



## MARCH 2012 RESOLUTIONS

**Date: March 6, 2012**

**Committees of Origin: Land Use and Business & Consumer Issues Committee**

**Re: Upper West Side Enhanced Commercial Districts.**

**Full Board Vote: 37 In favor 0 Against 2 Abstentions 2 Present**

Application by the Department of City Planning to rezone the street fronts along sections on:

- Broadway, bounded by 72<sup>nd</sup> and 110<sup>th</sup> Streets;
- Amsterdam Avenue bounded 75<sup>th</sup> and 110<sup>th</sup> Streets on the west side, excluding the blocks between 100<sup>th</sup>-101<sup>st</sup> Streets and 102<sup>nd</sup> -103<sup>rd</sup> Streets, and bounded by 73<sup>rd</sup> -87<sup>th</sup> Streets, and 105<sup>th</sup> - 109<sup>th</sup> Streets on the east side of the avenue; and
- Columbus Avenue bounded by 72<sup>nd</sup> and 87<sup>th</sup> Streets.

The City Planning Commission has certified an amendment to Section 132 of the Zoning Resolution, with the purpose of preserving existing storefront widths on portions of Columbus and Amsterdam Avenues and Broadway.

In general, Community Board 7/Manhattan Manhattan views the proposed amendment favorably, but finds that there are several features that are unacceptable, and in some cases, could render nugatory the benefits intended by the amendment. This resolution sets forth the Community Board's objections.

After a public hearing and extensive discussion and debate,

BE IT RESOLVED THAT Community Board 7/Manhattan **approves** the proposed amendment to the Zoning Resolution with respect to the creation of the Upper West Side Enhanced Commercial Districts, on condition that the text is amended to meet the following concerns:

1. **Authorizations:** The proposed text would permit CPC to override the storefront width restrictions upon a finding either a) that a proposed use cannot be accommodated within the maximum prescribed storefront width; or b) that a "high ground floor vacancy" exists within a "reasonable distance" of the proposed use due to economic conditions.

Community Board 7 finds that the first proposed ground for authorization would permit the very type of use which it is desirous to prevent, i.e., large stores which will claim that their proposed "use" cannot be accommodated within the maximum width provided. The second proposed ground, economic hardship, is acceptable in principle, but the terms "high ground floor vacancy" and "reasonable distance" should be defined, e.g., a 15% vacancy over a half mile in either direction on the affected avenue.

In the case of an application by an existing business seeking to expand into a contiguous space where such expansion would result in a storefront that exceeds the permissible maximum, the City Planning Commission shall act on such application within 90 days of submission or the application shall be deemed granted.

Finally, the text of the Amendment or some other official document should clarify that authorizations are subject to a review and comment period by the Community Board.

2. **Interface with landmarks regulations and the Landmarks Preservation**

**Commission:** The section of the proposed amendment treating the issue of landmarks and historic districts is susceptible of the (we believe erroneous) interpretation that the issuance by LPC of a Certificate of Appropriateness overrides the restrictions of the zoning resolution. The Community Board opposes any such rule. Landmarks, like all buildings, are subject to underlying zoning, absent a special permit or variance. There may be rare instances in which the landmark character of a building would be destroyed by adherence to underlying zoning. If the



LPC were to so certify, after notice and a hearing, then the City Planning Commission should have the right to issue an appropriate authorization.

In the area of interface between Landmarks Regulations and the Zoning Resolution, there is a generic defect in the prescribed procedures which Community Board Seven has commented on repeatedly over the years, which represents an unwarranted burden on both the developer and the Community Board and which fosters confusion rather than clarity. At present, a developer is required to obtain a Certificate of Appropriateness from the LPC and then pursue a variance or special permit. This generally results in two separate hearings often a year apart. This proposed amendment presents an ideal vehicle for prescribing a new procedure for applicants where both Landmark Regulations and Zoning action are involved. A single application, to be acted on by different agencies within the same time period should be mandated for all but exceptional cases. This would enable the Community Board to consider the Landmarks and Zoning issues of a proposed project at the same time.

And BE IT FURTHER RESOLVED THAT Community Board 7 appreciates the efforts by the City Planning Commission in recognizing and addressing the issues covered by the proposed amendment. The Community Board expresses the hope that further attention will be paid to the following issues:

- a) Proliferation of chain stores: As a minimum, two outlets of a single nationwide or regional chain should not be permitted to operate within a designated radius of each other;
- b) Enforcement: The Department of Buildings with guidance from CPC should develop a protocol and allocated resources to enforce the provisions of this and all other zoning rules.
- c) Grandfathering: Community Board Seven is aware that the Zoning Resolution currently permits grandfathering of previously permitted uses in the event an amendment creates a non-compliant situation, and further that such grandfathering continues during the first two years of any vacancy subsequent to enactment of the amendment. Community Board Seven believes that the two year vacancy rules are unduly permissive and urges the City Planning Commission to study the issue with a view to modification.

*Vote of the Joint Committees: 11-2-0-0. Non-Committee Board Members: 3-0-3-0.*