CITY PLANNING COMMISSION
October 21, 1987 Calendar No. 51 N 880172 ZRY

IN THE MATTER OF an amendment pursuant to Section 200 of the New York City Charter, of the Zoning Resolution, relating to Section 12-10, amending the definition of "predominantly built-up area."

INTRODUCTION

The proposed text amendment to the Zoning Resolution would limit the applicability of the definition "predominantly built-up area." The purpose is to limit the applicability of the "infill" regulations of R4 and R5 zoning districts so as to preserve the low density residential character of certain block fronts.

BACKGROUND

The term "predominantly built-up area" was added to the Zoning Resolution as part of the "infill" zoning amendment adopted in 1973. At that time, the Commission stated that "the proposed amendment is designed to encourage the construction on vacant land of two-family and three-family houses in keeping with the character of surrounding development in low density neighborhoods. The amendment modifies certain aspects of the Resolution in R4 and R5 districts to stimulate this kind of housing."

The "infill regulations" offered builders more floor area and other incentives such as reduced parking requirements if they constructed "infill housing" limited in height to

32 feet on small lots within "predominantly built-up areas" in R4 and R5 zoning districts. The "infill" regulations were intended to apply to small vacant lots and parcels with obsolete or dilapidated buildings.

Through the 1970s and into the 1980s the "infill" provisions worked well, resulting in much-needed new housing while filling up the small and underused lots in attractive, built-up neighborhoods in R4 and R5 districts. However, as vacant lots in those districts have become scarcer and the demand for housing in those neighborhoods has grown, it has become profitable for builders to demolish sound one- and two-family homes and to replace them with "infill" developments which may consist of four to eight unit semi-detached and attached houses. This threatens to alter significantly the neighborhood character in many of the affected areas.

THE PROPOSAL

The text as proposed by the Commission, and referred to the community boards for review, amends the definition of "predominantly built-up area" to limit "infill" development where one- and two-family detached and semi-detached residences form the character of facing block fronts. Thus, "infill" development would not be permitted on zoning lots occupied as of July 1, 1987 by detached or semi-detached single- or two-family residences where 75 percent or more of the aggregate length of the block fronts in residential use on both sides of the street is occupied by these types of residences as of July 1, 1987.

ENVIRONMENTAL QUALITY REVIEW

The application (N 880172 ZRY) was reviewed by the Department of Environmental Protection and the Department of City Planning pursuant to the New York State Environmental Quality Review (SEQR) regulations as 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) regulations set forth in Mayoral Executive Order No. 91 of 1977. The Departments of Environmental Protection and City Planning, as CEQR co-lead agencies, have determined that the proposed action will not have a significant effect on the quality of the environment and a negative declaration (CEQR 88-041Y) was issued on August 28, 1987.

COMMUNITY BOARD REVIEW

On August 31, 1987 the Commission referred the proposed text change to all 59 Community Boards for review. Community Boards 2, 4 and 11 in Queens voted in favor of the amendment.

CITY PLANNING COMMISSION PUBLIC HEARING

On September 2, 1987, (Calendar No. 63), the Commission scheduled September 30, 1987 for a public hearing on the text amendment N 880172 ZRY. The public hearing was duly held on September 30, 1987, (Calendar No. 18). Twenty-eight speakers appeared, 15 in favor and 13 in opposition to the proposal. Community Boards 5, 11 and 14 in Queens generally supported the proposal, as did a number of Queens homeowners, homeowners associations, block associations and civic organizations. Those opposed were predominantly Queens builders, architects, engineers and attorneys, some of whom are members of the Queens County

Builders and Contractors Association. The public hearing was closed but the public was advised that the record would remain open for comments until October 16, 1987. The Commission has received four additional statements, one in favor and three against the proposal. The major issues and arguments are summarized below.

ARGUMENTS IN FAVOR OF THE AMENDMENT

Several speakers, primarily from the Bayside and Rockaway Park communities in Queens, testified that the amendment would help preserve neighborhood character by limiting "infill" development in single- and two-family neighborhoods. They stated that in these neighborhoods, sound one- and two-family homes are being demolished and replaced with six to eight unit "infill" developments (depending on the size of the lot). These kinds of developments, they said, were never intended under the "infill" regulations passed in 1973, and are changing the low density character of the neighborhoods. Moreover, they argued, these neighborhoods should never have been zoned R4 and R5; R2 and R3-1 would be more appropriate. "Infill" development results in denser population, increased parking problems, parking in front yards (as opposed to garages), apartment houses that are out of character with adjacent homes, and a change in the family-oriented neighborhood atmosphere.

Several speakers testified that the amendment would help preserve sound housing stock by limiting "infill" development. According to the testimony, one- and two-family homes, a critical source of housing, are being demolished (and a larger number are slated for demolition) and smaller units in larger structures are being erected in their place. This trend

reduces housing available for families. Moreover, the competition between "infill" developers and potential home purchasers is making it difficult for families to find sound housing. They stated that the "infill" amendment would preserve housing and would also remove developers from competing with home buyers.

Several speakers stated that the demolition of sound homes and their replacement with small apartment houses would increase density in the neighborhoods and cause unanticipated strains on the capacity of municipal services. They argued that as neighborhood character changes and the level of municipal services deteriorates, property values will decrease for those who remain in the neighborhood. They predicted that builders would no longer develop in the neighborhood once the character and quality which drew them there had been destroyed while prospective homeowners would be deterred by the change in the neighborhood's desirability.

Many speakers in favor of the proposal urged the Commission to retain July 1, 1987 as the date on which existing detached and semi-detached one- and two-family residences would be protected from development under the "infill" provisions and predicted that many houses would be demolished if the development process under the "infill" regulations was not frozen at that date. Speakers also asked the Commission to lower from 75 to 60 percent the amount of the facing block fronts in residential use that would be needed to determine neighborhood character as detached and semi-detached one- and two-family residential areas.

ARGUMENTS IN OPPOSITION TO THE AMENDMENT

Representatives of the Queens Builders and Contractors Association and individual contractors and architects (primarily from Queens) testified that "infill" development is the major source of new, moderately priced housing being constructed in the boroughs. They contend that the amendment would severely curtail this segment of housing production, which offers units at a lower price than that of housing currently being built at lower and higher densities. In a period of housing shortage, the amendment would only exacerbate the situation.

Many of those testifying in opposition pointed out that most of the borough's housing production in low density zones (e.g. infill development) is carried out by small builders and contractors. They state that these firms have invested substantial funds on property on which "infill" rules would not be applicable if the amendment were passed. The result would be to create severe financial hardship and potential bankruptcy for many small builders. Moreover, they contend that the damper placed on low-rise housing production by this amendment would cause financial hardship to the industry -- builders, contractors, architects, and others -- resulting in loss of jobs and loss of livelihood. Some further stated that the July 1, 1987 "snapshot" date, which affects properties purchased before the amendment was proposed or publicized, would make economic impacts more severe. Some speakers suggested that if the amendment is implemented, a "grace period" that would allow developments with building permits to proceed be provided to limit economic impacts.

A few individuals testified that the proposed amendment would decrease small home property values in R4 and R5 zones because builders would no longer be competing for purchase of properties.

Some speakers stated that adverse impacts from "infill" development are confined to a few neighborhoods and that these specific impacts should be addressed through site specific remappings and studies of issues generic to low-density zones. They complained that the proposed amendment addresses these specific local problems by limiting "infill" development and reducing housing production citywide, while these existing problems should be solved with neighborhood-specific zoning actions.

Several speakers argued that "infill" development generally replaces obsolete housing with higher quality dwelling units. A few sought to clarify whether "occupied zoning lots" mean lots occupied by a family in one- or two-family houses or occupied by a one- or two-family residence. They said the latter interpretation would mean many vacant buildings would have to remain, some of which are in poor condition. Finally, a few speakers claimed that an Environmental Impact Statement should have been prepared to address the social and economic impacts of the proposed text change. In a subsequent comment, one builder questioned whether it is possible to identify one- or two-family houses since many homes do not have certificates of occupancy and others have been illegally converted to three-family units.

CONSIDERATION

The Commission favors the adoption of the proposed text amendment as an interim measure which addresses a major unanticipated impact of the current "infill" regulations as they apply to some "predominantly built-up areas" in R4 and R5 districts. In many areas the type of "infill" development now occurring

differs substantially from that envisioned and encouraged by the Commission at the time of adoption. In its 1972 report, Infill Zoning, the Department stated that the acquisition cost for "infill" construction "would cover a vacant site ... but would not be sufficient to purchase any reasonably sound existing structure." However, 15 years later the economics of "infill" development provide a strong incentive to demolish sound existing housing in a significant number of neighborhoods, and change their long-established character.

The Commission recognizes that "infill" development continues to be appropriate in many areas, and that a comprehensive review of lower density residential zoning is required. At its request, the Planning Department is undertaking a citywide study of R3, R4 and R5 districts. The study, including a careful examination of the current "infill" regulations, will develop zoning tools to insure that neighborhood character is respected while desperately needed new housing can be produced in appropriate locations.

The proposed text amendment is an interim measure. While it does not end "infill" development in "predominantly built up areas" in R4 and R5 districts, it does limit the use of the "infill" regulations where one- and two-family detached and semi-detached homes clearly form the character of the block fronts which are in residential use and face each other. For example, if one side of the street is built with apartment houses and the other side is built with one-family homes, the "infill" provisions will continue to apply. Furthermore, the proposed text amendment would not prohibit the demolition of an existing one-family house and its replacement with a two-, three- or multifamily house which meets the underlying

R4 and R5 district regulations. Finally, under the proposed amendment "infill" development could continue to occur on vacant lots and on lots occupied by commercial, manufacturing and community facility uses.

The Department of City Planning undertook a sample survey of R4 and R5 zones to determine the overall applicability of the proposed amendment. This survey utilized a random sample (20%) of all census tracts wholly or partially zoned R4 and R5 in Brooklyn, the Bronx and Queens. (Because so few areas in Staten Island are zoned R4 and R5, all of these areas in Staten Island were included in the survey.) Because the sample was random, the blockfaces within the sample are representative of all R4 and R5 blockfaces. Thus, these blockfaces could be analyzed to estimate the proportion of blockfaces where R4/R5 infill now applies, within each borough, that would be affected by the amendment. Approximately 6,500 blockfaces were analyzed. The results of this analysis are presented below:

Applicability of Proposed Infill Amendment

Borough	Percent Blockfaces Applicable	Percent Blockfaces Not Applicable
Brooklyn	38%	62%
Bronx	61%	39%
Queens	54%	46%
Staten Island	68%	32%
Citywide	50%	50%

(The above percentage calculations exclude blockfaces where "infill" is now inapplicable.)

This analysis indicates that "infill" development would continue to be applicable on thousands of block fronts throughout the city. In addition, vacant lots, as well as lots occupied by commercial, industrial and community facility uses, cover a significant proportion of some blockfaces. Thus, the percentage of "infill"-eligible zoning lots affected by the proposed amendment is likely to be smaller than the percentage of blockfaces indicated in the table.

Based on this analysis, the Commission believes that there would continue to be sufficient opportunities for "infill" development. On the other hand, block fronts which are clearly one- and two-family detached and semi-detached in character would be protected.

Public comment indicates that four issues are particularly important in the Commission's consideration: the date on which zoning lots occupied by one- and two-family detached and semi-detached residences would be excluded from the "infill" regulations; the percentage of the zoning lots occupied by such residences that determines the character of the block fronts; the feasibility of determining occupancy by one or two families; and the meaning of "zoning lots occupied by ... residences."

The text as heard set July 1, 1987 as the date on which the character of the block and the occupancy of zoning lots would be determined. The Commission has been advised by the Law Department that the July 1, 1987 date is not reasonably related to a city action or to due public notice. The Commission has changed the date for determining character and occupancy to October 21, 1987, the date on which the Commission adopted the amendment. The Commission believes that this date is appropriate and consistent with notice and due process procedures.

The amendment as heard would not have permitted "infill" development on a block front where only one zoning lot, for example, is occupied by a one- or two-family house and the remainder of the block front is occupied by commercial and/or industrial uses. (In that instance 100 percent of the aggregate length of the block fronts in residential use is one- and two-family.) Because the amendment is intended to preserve the character of the block fronts where one- and two-family detached and semi-detached residences predominate, the text has been amended to allow "infill" development on block fronts where at least 75 percent of the zoning lots are occupied by commercial and/or manufacturing uses.

Although many speakers argued for lowering the 75 percent threshold for determining the character of the block front, the Commission believes that the 75 percent figure is appropriate because it establishes the clear character of the block front. Furthermore, the Commission cannot lower that percentage without holding a new public hearing after due public notice as required by the City Charter because a lower figure would be more restrictive than the proposal as heard.

The Commission finds that there is generally sufficient data available in Building Department files, in tax records and in title documents to determine one- and two-family occupancy. Furthermore, the Commission is of the opinion that the creation of illegal units in a one- or two-family house does not turn the residence into a multiple dwelling for zoning purposes.

To reason otherwise would encourage the subdivision of existing one- or two-family houses into multiple dwellings in an attempt to circumvent the intent of this amendment.

The Commission reiterates the position stated at the public hearing regarding "zoning lots occupied by ... residences." The zoning lots must be occupied by existing one- or two-family detached or semi-detached residences but such residences do not have to be occupied by residents. Thus, houses which are currently vacant may not make a zoning lot eligible for demolition and development pursuant to the "infill" regulations.

In conclusion, the Commission supports the proposed amendment as modified. The text, in removing an incentive to demolish sound one- or two-family housing on block fronts where such housing forms the predominant neighborhood character, reinforces the Commission's commitment to insure that the scale and character of new housing fits in well with existing structures. The amendment is consistent with this policy and will provide needed protections while the Department completes its comprehensive study of lower density districts.

RESOLUTION

The City Planning Commission considers the proposed amendment, as modified, appropriate and adopted the following resolution on October 21, 1987 (Calendar No. 51).

RESOLVED by the City Planning Commission that the City Planning Commission concurs in the environmental determination of the CEQR co-lead agencies, the Department of Environmental Protection and the Department of City Planning, issued with

respect to this application on August 28, 1987 (CEQR 88-041 Y) and that, pursuant to Section 200 of the New York City Charter the Zoning Resolution of the City of New York effective as of December 15, 1961, and as subsequently amended, is further amended by a change relating to Section 12-10, amending the definition of "predominantly built-up area" as follows:

Matter in **bold** is new;
Matter in brackets [ ] is old, to be deleted;
Matter in *italics* and underlined is defined in Section 12-10

12-10 Definitions

* * *

Predominantly Built-Up Area

A "predominantly built-up area" is a *block* having a maximum area of 4 acres in R4 and R5 districts which is developed with *buildings* on *zoning lots* comprising 50 percent or more of the area of the *block* including a *commercial district* mapped within such *residential district.*

All such *buildings* shall have certificates of occupancy or other evidence acceptable to the Commissioner of Buildings issued not less than three years prior to the date of application for a building permit. Special optional regulations applying only to *zoning lots* of not more than 1.5 acres in a *predominantly built-up area* as set forth in the following sections:

Section 23-14 (Minimum Open Space Ratio and Maximum Floor Area Ratio in R1 through R9 Districts)

Section 23-22 (Required Lot Area per Dwelling Unit, Lot Area per Room or Floor Area per Room)

Section 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents)

Section 23-631 (Front Setbacks in districts where front yards are required)

Section 23-691 (Special height regulations for developments in predominantly built-up areas)

Section 25-22 (Requirements Where Individual Parking Facilities are Provided)

Section 25-23 (Requirements Where Group Parking Facilities are Required)

The regulations applicable to a predominantly built-up area shall not apply to any zoning lot occupied as of October 21, 1987 by a single or two-family detached or semi-detached residence where 75 percent or more of the aggregate length of the block fronts in residential use on both sides of the street facing each other are occupied by such residences as of October 21, 1987. However, the regulations applicable to a predominantly built-up area may apply to such zoning lots where 75 percent or more of the aggregate length of the block fronts facing each other on both sides of the street is comprised of zoning lots occupied as of October 21, 1987 by commercial or manufacturing uses.

Furthermore, the regulations applicable to a predominantly built up area shall continue to apply in the Special Coney Island Mixed Use District, the Special Hunters Point Mixed Use District, and the Special Ocean Parkway District, and in areas subject to the provisions of Section 23-146 (Optional Provisions for Certain R5 and R6 Districts in Brooklyn.)

Sylvia Deutsch, Chairperson

Salvatore Gagliardo,

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All new text, added to the last paragraph.

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