

## **Zoning for Quality and Affordability**

### **Summary of proposed changes to Article I, Chapter 2 – Construction of Language and Definitions**

**Overview:** Article I, Chapter 2 of the Zoning Resolution establishes rules for the construction of language and sets forth a series of definitions that are used throughout the remaining Chapters. The proposal updates terminology in the “definitions section” pertaining to affordable senior housing and related long-term care facilities to reflect current industry and regulatory standards. It additionally establishes new terms that work in conjunction with new provisions in other Chapters to facilitate the production of affordable housing units. More specifically, the proposal:

- Adds proposed definitions for “Affordable independent residence for seniors”, and “Long-term care facilities” and replaces previous terms.
- Adds new definitions for “Income-restricted housing unit” and “Transit zone”.
- Clarifies provisions for how various bulk regulations apply to terraces and balconies
- Provides greater flexibility in how base plane measurements are calculated for sloping sites.
- Expands and clarifies definition of “Quality Housing building”.
- References to re-numbered or re-titled sections are updated. Terms removed or revised in the proposal are updated. Other edits for general clarity are also included.

If you would have comments or questions on this draft, please send them to [ahousing@planning.nyc.gov](mailto:ahousing@planning.nyc.gov).

Matter in underline is new, to be added;  
Matter in ~~strikeout~~ is to be deleted;  
Matter within ## is defined in Section 12-10;  
\*\*\* indicates where unchanged text appears in the Zoning Resolution

## Article I - General Provisions

### Chapter 2 Construction of Language and Definitions

\* \* \*

#### 12-10 DEFINITIONS

Words in the text or tables of this Resolution which are #italicized# shall be interpreted in accordance with the provisions set forth in this Section.

\* \* \*

#### Adult physical culture establishments

An "adult physical culture establishment," is any establishment, club or business by whatever name designated which offers or advertises or is equipped or arranged so as to provide as part of its services, massages, body rubs, alcohol rubs, baths or other similar treatment, by members of the opposite sex, except for activities which are excluded below or defined under #physical culture or health establishment# in Section 12-10 and which are, therefore, not included within the definition of an #adult physical culture establishment#:

- (1) treatment by a licensed physician, a licensed chiropractor, a licensed osteopath, a New York licensed masseur or masseuse, a licensed practical nurse or a registered professional nurse;
- (2) electrolysis treatment by a licensed operator of electrolysis equipment;
- (3) hospitals, ~~nursing home~~ #long-term care facilities#, or ambulatory diagnostic or treatment health care facilities listed in Use Group 4 ;
- (4) barbershops or beauty parlors which offer massage to the scalp, the face, the neck or shoulders only; and
- (5) athletic facilities of an educational institution including an alumni club, or of a philanthropic or charitable institution.

\* \* \*

Commented [DCP1]: Updating to reflect new definition.

Affordable independent residence for seniors

Commented [DCP2]:New definition replacing 'non-profit residence for the elderly'.

An “affordable independent residence for seniors” is a #building# containing #residences#, or portion thereof, in which at least 90 percent of the #dwelling units# are each occupied by at least one person who is 62 years of age or over; where, except for a #super’s unit#, all of the #dwelling units# are #income-restricted housing units# used for class A occupancy as defined in the New York State Multiple Dwelling Law. For the purposes of this definition, #super’s unit#, shall be as defined in Section 23-911 (General definitions).

An #affordable independent residence for seniors# may consist of one or more #buildings# on the same or contiguous #zoning lots#, or on lots which would be contiguous but for their separation by a #street#, and shall contain related #accessory# social and welfare facilities primarily for #residents#, such as cafeterias or dining halls, community rooms, workshops and other essential service facilities, which may also be made available to the community. Floor space in an amount not less than four percent of the total #floor area# of such #affordable independent residence for seniors# shall be allocated to such #accessory# facilities. Such floor space may occupy #floor area# or #cellar# space, and may include indoor recreation space provided in accordance with Section 28-31 (Required Recreation Space) for #Quality Housing buildings#. In no event shall the floor space occupied by lobbies, passageways, storage space or other spaces normally provided in #residential buildings# be attributed to the #floor area# of the #accessory# social and welfare facilities.

An #affordable independent residence for seniors# shall also include a #building used, enlarged or developed# prior to [date of adoption] as a non-profit residence for the elderly.

\* \* \*

Base plane

The “base plane” is a plane from which the height of a #building or other structure# is measured as specified in certain Sections. For #buildings#, portions of #buildings# with #street walls# at least 15 feet in width, or #building segments# within 100 feet of a #street line#, the level of the #base plane# is any level between #curb level# and #street wall line level#. Beyond 100 feet of a #street line#, the level of the #base plane# is the average elevation of the final grade adjoining the #building# or #building segment#, determined in the manner prescribed by the Building Code of the City of New York for adjoining grade elevation. In either case, in the #flood zone#, either the #base flood elevation# may be the level of the #base plane# or #building# height may be measured from the #flood-resistant construction elevation#, as provided in Article VI, Chapter 4. For the purposes of this definition, #abutting buildings# on a single #zoning lot# may be considered a single #building#. In addition, the following regulations shall apply:

- (a) Within 100 feet of a #street line#:
  - (1) The level of the #base plane# for a #building# or #building segment# without a #street wall# shall be determined by the average elevation of the final grade adjoining such #building# or #building segment#.

\* \* \*

- (4) As an option, on sites which slope from the #street wall line level# to the #rear wall line level# by at least ~~ten~~ **five** percent to the horizontal, the level of the #base plane# may extend in a sloping plane from such #street wall line level# to such #rear wall line level#. When a sloping #base plane# is thus established, the average elevation of the final grade at the #rear wall line# shall not be lower than the #rear wall line level#.

**Commented [DCP3]:** Changing provision to extend flexibility in determining base plane to lots with less-steep sloping sites.

\* \* \*

Floor area

“Floor area” is the sum of the gross areas of the several floors of a #building# or #buildings#, measured from the exterior faces of exterior walls or from the center lines of walls separating two #buildings#. In particular, #floor area# includes:

- (a) #basement# space, except as specifically excluded in this definition;

\* \* \*

- (f) floor space in open or roofed ~~terraces, bridges, breeze ways or porches~~, if more than 50 percent of the perimeter of such ~~terrace, breeze way, or porch~~ is enclosed, and provided that a parapet not higher than 3 feet, 8 inches, or a railing not less than 50 percent open and not higher than 4 feet, 6 inches, shall not constitute an enclosure;

**Commented [DCP4]:** Various changes in this definition intended to clarify how terraces are treated in terms of floor area.

\* \* \*

- (n) floor space in exterior balconies or in open or roofed terraces if more than 67 percent of the perimeter of such balcony or terrace is enclosed and provided that a parapet not higher than 3 feet, 8 inches, or a railing not less than 50 percent open and not higher than 4 feet, 6 inches, shall not constitute an enclosure. A sun control device that is accessible for purposes other than for maintenance shall be considered a balcony; and

\* \* \*

However, the #floor area# of a #building# shall not include:

- (1) #cellar# space, except where such space is used for dwelling purposes. #Cellar# space used for retailing shall be included for the purpose of calculating requirements for #accessory# off-street parking spaces, #accessory# bicycle parking spaces and #accessory# off-street loading berths;

\* \* \*

- (5) floor space in open or roofed ~~terraces, bridges, breeze ways or porches~~, provided that not more than 50 percent of the perimeter of such ~~terrace, bridges, breeze ways, or porch~~ is enclosed, and provided that a

parapet not higher than 3 feet, 8 inches, or a railing not less than 50 percent open and not higher than 4 feet, 6 inches, shall not constitute an enclosure;

\* \* \*

- (10) floor space in exterior balconies or in open or roofed terraces provided that not more than 67 percent of the perimeter of such balcony or terrace is enclosed and provided that a parapet not higher than 3 feet, 8 inches, or a railing not less than 50 percent open and not higher than 4 feet, 6 inches, shall not constitute an enclosure. A sun control device that is accessible for purposes other than for maintenance shall be considered a balcony;

\* \* \*

#### Height factor

The "height factor" of a #zoning lot# is equal to the total #floor area# of a #building# divided by its #lot coverage#. If two or more #buildings# are located on the same #zoning lot#, the #height factor# is the sum of their #floor areas# divided by the sum of their #lot coverages#.

~~The #height factor# is thus equal to the number of #stories#, if the #building# were erected without setbacks. In computing a #height factor#, a fraction of .5 or more may be considered a whole number, and smaller fractions shall be disregarded.~~

For example, a #zoning lot# with a #residential building# containing 60,000 square feet of #floor area# and a #lot coverage# of 5,000 square feet has a #height factor# of 12, and a #zoning lot# with two #residential buildings# containing a total of 80,000 square feet of #floor area# and 10,000 square feet of total #lot coverage# has a #height factor# of 8.

~~In computing a #height factor#, a fraction of .5 or more may be considered a whole number, and smaller fractions shall be disregarded.~~

\* \* \*

#### Income-restricted housing unit

An "income-restricted housing unit" is a #dwelling unit# that complies with the definition of #affordable housing unit# set forth in Section 23-911 (General definitions), or any other #dwelling unit# with a legally binding restriction on household income at or below 80 percent of the #income index#, as prescribed by a City, State, or Federal agency, law, or regulation, for a period of not less than 30 years. For the purposes of this definition, #income index# shall be as defined in Section 23-911 (General definitions).

Any #dwelling unit# for which the applicable number of required #accessory# off-street parking spaces was established pursuant to the provisions of Section 25-25 (Modification of Requirements for Public, Publicly-Assisted and Government Assisted Housing or for Non-profit Residences for the Elderly) as such Section existed

Commented [DCP5]: Removing erroneous statement that makes calculation of height factor unclear for zoning lots with multiple buildings with differing heights.

Commented [DCP6]: New inclusive definition for affordable housing units. Predominantly used in proposal for determining parking requirements.

between December 15, 1961 and [date of adoption] shall be considered an #income-restricted housing unit#. In addition, #dwelling units# in public housing developments owned by the New York City Housing Authority for which the applicable number of required #accessory# off-street parking spaces was established pursuant to the zoning regulations in effect between July 20, 1950 and December 15, 1961 shall be considered #income-restricted housing units#.

\* \* \*

#### Long-term care facility

A “long-term care facility” is a #community facility use# that has secured appropriate certificate of authority or licensure by the New York State Department of Health and shall include:

- (a) nursing homes or assisted living facilities as defined in the Public Health Law; and
- (b) continuing care retirement communities, consisting of independent living #dwelling units# in addition to nursing home beds and assisted living facilities as defined in the New York State Public Health Law. Such continuing care retirement communities may be located in one or more #buildings# on the same or contiguous #zoning lots#, or on lots which would be contiguous but for their separation by a #street#. All such continuing care retirement communities shall:
  - (1) offer a life care contract that includes unlimited long-term care services along with housing for independent living and #residential# services and amenities; and
  - (2) include fewer independent living #dwelling units# than the combined number of assisted living #dwelling units# or #rooming units# and nursing home beds on such same or contiguous #zoning lots#, or on lots which would be contiguous but for their separation by a #street#. For the purposes of this calculation, the number of such assisted living #dwelling units# or #rooming units# shall be the number of such units in the State-licensed assisted living facilities or assisted living #residences#; and the number of such nursing home beds shall be the number of authorized State-licensed nursing home beds, as applicable. For the purposes of this definition, the term #rooming units# shall be as defined in the New York City Housing Maintenance Code.

However, if a continuing care retirement community does not comply with conditions (1) or (2) above, the independent living #dwelling units# shall be considered a #residential use#.

\* \* \*

#### Lot coverage

“Lot coverage” is that portion of a #zoning lot# which, when viewed directly from above, would be covered by a #building# or any part of a #building#. However, for purposes of computing a #height factor#, any portion of such #building# covered by a roof which qualifies as #open space#, or any terrace, balcony, breeze way, or porch or portion thereof not included in the #floor area# of a #building#, shall not be included in #lot coverage#.

Commented [DCP7]: New definition replacing 'nursing homes and health-related facilities' in Use Group 3.

For example, a #zoning lot# of 20,000 square feet consists of one portion, 100 feet by 100 feet, as a #corner lot# portion, and another portion, 100 feet by 100 feet, as an #interior lot# portion. In a district that allows 70 percent coverage of the #interior lot# portion, that portion can have a #lot coverage# of 7,000 square feet, while the #corner lot# portion which is allowed ~~100~~ 80 percent coverage can have a #lot coverage# of ~~10,000~~ 8,000 square feet.

Commented [DCP8]: Updating example to reflect proposal for corner lot coverage.

~~When a #height factor# is not computed for a #residential building# or #residential# portion of a #building#, obstructions permitted pursuant to Section 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents) shall not be included in #lot coverage#, except that the portion of any balcony which does not project from the face of the #building# shall be counted as #lot coverage#.~~

Commented [DCP9]: Rewriting provision to clarify how balconies and other obstructions relate to lot coverage calculations.

~~When a #height factor# is not computed for a #residential building# or #residential# portion of a #building#, the portion of any balcony which does not project from the face of the #building# shall be counted as #lot coverage#, but other obstructions permitted pursuant to Section 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents) shall not be included in #lot coverage#.~~

\* \* \*

#### ~~Non-profit residence for the elderly~~

Commented [DCP10]: Removing definition as use is replaced by proposed new definition for "affordable independent residence for seniors".

~~A "non-profit residence for the elderly" is a #residence# occupied at least 90 percent by elderly families, the head or spouse of which is sixty two years of age or over, or by single elderly persons who are sixty two years of age or over, and which:~~

- ~~(a) contains housekeeping, semi-housekeeping or non-housekeeping units especially designed for elderly persons or families; and~~
- ~~(b) consists of one or more #buildings# on the same or contiguous #zoning lots#, or on lots which would be contiguous but for their separation by a #street# and contains related #accessory# social and welfare facilities primarily for residents which may also be made available to the community, such as cafeterias, or dining halls, community rooms, workshops and other essential service facilities provided that these facilities shall occupy #floor area# or #cellar# space in an amount not less than four percent of the total #floor area# of the #non-profit residence for the elderly#. In no event shall the floor space occupied by lobbies, passageways, storage space or other spaces normally provided in usual #residential buildings# be considered as a part of the #floor area# attributable to the Social and Welfare facilities; and~~
- ~~(c) is either:
  - ~~(1) owned by or constructed for the New York City Housing Authority, or~~
  - ~~(2) constructed with the assistance of mortgage financing or other financial assistance insured by or procured through or with the assistance of a municipal, State, or Federal governmental agency, and is maintained on a non-profit basis by a charitable organization or its wholly owned~~~~

subsidiary incorporated pursuant to the provisions of the New York State Not For Profit Corporation Law.

~~However, any #non profit residence for the elderly# to which seed money has been advanced under Article II of the State Private Housing Finance Law prior to January 23, 1969 shall have the option to be continued under the provisions of the Zoning Resolution as amended on January 23, 1969 or under the provisions of the Zoning Resolution as effective just prior thereto.~~

~~In the Borough of Manhattan in R7-2 Districts, the definition of a #non profit residence for the elderly# shall also apply to projects reserved for the elderly for a period of not less than 40 years approved under Article 2 and 5 of the State Private Housing Finance Law provided the project is operated by a sponsor or co-sponsor which is a non-profit organization. The certificate of occupancy shall bear the designation "Non profit residence for the elderly," as defined in Section 12-10 of the Zoning Resolution.~~

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Predominantly built-up area

A "predominantly built-up area" is a #block# entirely within R4 or R5 Districts, including a #Commercial District# mapped within such #Residential Districts#, having a maximum area of four acres with #buildings# on #zoning lots# comprising 50 percent or more of the area of the #block#. However, a #predominantly built-up area# shall not include a #block# which is located partly in a R4A, R4-1, R4B, R5B or R5D 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# are set forth in the following Sections:

- ~~Section 23-143~~ (~~Minimum Required Open Space, Open Space Ratio, Maximum Lot Coverage and Maximum Floor Area Ratio~~ Optional regulations for predominantly built-up areas)
- Section 23-22 (~~Required Lot Area per Dwelling Unit, Lot Area per Room or Floor Area per Room~~ Maximum Number of Dwelling Units)
- Section 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents)
- Section 23-631 (~~Height and setback in R-1, R-2, R-3, R-4 and R-5 Districts~~ General provisions)
- 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

Commented [DCP11]: Updating various cross-references in this list to match reorganization of Article II, Chapter 3.

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# and the #Special Ocean Parkway District#, and in areas subject to the provisions of paragraph (c) of Section 23-16 23-146 (Optional provisions for certain R5 and R6 Districts in Brooklyn Special Provisions for Certain Areas).

\* \* \*

#### Quality Housing building

A “Quality Housing building” is a #building#, #developed#, #enlarged#, #extended# or #converted#, pursuant to the Quality Housing Program. The Quality Housing Program consists of specific #bulk# requirements set forth for #Quality Housing buildings# in Article II, Chapter 3 and Article III, Chapter 5. Where a #building# adheres to such #bulk# requirements, which, depending on the requirements for the zoning district, may be required or may be an option, additional standards and requirements are set forth in Article II, Chapter 8 that apply in conjunction with such #bulk# provisions for #Quality Housing buildings#.

\* \* \*

#### Residence, or residential

A “residence” is one or more #dwelling units# or #rooming units#, including common spaces such as hallways, lobbies, stairways, laundry facilities, recreation areas or storage areas. A #residence# may, for example, consist of one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#. However, #residences# do not include:

- (a) such transient accommodations as #transient hotels#, #motels# or #tourist cabins#, or #trailer camps#;
- (b) #non-profit hospital staff dwellings#; or
- (c) student dormitories, fraternity or sorority student houses, monasteries or convents, sanitariums, nursing homes #long-term care facilities#, or other living or sleeping accommodations in #community facility buildings# or portions of #buildings# used for #community facility uses#.

“Residential” means pertaining to a #residence#.

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#### Transit Zone

The “Transit Zone” is the area within the boundaries shown in Appendix I where special parking provisions

Commented [DCP12]: Updating with proposed new definition.

Commented [DCP13]: New definition to describe geographic area where modified parking regulations for affordable independent residences for seniors and income-restricted housing units apply.

apply.

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END

