City agency with the mandate and expertise to prioritize affordable housing be the venue for the adjudication of any hardship applications.

**"In lieu of" Fund** – CB7 is open to the option of using this fund to accommodate small buildings where MIH may be problematic. However, the MIH text does not provide sufficient explanation for how this fund will work. A much more detailed description of this fund is required before we could possibly support it. A small sampling of unanswered questions include: How is the expense determined? What mechanism controls the changing expense over time? What mechanisms ensure that the money will be expended efficiently and timely? Will HPD have adequate access to adequate staff and experts to ensure that the fund is applied as required? In addition, adequate protections must be erected to deliver on a commitment that the affordable housing built or preserved through the fund is located proximate to the site generating the payment.

**Preservation of Existing Affordable Housing/421a Provisions** – One of our chief concerns was that a building which currently or in the recent past included rent regulated units or units subject to other affordable housing restrictions could be torn down for a larger building with only the minimum Inclusionary units under MIH, representing a net loss of affordable units. DCP contends that all MIH buildings would also be subject to 421-a, which has provisions to ensure that the number of affordable units on a lot are not lost. Since 421-a periodically must be reauthorized by the State legislature, and may not now or in a future iteration apply to every MIH project, it is essential that MIH include on its own an incontrovertible requirement that at least the highest number of rent-regulated units with at least the same floor area as was in the demolished building over the five years preceding the demolition be replaced as affordable units in any new or replacement building, and that none of those units be counted to satisfy the MIH requirements. This requirement must be embodied in the text of MIH.

**Stifling Negotiation** – We have concern that despite MIH's intention to establish a floor for affordability in a building, we may in effect be establishing a ceiling that will stifle negotiation between developers and the Community Boards, Borough Presidents, City Council Members, City Planning representatives and others involved in the public review that must precede any decision on how MIH would be implemented in any given situation. While affordable housing is our priority, we owe it to our current and future neighbors and constituents to ensure that providing much-needed units of affordable housing does not result in further overloading our schools, subways, parks, and roads. MIH will make buildings as-of-right that previously would have required careful negotiation which we fear will impact our ability to manage the development of our district going forward. The proposal must be amended to ensure that a full public review process is required and that approval of any application would not be as-of-right if the developer agreed to provide the minimum Inclusionary housing as called for in the proposal.

THEREFORE, BE IT RESOLVED THAT Community Board 7/Manhattan opposes the Mandatory Inclusionary Housing program unless the seven changes spelled out in this resolution are addressed.



## RESOLUTION

**Date: November 4, 2015**

**Committees of Origin: Land Use and Housing**

**Re: Zoning for Quality and Affordability (ZQA) text amendment.**

**Full Board Vote: 33 In Favor 0 Against 0 Abstentions 0 Present**

The amendment to the Zoning Resolution proposed by the Department of City Planning and titled "Zoning for Quality and Affordability" (ZQA) has the twin goals of encouraging development of affordable housing, particularly for seniors, and improving building design. Community Board 7/Manhattan applauds the effort and shares DCP's goals. However, the proposed Amendment contains certain undesirable features, as detailed below, which prevent CB7 from endorsing the proposed amendment as it is currently drafted. Additionally, provisions in ZQA intended to improve building design do not allow sufficient flexibility to encourage truly superior architecture.

1. Affordable and Senior Housing:

The proposed amendment would permit an increase in floor area ratio (FAR) for buildings providing affordable senior housing and long-term care facilities. In R-10 and R-10A zones the increase would be 20% from 10FAR to 12 FAR; somewhat smaller increases would apply in zones permitting lower FAR. The proposed amendment recognizes that it is frequently difficult for a developer to utilize all of the increased FAR allowable for senior housing without increasing the permitted height of the affected buildings. Accordingly, DCP is proposing to increase the maximum height of buildings in various zoning categories by 20-40' feet in contextual districts, and by comparable amounts in non-contextual districts. The height increases would apply on both wide and narrow streets and in historic districts (subject to a Certificate of Appropriateness permit from the Landmarks Commission). The relaxation of height restrictions would also apply to narrow (45' or less), or "sliver," buildings. DCP is also proposing to increase the maximum base height to minimize the effects of an increase in total height; and to permit shared accessory space on the ground floor and in rear yard areas (other than in "B" districts). Maintenance of the building for senior affordable housing would be for a period of 30 years.

CB7 findings and recommendations For Affordable Senior Housing: CB7 supports the general goal of encouraging affordable Senior Housing and long-term care facilities, and recognizes that there is a growing need, particularly in the CB7 district for such facilities. Modest changes in maximum height, intended to encourage development of senior facilities only are acceptable. However, CB7 **opposes** the following proposed height increases:

- Maximum height increases on narrow streets-- narrow streets in the CB7 district have a distinctive appearance which would be threatened by new buildings of excessive height;
- Maximum height increases in historic districts- CB 7 believes that the Landmarks Commission is ill-equipped to balance the social goal of increased senior housing against the aesthetic goal of preservation of the historic districts;
- Maximum height increases for sliver buildings-- generally, sliver buildings are limited in height to the width of the facing street and CB 7 believes that this restriction should continue to apply to all developments.

Additionally, CB7 **opposes** the limitation of the requirement for affordable senior housing to 30 years, and urges that such housing be made a requirement in perpetuity.

If the foregoing proposed height increases were eliminated CB 7 would support the proposed zoning amendment with respect to Affordable Senior Housing.

## 2. Inclusionary housing areas:

The proposed amendment would provide for an increase in the maximum heights of buildings in providing inclusionary (affordable) housing. In CB7, these areas generally are the West End Avenue-and Broadway corridors, and portions of Central Park West and Riverside Drive including side streets. As with the proposal for Affordable Senior Housing, the proposed amendment does not differentiate between wide and narrow streets. Height increases on narrow streets would be either 30 or 40'.

CB7 findings and recommendations for inclusionary housing areas: CB 7 continues to support the general goal of the inclusionary housing program, but opposes the proposed maximum height increases for narrow streets, historic districts or sliver buildings for the reasons itemized in item 1 above.

## 3. Basic residential changes in maximum building heights:

The proposed amendment provides for an increase in maximum allowable building heights for all new developments in contextual and non-contextual districts. In contextual districts the increases are from 5-10' on both wide and narrow streets; for non-contextual districts the proposed increases range from 5-20', including a proposed 20' increase on narrow streets in R-8 districts.

CB7 findings and recommendations for changes in maximum building heights: CB 7 agrees that minor relaxation of the maximum height requirements for wide streets is appropriate but opposes any increase in maximum building heights on narrow streets.

## 4. Changes to the building envelope:

In addition to proposed changes in building heights, DCP is proposing a variety of changes in the building envelope requirements of the zoning resolution. These will:

- permit alignment to adjacent structures providing discretion to incorporate building features such as bay windows, solar shading elements or other types of façade articulation to extend 12" beyond the street wall / property line;
- encourage better ground floor retail space and or residential units with adequate ceiling heights;
- allow for increased height of the ground floor by 5', if the second level of the building begins at a height of 13';
- provide greater flexibility in the placement of recesses in the street wall facades and create entrance courts; and
- address irregular site conditions and shallow or sloping lots.

For buildings with residential units on the ground floor, the proposal would permit raising the height of the lowest residential floor with the option of leaving the lobby area to be at street level and providing interior access via interior stairs or the elevator. For buildings zoned for ground floor commercial space, the increased ceiling heights would encourage commercial use. To compensate for the increase height of the ground floor maximum building heights would be increased by 5'. The maximum base height would also be increased by 5'. In order to encourage higher floor to ceiling heights of 10', DCP also proposes to set a limit on the number of stories a building can rise.

Additionally, the proposal would modify street-wall regulations to require that buildings "line up" with immediately adjacent buildings, rather than buildings within 150' as currently provided. The proposal would also relax rear yard requirements to accommodate a deeper building.

The DCP proposal would also change rules for corner buildings, by increasing the maximum lot coverage from 80% to 100%, and would amend the current requirement that corner buildings step down or transition from their maximum permitted height to the permitted height in an adjacent lower density district for a distance of 25'. The proposed amendment would permit the step down to be set at the lower of the permitted height on the zoning map or 75'. DCP proposes to eliminate the rear yard requirement for corner buildings.

CB7 findings and recommendations for changes to the building envelope: CB7 welcomes the efforts by DCP to improve grade level appearance and for commercially feasible lots, increased retail space, increase the building

height for the ground floor, relax rules for articulation, however, the location of where the additional 5' is located should be left to the discretion of the Architect and Owner to diversify both the appearance of the building and provide user amenity where it is best suited to the project requirements. This can include an intermediate floor that contains a building wide community space, fitness center, playroom or other associated residential activity and for senior housing create a mid-level cafeteria, library, visiting area or other associated communal space or suite of rooms. If the additional floor height were moved to the top level, this could create a roof terrace, with associated residential activity, and encourage the use of green roofs and sustainable architecture. Other areas that we believe are beneficial to a better streetscape and neighborhood appearance are the relaxation of the alignment regulations to be located no closer than the adjacent building and the opportunity for setbacks at the street wall up to 10' in non-contextual buildings and thereby encourage planting at the street wall; , relax rules for a step-down in height from corner buildings, and compensate for additional height of the ground floor by a modest increase (no more than 5') in building height.

CB 7 **opposes** elimination of the rear yard setback for any buildings.

CB7 **opposes** the proposed increase in lot coverage for corner buildings from 80 to 100%. Full lot coverage creates the risk of diminishing light and air, particularly in residential buildings. Should a developer believe that limiting lot coverage to 80% would create a hardship, the developer may apply for a variance from the BSA.

Although the proposed Quality-related amendments represent a significant step toward improving new building quality, CB7 is concerned that the proposal is still too rigid to permit novel and creative architecture, and urges DCP, working with architects and the Community Board, to revisit the proposal with a view toward greater flexibility. Recognizing that relaxation of zoning envelope rules runs the risk of inferior housing design, CB7 nonetheless believes that some mechanism should exist to permit the design of buildings to fit unique needs or conditions or to encourage superior architecture. One possible solution would be the establishment of a Special Permit system by which developers wishing to modify the rules for a particular building would be able to seek permission from DCP, after review by the Community Board. The significance of this requirement would be to design buildings that respond to specific and intimate neighborhood character and architecture regardless of whether the building is in a zoned contextual district, or not, with the aim to eliminate the tendency to create repetitive, unvaried and uniformly similar building and streetscape.

#### 5. General comments:

CB7 is disappointed that DCP has not taken advantage of the opportunity afforded by a major proposed zoning amendment to review rules for zoning lot mergers and to construct more meaningful limitations on the height of buildings resulting from such transfers in areas where height restrictions do not exist.

CB7 urges the Department of City Planning, the Buildings Department and the Department of Housing Preservation and Development to coordinate enforcement of provisions relating to housing for seniors and affordable housing.

CB 7 urges that a comprehensive study of both ZQA and MIH be conducted periodically by the Department of City Planning in order to evaluate the results and effectiveness of the program in neighborhoods around the city and that such a study be available for public comment.

#### CONCLUSION

Community Board 7/Manhattan encourages DCP to make the changes suggested by this resolution. If all of these changes are made, CB7 could support the proposed amendment.