

**TRANSCRIPT OF PUBLIC HEARING BEFORE  
THE CITY PLANNING COMMISSION  
MARCH 14 & 15, 1960**

in the matter of....

Comprehensive Amendment  
of the Zoning Resolution  
of The City of New York

Documents

Prepared by Department of City Planning  
C.P. 15278

VOLUME: A

PUBLIC HEARING

before the

CITY PLANNING COMMISSION

in the matter of a

PROPOSED COMPREHENSIVE AMENDMENT  
Pursuant to Section 200 of the New York City Charter

of the

ZONING RESOLUTION OF THE CITY OF NEW YORK

consisting of

TEXT AND MAPS

Held at City Hall, Borough of Manhattan

Beginning on March 14, 1960, and continued on  
March 15, 18, 21, 22, 23 and 25, 1960.

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DOCUMENTS PRESENTED AT TEXT HEARINGS

Monday, March 14, and Tuesday, March 15

- Document 1. Association of the Bar of the City of New York,
- Document 2. Citizens Budget Commission
- Document 3. New York Chamber of Commerce
- Document 4. Commerce & Industry Association of New York

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THE ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK  
42 West 44th Street

The City Planning Commission's Proposal for a  
New Zoning Resolution

A REPORT OF THE  
COMMITTEE ON REAL PROPERTY LAW

The Committee herewith presents its report on the City Planning Commission's "Proposed Comprehensive Amendment of the Zoning Resolution of the City of New York" (the "Proposed Resolution").

The Committee approves the Proposed Resolution and recommends its adoption.

SUMMARY OF COMMITTEE'S FINDINGS AND  
RECOMMENDATIONS

The Zoning Resolution adopted by New York City in 1916 was a pioneering achievement. It coupled the regulation of use with the regulation of height and area of buildings, and thus checked the mushroom growth of incompatible uses and prevented the central part of the City from becoming a tangle of dark and airless canyons. This epoch-making enactment provided an example for countless cities throughout the country.

However, since its adoption the Zoning Resolution has not been completely revised, despite the many changes in the face and flow of the City and despite the example, this time provided by other zoning ordinances incorporating newly developed zoning conceptions and techniques. Instead these years have witnessed patchwork amendment to the maps and text—more than 2,500 in fact — in an

attempt to keep the Resolution reasonably adaptable to the City's zoning needs.

The Proposed Resolution is a complete and comprehensive revision of the Zoning Resolution, and the City is now confronted with the urgent choice between a new fully integrated Resolution and continued piecemeal amendment of the existing Resolution.

The major conclusions of the Committee are these:

1. We find that the present Zoning Resolution is outmoded and does not adequately provide for the needs of the City of New York. Its basic failing is that it lacks a comprehensive concept of rational land use for the City as a whole. As a result it cannot furnish proper zoning guidance for the mature but still dynamic City. We further find that the present Zoning Resolution cannot be adequately modernized by piecemeal amendment.

2. We find that the basic structure of the Proposed Resolution is not subject to the foregoing objections. It incorporates modern zoning conceptions which have been adopted in numerous other cities. By and large it provides a comprehensive, ingenious and flexible instrument to assist in guiding the future growth and development of the City.

3. We also believe that if the Proposed Resolution is not adopted, no other attempt to adopt comprehensive zoning is likely to be made for many years to come. The sustained effort and large expense that resulted in the Proposed Resolution would not be duplicated if the Proposed Resolution is defeated. Accordingly, we believe that it is urgently necessary to support the Proposed Resolution now.

The Committee recommends the approval of the Proposed Resolution.

A more detailed discussion follows.

## I - THE PRESENT ZONING RESOLUTION

The present Zoning Resolution comprises a zoning text containing provisions regulating the uses of land and the height and area of buildings plus three maps of the City in which property is separately classified by use district, height district and area district.

### Deficiencies of Substance

Some of the present Zoning Resolution's deficiencies of substance include the following:

1. Full utilization of the present Resolution would result in a city of about 55 million residents and 250 million workers. A total city pattern so far from the recognizable City of today and of the future is not capable of rationally controlling land development.

2. There is a complete absence of control over uses in "unrestricted" districts and there are far too many such districts designated throughout the City on the zoning maps. On the one hand, this has led to the location of residences in such districts, thus wasting and pre-empting sites that should have been devoted to industry. On the other hand, it has permitted the worst types of noxious uses in many cases in close proximity to homes.

3. The present use districts do not adequately provide for the logical grouping of compatible uses, as is the case with business districts that permit manufacturing and warehousing, and manufacturing districts which are essentially business classifications.

4. Direct control of bulk is provided in only a fraction of the zoning districts; others have indirect controls (i.e., the result of combined height and area district regulations) where the effects tend to be too restrictive and to vary widely because of such accidental factors as district combinations and the size and location of lots.

5. The Resolution is still largely related to lot-by-lot development, a valid image of the City 40 or more years ago but a hindrance to modern large-scale developments in which individual lot lines have little relevance.

6. There is inadequate provision, because of the structure of the text and the maps of the present Resolution, for non-residential parking requirements, a crucial factor for the modern city.

#### Deficiencies of Form

Because the present Resolution has grown like "Topsy" it is at once over-simplified and over-complicated. The form and organization of the Resolution as a whole is confused and confusing. Where the text is simply stated there is, in various instances, a sacrifice of content. In some cases, on the other hand, the wording is so complicated as to be virtually incomprehensible. The use of three sets of maps is cumbersome and unnecessary.

#### The Question of Piecemeal Amendment

If the present Resolution is basically inadequate and outmoded—and there is widespread agreement that it is—the question of revision is essentially one of technique. Should we continue with our attempts to patch up a Resolution for conditions for which it was never intended or should we, as most other cities have done whose zoning ordinances date back to the 1920's, substitute a new and fully-integrated Resolution?

Our own experience is the best answer. Despite the more than 2,500 amendments to text and maps, the present Resolution is still inadequate and obsolete. At this point, it is wholly unrealistic to expect that the process of piecemeal amendment will produce different results in the future than in the past.

Lacking a comprehensive concept of rational land use for the City as a whole, the present Resolution contains a built-in major failing that must defeat all attempts at piecemeal correction. Extensive remapping on the basis of an outworn text can lead only to distortion and unforeseen and inconsistently onerous results. Extensive amendment of the text in accordance with contemporary zoning conceptions without corresponding integration with the map would be pointless.

We think there can be no serious question but that the time has come for a complete revision of the Zoning Resolution and an abandonment of the self-defeating process of patchwork amendment which after more than 40 years has left us still with an outmoded, cumbersome and inadequate instrument to guide the development of the City.

## II--THE PROPOSED RESOLUTION

### Background

The Proposed Resolution is the second serious City-sponsored effort in recent years to formulate comprehensive rezoning. The first was "The Plan for Rezoning" published in 1951 which had been prepared by outside consultants engaged by the City. The 1951 Plan was approved in principle, with some reservations, by a Special Committee of this Association, whose report was adopted by the Association on January 19, 1954. However, the 1951 Plan was never brought to the action stage by City officials.

In September 1956 the City Planning Commission retained the architectural firm of Voorhees, Walker, Smith & Smith (the "Consultants") to make the appropriate studies and to draft a comprehensive zoning proposal to replace the present ordinance. After more than two years of study the Consultants' proposal was made public in February 1959. The Planning Commission then held a series of informal

hearings on the proposal and also consulted various groups having a special interest in zoning, including architects, civic associations, real estate boards and this Committee. (This Committee, at the Planning Commission's request, submitted a written report to the Commission on the proposal.) On December 21, 1959 the Planning Commission presented the Proposed Resolution, which represents the Planning Commission's own revision of the Consultants' proposal. Although the Planning Commission made numerous changes in the Consultants' proposal, the Proposed Resolution retains the essential features of the proposal. The Proposed Resolution will be the subject of public hearings to be held by the Planning Commission during March 1960.

This Committee is pleased to report that many of its suggestions concerning the Consultants' proposal were adopted by the Planning Commission when it formulated the Proposed Resolution. Thus, the Planning Commission adopted the following recommendations of this Committee: (a) deleted all provisions concerning a Zoning Administrator, with rule-making power, to enforce the Zoning Resolution; enforcement will remain with the Department of Buildings and rule-making power with the Board of Standards and Appeals; (b) required findings in all determinations by the Board of Standards and Appeals on applications for variances or special permits; (c) changed the judicial doctrine barring a purchaser with knowledge of the zoning regulations from applying for a variance in cases of practical difficulties and unnecessary hardship; (d) deleted the Consultants' requirement of publication in a newspaper, in addition to City Record publication, of proposed zoning changes initiated by the Planning Commission; and (e) redrafted various provisions to clarify standards and procedures.



## Scope

The Proposed Resolution is based upon a conceivable image of the future City. The New York City which we know today is characterized more by population shifts than by the vast population increases of the past. Its 1957 population of 7,870,000 is expected to grow to 8,340,000 by 1975. The Proposed Resolution would permit building construction to accommodate a population within the City of 11,830,000 and thus allow for changes in trends and future growth.

The Proposed Resolution provides for a single-map system, permitting 62 types of zoning districts for the entire City compared to the three-map system of the present Resolution under which 286 combinations of use, height and area districts are actually mapped and under which more than 1,000 combinations are possible.

The major controls relied upon in the Proposed Resolution relate to use, bulk and intensity of development and parking. Parking is thus made an integral part of the new zoning.

The Proposed Resolution is admittedly neither simple nor brief. It is a document containing over 300,000 words and numerous tables and illustrations. Yet because of the manner in which it has been organized, it is not difficult to use.

## Use Regulations

The Proposed Resolution adopts the principle of permissive listing of uses. All uses which are permissible in a district are listed as permitted uses and no others are allowed. This protects the City against the loopholes which develop in prohibitive listing and has the advantage of clarity for persons using the Resolution. If a use is overlooked or subsequently comes into being as a result of technology, it may be added as a permissive use by amendment in the districts where it is appropriate.

The Proposed Resolution provides for 13 use districts: 2 Residential, 8 Commercial and 3 Manufacturing.

The Manufacturing districts also embody the modern principle of "performance standards" which involve the establishment of measurable standards in 8 aspects of potential industrial nuisances, such as noise, odors, vibration, etc. Different levels of performance are established for each of the 3 Manufacturing districts. The purpose of this technique is to prevent the development of nuisances where they may be harmful to their neighbors and to the community and also to permit industries, which can comply with the stated standards in each type of district, an opportunity to locate there. Thus an industry classified as belonging in Manufacturing 2 or Manufacturing 3 districts can locate in Manufacturing 1 if it qualifies under all the higher district standards.

Apart from the use districts and the performance standards, the uses permissible in each of the 13 different use districts are stated in terms of 18 "use groups." The uses listed in each of these groups have either common characteristics or common functional relationships. This permits a desirable flexibility as to the purposes and characteristics of each district, which is unattainable under the present Resolution.

A relatively small number of uses are given special treatment. These are uses such as bus stations, race tracks, children's amusement parks, etc. which require the granting of a special permit, after the making of specified findings, by either the Board of Standards and Appeals or the City Planning Commission before such uses can be located in specified districts. Each of these uses has certain characteristics which makes such special consideration desirable—those involving significant planning issues being assigned to the Planning Commission and the rest to the Board of Standard and Appeals.

A notable feature in connection with the power of the Board of Standards and Appeals to grant variances and special permits is the absence of a counterpart to Section 7 (e) of the present Resolution, which permits the Board to grant variances for a stated term of years for "buildings and uses not in conformity with the requirements of this article." This blanket authority is eliminated and the Proposed Resolution specifically enumerates the uses which the Board may permit in various districts subject to the making of findings. We approve of the elimination of the blank check type of authority to grant all types of variances on the ground that it would lead to the dilution of the Resolution.

The Proposed Resolution also provides that in Residence districts certain present non-conforming uses must terminate at the end of specified periods, and further restricts the restoration of non-conforming uses after damage or destruction to a certain prescribed extent. The validity of these provisions is discussed later in this report.

#### Bulk Controls

The Proposed Resolution provides for direct control of bulk and density instead of the present Resolution's indirect controls arrived at by a combination of height and area regulations. The bulk controls are designed to regulate (a) the over-all bulk or density allowable on a particular zoning lot, and (b) the disposition of this bulk within the confines of the zoning lot.

The control of over-all density of development applies to all districts without exception. This is the floor area ratio which is already in use in several, but not all, of the area districts of the present Resolution. If this were the only over-all density control

in Residence Districts there might be an unwarranted increased density as a result of building small dwelling units in order to get as many units as possible within the specified floor area. The Proposed Resolution, therefore, provides additional regulations for Residence Districts specifying a certain lot area for each room, varying with the number of rooms in the apartment. The purpose of this direct control of population density is to make possible intelligent planning for schools and other community facilities.

A novel concept in this regard is the use of bonuses to encourage the builder to leave open space on his lot at the street level. For every unit of ground space left open, several additional units of floor space beyond the normal maximum may be added.

Flexibility within the limits of adequate provision for light and air is also intended in the provisions for controls over the shape of buildings and their location on the lot. These provisions are intended to permit a wider choice in the disposition of the allowable building bulk than presently exist.

The hope is that the bulk controls will properly control population density and at the same time permit flexibility of design and contribute to economical construction.

## Parking

The Proposed Resolution recognizes that the automobile has added a new dimension to city life and that provision for parking must be considered as an essential element of the modern zoning resolution. Since 1950 the present Resolution has had fairly effective requirements for off-street parking for residential buildings. However, all efforts to introduce parking requirements for non-residential buildings have failed, largely because parking requirements were not contemplated initially and the present Resolution does not lend itself to amendment for this purpose.

The Proposed Resolution, generally speaking, requires all buildings in all districts to provide the needed amount of off-street parking, except for Manhattan south of 110th Street and downtown Brooklyn. The Proposed Resolution increases in some instances the required parking for Residential Districts over that provided in the present Resolution, and introduces parking requirements for commercial and industrial areas.

### III-Legal Questions

#### A. NON-CONFORMING USES

##### 1. Termination

The treatment of non-conforming uses is one of the most difficult problems in zoning. Such non-conformity is generally recognized as one of the chief causes of blight, congestion and slums. However, the efforts to eliminate non-conforming uses inevitably collide with powerful pressures to preserve existing investments.

The early hope was that the non-conforming use would simply disappear over the course of time because its incompatibility with its

neighboring uses and structures would make its continuance economically unprofitable. In fact, the non-conforming use rarely disappears by voluntary abandonment and indeed provisions similar to Section 6 of the present Resolution, which protects non-conforming uses, have, in many instances, unintentionally granted monopoly rights by excluding competitors from the area.

To mitigate the effects of non-conforming uses, many recent zoning ordinances have provided for the elimination of the worst types of such uses after prescribed periods which would permit the amortization of the owner's investment. The Proposed Resolution includes provisions of this "amortization" type designed to deal only with the most damaging cases, i.e., manufacturing and related uses in Residence Districts.

The attitude of the New York Court of Appeals which is discernible from *Harbison v. City of Buffalo*, 4N.Y.2d 553 (1958), *People v. Miller*, 304 N.Y. 105 (1952), and *Town of Somers v. Camarco*, 308 N. Y. 537 (1955), is on the whole favorable to such amortization, but the cases before it to date have not furnished the real test. One can state with confidence only that non-conforming uses are constitutionally protected unless the loss to the owner resulting from termination is relatively slight and insubstantial. In *People v. Miller*, supra, the Court upheld the termination of a pigeon farm. In *Somers v. Camarco*, supra, it held unconstitutional the proposed cessation of a sand and gravel business (involving "substantial" improvements) on one year's notice. In the *Harbison* case, supra, it held valid a Buffalo ordinance which required termination of a junkyard use in a residential district within three years, and remanded the case for evidence whether application of the ordinance was reasonable in the

facts at bar; the lower court subsequently found that moving its junkyard would cost the petitioners about \$20,000 and that accordingly the ordinance was not reasonable as applied there (unreported decision, discussed in 44 Cornell Law Quarterly (1959) 450,451).

The proponents of amortization of non-conforming uses have been encouraged by the Court of Appeals' opinion in the Harbison case not so much for the holding as for the Court's tolerant discussion and its citation, with evident approval, of liberal decisions in other states.

Thus the Court in the Harbison case stated as follows (4 N.Y. 2d at 561,562):

"Leaving aside eminent domain and nuisance, we have often stated in our decisions that the owner of land devoted to a prior nonconforming use, or on which a prior nonconforming structure exists (or has been substantially commenced), has the right to continue such use, but we have never held that this right may continue virtually in perpetuity. Now that we are for the first time squarely faced with the problem as to whether or not this right may be terminated after a reasonable period, during which the owner may have a fair opportunity to amortize his investment and to make future plans, we conclude that it may be, in accordance with the overwhelming weight of authority found in the courts of our sister States, as well as with the textwriters and commentators who have expressed themselves upon the subject.\*\*\*In ascertaining the reasonable period during which an owner of property must be allowed to continue a nonconforming use, a balance must be found between social harm and private injury. We cannot say that a legislative body may not in any case, after consideration of the factors involved, conclude that the termination of a use after a period of time sufficient to allow a property owner an opportunity to amortize his investment and make other plans is a valid method of solving the problem."

The Proposed Resolution would terminate the following non-conforming uses in Residential Districts only, after the expiration of the following time periods:

1. Open uses involving no substantial structures (i.e., structures with a floor area of less than 400 square feet or having an assessed valuation of less than \$2,000) would terminate in 3 years (Section 52-82). This is similar to the regulation upheld by the Court of Appeals in the Harbison case.

2. Certain non-conforming uses deemed especially objectionable in Residence Districts, such as coal storage, dumps, auto wrecking establishments, not located within a completely enclosed building or which involve the use of buildings or other structures having an assessed valuation of less than \$20,000 would terminate in 10 years (Section 52-84). This is similar to (1) and is also supported by the "nuisance" doctrine. The longer time period appears to be reasonably related to the somewhat larger investment.

3. Certain non-conforming uses, generally manufacturing or heavy service establishments, located in buildings designed for residential use, would terminate in 10 years (Section 52-85). The lack of substantial investment in plant facilities may in some cases bring this situation, on analysis, close to the conditions in (1) and (2). It would seem that the rationale in the Harbison case would be persuasive, if not controlling under such circumstances.

4. Certain non-conforming uses, generally manufacturing or heavy service establishments, located in buildings not designed for residential use would terminate either 25 years after the effective date of the new Resolution or 40 years after the date of issuance of the original Certificate of Occupancy, whichever is later (Section 52-86). If such non-conforming uses are located in a non-residential building which has been enlarged, or is located in two or more buildings, the time periods are based on the date of extension or the building with the longer useful life (Sections 52-861 and 52-862). Upon application, the termination date may be extended by the Board of Standards and Appeals for one term of 3 years (Section 73 - 33).

The above plan for amortization of non-conforming uses appears to the Committee to be reasonable in most situations, and in our opinion



would be valid under New York law as it is presently evolving. We would suggest, however, that the Planning Commission consider the comments made by a Special Committee of this Association on a similar proposal, to the effect that an owner should have an administrative remedy whereby he may be granted an appropriate extension of time in cases where the prescribed period is unreasonable or inadequate. (As previously noted, the Special Committee's Report was adopted by the Association in January, 1954). The Planning Commission might conclude that in lieu of Section 73-33, supra, which would provide a discretionary three-year grace period, the proposed Resolution should empower the City Planning Commission—not the Board of Standards and Appeals—to act on individual applications for special permits extending the period of amortization, upon a showing of unnecessary hardship and practical difficulties, balanced against the public interest in terminating non-conforming uses.

## 2. Restriction on Reconstruction

Section 25 of the present Resolution provides that:

"Nothing in this resolution shall prevent the restoration of a building wholly or partly destroyed by fire, explosion, act of God or act of the public enemy or prevent the continuance of the use of such building or part thereof as such use existed at the time of such destruction of such building or part thereof."

The Proposed Resolution represents a departure from the above-quoted provision of the present Resolution. Where a building which is substantially occupied by a non-conforming use is damaged or destroyed "by any means" to the extent of 50% or more of its total floor area, the building may be repaired or incidentally altered, i.e., altered in its non-structural aspects, and the non-conforming use continued, but the building may not be "reconstructed" except for a conforming use (Section 52-621). If "floor area" is an inappropriate measure of the extent of

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damage or destruction, an application may be made to the Board of Standards and Appeals which may substitute "reconstruction costs" for floor area (Section 52-622).

These provisions are similar to the provisions now not uncommon in modern zoning ordinances which terminate the right to replace a non-conforming use or building if more than a certain per cent of value is destroyed by fire or similar catastrophe. McQuillin, Municipal Corporations (3d ed.) Vol. 8, sec. 25.195; Palazzola v. City of Gulfport, 211 Miss. 737, 52 So. 2d 611 (1951), upholding a 50% clause.

The New York courts have had occasion to uphold an ordinance providing that a non-conforming building damaged by fire to the extent of more than 75% of its value shall not be repaired except for a conforming use, Matter of Koeber v. Bedell, 254 App. Div. 584, 3 N.Y.S.2d 108 (2d Dept. 1938), aff'd without opinion, 280 N. Y. 692 (1939); but the validity of a provision restricting restoration where the damage is less than 75% does not appear to have been litigated in this jurisdiction.

In the opinion of the Committee the proposed 50% provision is reasonable and valid.

### 3. Lapse

Under the present Resolution discontinuance of a non-conforming use terminates the use. But discontinuance is interpreted as abandonment, and as a practical matter the owner may resume the non-conforming use if he shows that he did not intend to abandon it.

The Proposed Resolution substitutes an objective test: the right to a non-conforming use is lost if the use is discontinued for 2 years (except where directly caused by war, strike or a public improvement) and "Intent to resume active operations shall not affect the foregoing." (Section 52 -71).

The social desirability of terminating non-conforming uses appears to have been a factor in the decision in *Franmor Realty Corp. v. Le Boeuf*, 201 Misc. 220, 104 N.Y.S. 2d 247 (Sup. Ct. Nassau 1951), aff'd 279 App. Div. 795 (2d Dept. 1952), upholding an ordinance prohibiting resumption of a non-conforming use after a discontinuance of one year. The Court was satisfied that the period of one year was reasonable and despite proof that the owner did not intend to abandon, refused to permit resumption of the non-conforming use. This decision supports the validity of the provision in the Proposed Resolution making irrelevant intent to resume.

#### B. PERFORMANCE STANDARDS

One of the most significant features of the Proposed Resolution is the requirement that all uses and structures in Manufacturing Districts comply with specified performance standards. These standards relate to noise, vibration, smoke and dust, odorous matter, toxic or noxious matter, radiation hazards, fire and explosive hazards, humidity, heat or glare (Sections 42-21 through 42-28). The standards would vary between M1 (light manufacturing), M2 (medium manufacturing) and M3 (heavy manufacturing) districts. Within 15 years all non-conforming uses in Commercial or M1 districts would have to conform to the performance standards applicable to an M1 district and non-conforming uses in an M2 or M3 district would have to conform to the performance standards for the applicable district (Section 52-51).

In principle and as a legal matter the proposed performance standards would appear to be as unexceptionable as performance standards in a building code. If definitely expressed so that administrative discretion is not unchecked, both are an exercise of the police power and rest for their legal validity on a factual demonstration of

reasonableness. The standards proposed represent in the first instance the analysis of the Consultants which was thoroughly reviewed and in a number of cases modified by the Commission.

Although many counties and municipalities are presently employing performance standards in their zoning ordinances no court decisions specifically addressed to their validity seem to have appeared to date; cf., however, Newark Milk and Cream Co. v. Township of Parsippany-Troy Hills, 47 N. J. S per. 306, 135 Atl. 2d 682 (1957), sustaining the constitutionality of a zoning ordinance containing performance standards.

#### C. THE ISSUANCE OF SPECIAL PERMITS BY THE CITY PLANNING COMMISSION

In the Committee's opinion no substantial question of law is raised by the provisions in the Proposed Resolution which give the City Planning Commission power, subject to the approval of the Board of Estimate, to grant special permits for certain specified uses in zoning districts where such uses would not otherwise be permitted. The special permit uses include amusement establishments such as arenas, drive-in theatres, racetracks and children's amusement parks, off-street parking establishments, public utility or transportation facilities, including bus stations and airports. Under the present Resolution some of these uses would require a variance from the Board of Standards and Appeals while others, such as large public garages, drive-in theatres, bus stations and airports, already come within the jurisdiction of the Planning Commission. The Proposed Resolution carries forward the recognition that the special permit uses are not exceptions to a general zoning plan but are an integral part of it and that the power to determine whether and where they should be located prop-

erly belongs to the Planning Commission.

In the case of each special permit use, the Commission is required to make specified findings and under Sections 74-30 et seq. detailed standards applicable to the respective uses are expressed. In the opinion of the Committee the standards set forth in these sections are adequate to guide the Planning Commission and therefore raise no legal problem.

The Committee is untroubled by the not altogether accurate contention that this portion of the Proposed Resolution takes the Planning Commission into a type of zoning activity that it has not thus far carried out. The point has been made that the Planning Commission would be transformed from a solely legislative agency in the field of zoning into an agency that is sometimes legislative, as in the field of amendment, and sometimes administrative, as in the case of special use permits.

In view of the standards set forth in Sections 74-30 et seq., we do not regard the labeling of the Planning Commission's function as significant. If it is performing a legislative function, the City Planning Commission has all of the freedom of action which the courts have recognized for zoning purposes ever since the *Ambler Realty* case, 272 U.S. 365 (1926); see also, *Nappi v. LaGuardia*, 184 Misc. 775, 55 N.Y. Supp. 2d 80 (Sup. Ct. 1944). If the function is administrative, the standards are quite adequate for the guidance of the City Planning Commission.

Furthermore, there is ample opportunity for judicial review of the actions of the City Planning Commission in granting special permits irrespective of whether such actions are legislative or administrative. If legislative, the actions are reviewable by means of a

proceeding for a declaratory judgment alleging unconstitutionality of the zoning legislation itself. If administrative, review can be had by means of a proceeding under Article 78 of the Civil Practice Act.

#### D. EFFECTIVE DATE - VALIDITY OF PERMITS

The effective date of the Proposed Resolution is one year after the date of its approval by the Board of Estimate or July 1, 1961, whichever is later (Section 11-70). This is in effect a grace period which has been provided to ease the transition to the new Resolution.

The Proposed Resolution provides that if a building permit has been issued prior to the effective date of the new Resolution, construction may proceed under the provisions of the existing Resolution. The Proposed Resolution also seeks to negate possible administrative delays in reviewing plans by protecting a building permit approved after the effective date of the Resolution if complete plans and detailed specifications were filed not later than 60 days before the effective date (Section 11-321).

The owner will have two years from the effective date of the Resolution to complete the building in accordance with the building permit but if the two-year period is insufficient, the owner may apply to the Board of Standards and Appeals for not more than a one-year extension, which the Board is empowered to grant if it finds that at the time of the application substantial construction above the foundations had been completed and substantial expenditures had been made in connection with the superstructure, and a two-year extension, including permission to start new buildings, is permitted in the case of developments involving more than one building (Section 11-322).

The plan outlined above represents a substantial modification of the original proposal made by the Consultants and is also considerably more liberal than Section 22-B of the present Resolution. Section 22-B authorizes work to proceed, after a change of zoning, only if the zoning change becomes effective "after operations have been lawfully started on erecting a structure." The cases construing provisions similar to Section 22-B hold that unless the owner has undertaken some actual construction, such as the building of foundations, he is bound by the provisions of the new zoning regulations even though he has done extensive work in clearing the site, taken borings, made architectural drawings and plans, and spent large sums of money predicated on the new construction being within the scope of the old zoning provisions. *Atlantic Refining Company, Inc. v. Zoning Board of Appeals of the Village of Sloan*, 14 Misc. 2d 1022, 180 N.Y. Supp. 2d 656 (Sup. Ct. 1958); *Fox Lane Corporation v. Mann*, 216 App.Div. 813, 215 N.Y.S. 334 (2d Dep't 1926) aff'd 234 N.Y. 550, 154 N.E. 600 (1926); *Atlas v. Dick*, 275 App. Div. 671, 86 N.Y.S. 2d 23k (2d Dep't 1949) aff'd 290 N.Y. 654, 87 N.E. 2d 55; *Rosenzweig v. Crinnion*, 126 N.Y.S. 2d 692 (Sup. Ct. 1953).

The numerous objections to the Consultants' proposal in regard to effective date and pre-existing permits and the awareness of the narrow construction of Section 22-B has undoubtedly led the Commission to propose the procedures and time periods outlined above. Although the Proposed Resolution considerably liberalizes Section 22-B by exempting the owner from having to build foundations before the zoning change becomes effective, and thus in effect grants a "vested right" on the basis of filed plans alone, it is nonetheless clear that the Planning Commission's time schedule may create hardship particularly in the case of large projects required to be built in separate units where numerous

tenants may have to be relocated. In such instances the two-year period for the completion of construction, plus the extension obtainable from the Board of Standards and Appeals, may be insufficient to permit the developer to go forward with the contemplated project. In most cases, however, the chances are that the moratorium before the effective date together with the time periods granted by the Proposed Resolution will be sufficient to allow the orderly transition of the real estate market from the old to the new Zoning Resolution.

The Planning Commission, however, might consider having the two-year period within which to complete construction begin to run not from the effective date of the Resolution but from the date of the issuance of the building permit. This would perhaps make for a more uniform time period, i.e., the period would actually be the same in all cases, and no owner would be penalized merely because his plans took longer to process through the City departments.

In any event, however, no legal question appears to be presented by these provisions of the Proposed Resolution. If an owner has a "vested", i.e., a constitutional right to complete non-conforming or non-complying construction only if actual building has been undertaken prior to the zoning change, he cannot, upon being excused from this requirement, validly complain on the ground that the time period for the completion of construction is inadequate in his particular case.

#### E. OTHER QUESTIONS

None of the other legal and constitutional questions considered by the Committee appears to present any substantial question of law requiring comment in this report.



## IV-CONCLUSION AND RECOMMENDATION

The Committee submits the following resolution, intended to express the views set forth in the foregoing report:

BE IT RESOLVED, that in the opinion of this Association, the present Zoning Resolution of the City of New York is inadequate and should be replaced; and be it further

RESOLVED, that the Proposed Comprehensive Amendment of the Zoning Resolution of the City of New York (the "Proposed Resolution"), prepared by the City Planning Commission, is a proper and suitable replacement; and be it further

RESOLVED, that this Association endorses the Proposed Resolution, and recommends its adoption.

Respectfully submitted,

COMMITTEE ON REAL PROPERTY LAW

MENDES HERSHMAN, Chairman

Joseph Calderon	Henry W. Klein
Herman Cohen	James S. Lanigan
John S. Dorf	Warner H. Mendel
Paul H. Folwell	Eugene J. Morris
C. Thomas Godfrey	George W. Palmer
Louis Greenblatt	Henry V. Poor
*Raymond J. Horowitz	Lawrence S. Pratt
Harry Janin	Carl D. Schlitt
Herman Jervis	Shirley A. Siegel
Freeborn G. Jewett, Jr.	Maxwell H. Tretter
F. Robert Wheeler, Jr.	

Dated: New York, January 12, 1960.

\*Mr. Horowitz is Chairman of the Real Property Committee's Subcommittee.

CITIZENS BUDGET COMMISSION, INC.  
51 East 42nd Street  
New York 17, N.Y.

March 14, 1960

Statement of Robert W. Dowling, President of the  
Citizens Budget Commission, Presented to The City  
Planning Commission on the Proposed Zoning Resolution  
March 14, 1960

The Citizens Budget Commission has favored the proposed zoning ordinance in principle, as you know, from its inception. We appear today to voice our continued support of the proposed ordinance and the objectives of the City Planning Commission. We have stated the reasons for our general endorsement on many occasions and in some detail in the past. We shall not repeat any detailed analyses today, but we think a few points need to be made, briefly.

The time has come for renovation. The simple fact that this basic ordinance was adopted in 1916 and has been amended continuously through all the years, is reason enough to make it suspect as a workable, usable, practical basis for zoning. It seems to us that revision, reorganization, clarification and simplification are obviously in order. We do not have to show precisely how many amendments are too much. We only have to know that confusion exists and proceed to correct it. That is what your proposal will do.

We are convinced that the two principal objectives of the new zoning ordinance can be achieved by its adoption, namely to make our city a better place in which to live and work and to assure a firm tax base with foreseeable growth.

Citizens Budget Commission

The chief problem at the moment does not seem to be the merits of the proposed zoning ordinance. It seems, rather, to be misunderstanding.

Some of the opposition cite objections to specific elements of the proposal. There are at least three possible solutions to such criticism. One is to alter the proposal to satisfy the criticism. The City Planning Commission is the judge of whether this is feasible, in each case. Not everybody can be satisfied and, ultimately, your Commission will resolve such specific instances one way or the other. Another solution is to stand by the proposal, as written, and a third is to compromise. We believe that these alternatives furnish reasonable elasticity, at this time. Whatever your decisions, they will not stand in the way of the giant step forward, namely adoption of a renovated zoning ordinance.

The serious misunderstanding of critics of your plan is that they jump from these reasonable situations to an irrational conclusion, namely that the whole edifice should be destroyed because one door lock doesn't close properly. They say, in effect: "We see an item we do not like, so the whole proposal is wrong." The Citizens Budget Commission cannot accept this as a reasonable proposition, hence urges that you reject it on grounds of ordinary logic.

Our support for the rezoning proposal rests on two main points:

First, it will help to stabilize the real estate tax base and promote a healthy growth of the tax base in the future.

Second, it will help to hold in bounds the rising costs of providing city services.

Let us talk about the tax base first. We all know that real estate taxes are the mainstay of the City's budget. Collections from that source are about a billion dollars a year, more than triple the size of collections from the sales tax, which is next largest city tax.

For the future, the City's two main problems with the real estate tax base are to prevent the stagnation of the core areas of the city, and consequent destruction of the enormous property values there; and to prevent the development of slums in residential areas in the city. Our main objective should be to create the conditions for confident investment in real estate and to promote a healthy, steady growth in the tax base. This is of great importance to the soundness of the city's finances.

Of course it is obvious that if every square foot of taxable land could be developed to the highest density -- and then fully rented -- the city, as well as the owners of property could get astronomical returns, but the catch is in the word "if." High bulk, high density development creates congestion. Excessive bulk and density development creates excessive congestion. This has been the problem in the core areas of many cities. Those downtown business and commercial areas have felt the depressing effects of competition from suburban shopping centers and industrial parks, which offer more room and easy access. Modern zoning controls which effectively limit bulk and density are vital if congestion and eventual stagnation of core business and commercial areas are to be prevented. Effective control of bulk and density is

also essential in residential areas to prevent down-grading and the development of slums. If the city wants a healthy tax base in the future, then it must be willing to impose effective zoning controls now.

An effective set of zoning controls can be of great help both to the city's capital and expense budget.

Capital construction plans can be drawn better if the city has a clear idea of the limits of future population growth. Over-rapid, high-density development of already congested core areas carries in its wake a need for public expenditures which sometimes are beyond the City's immediate limited fiscal resources. More transit facilities, more arterial highways, schools, hospitals, police and fire stations, parking facilities, and similar projects must then be provided on almost a crisis basis, thereby ruining orderly planning processes and relegating other, only slightly less critical, capital projects to the status of "hoped-for future improvements."

Equally important, if neighborhoods are stabilized, schools and other city facilities will not be left half-empty when families with children move out to less congested neighborhoods. The added costs of providing city services in blighted neighborhoods -- police, welfare, and health services particularly -- are the budgetary penalties of uncontrolled growth. These costs are only additions to the real human costs of congested neighborhoods caught up in the whirlwind of deteriorating neighborhoods, slum clearance, relocation, more slums, and so on ad infinitum.

Entirely apart from any financial considerations, the human factors over-whelmingly point to the necessity for planning to make New York a desirable place for living and working. The absence of planning is a guarantee of human misery in the form of slums and deteriorating areas of all kinds.

Finally, we think that you have displayed wisdom in your approach to the terms of application of the ordinance. The adjustment period you propose not only puts everyone on notice of your intention, important as that is, but it also gives opportunity for testing what is in the ordinance. If critical, unpredictable errors of judgment appear to have been incorporated in the ordinance, they can be altered to fit the realities.

We commend your good sense, your patience, your objectivity and your thoroughness. We hope that you will continue your consideration of all reasonable proposals and then press for Board of Estimate action.

Citizens Budget Commission

NEW YORK CHAMBER OF COMMERCE  
65 Liberty Street New York 5, N. Y.

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A Modern Zoning Resolution for  
the City of New York

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New York charted a pioneering path, back in 1916, when it became the first major community in the Nation to adopt a comprehensive Zoning Resolution. Following the New York example, in the years which have followed virtually all sizeable communities throughout the country have established zoning restrictions and regulations governing land use, and prescribing types of permitted structures and activities.

This 1916 Zoning Resolution, which is still in effect although amended some 2500 times during the past 43 years, is broad in scope. Accidentally or by design it expressed extravagant views regarding the future development of the City, for the pattern of land use it established would permit an ultimate City housing some 55 million people, and providing employment for some 250 million workers.

It has long been felt that the City's Zoning Resolution, with its confusing and complex amendments, no longer provides a realistic pattern, or control, for New York's proper development; and various attempts have been made during the past quarter century to modernize and bring the Resolution up to date.

In 1948, funds were appropriated by the City for a study of zoning and the preparation of a proposal for a new Resolution. The consulting firm of Harrison, Ballard and Allen was engaged for this

work, and its proposed new Zoning Resolution was widely discussed, but received no implementation by the City Government.

The need for more modern zoning, however, has remained pressing, and in 1956 the Board of Estimate made further appropriation for a new study and proposal. The City Planning Commission retained the architectural firm of Voorhees Walker Smith and Smith as consultants. Their study and proposal, submitted this year, is currently before the City for consideration, and extensive public hearings will soon be held by the City Planning Commission.

The New York Chamber of Commerce has long recognized the need for a modern zoning resolution for the City of New York; and in 1952, the Chamber endorsed the principles embraced in the Harrison, Ballard and Allen proposal and urged the adoption of its general provisions.

New York still needs a new zoning resolution if the City is to provide for the orderly future development of the City. In the opinion of the Committee on City Affairs, the general zoning proposals contained in the report by Voorhees Walker Smith and Smith, and which are broadly reviewed in the accompanying report, are practical and realistic. The Committee recommends that the Chamber endorse them in principle; and that the City be urged to adopt them with all deliberate speed, and with such specific refinements as may be necessary and appropriate as a result of the forthcoming public hearings.

#### New York City Needs a New Zoning Resolution

By modern standards of good zoning, the 1916 Zoning Resolution with its 2500 amendments, and which still governs the pattern of land use in New York City, fails to meet the needs of the City.

New York Chamber of Commerce



It permits a pattern of land use and development that is unrealistic in terms of the City's past and potential growth. With respect to housing, the Zoning Resolution permits overcrowding and the breeding of slums on the one hand, and under-utilization of available housing space on the other. With respect to commercial and industrial land use, the present zoning, which would permit developments to accommodate 250,000,000 workers, and without proper regard for essential services, is obviously incapable of rationally controlling land development. As Chairman Felt of the City Planning Commission states: "Gross distortion and waste are inevitable."

Fundamentally, present zoning in New York City lacks a rational framework. This lack has produced these results:

1. Overbuilding and congestion in some parts of the City while other areas are vacant or blighted.
2. Uneconomic and inefficient building design resulting from regulations which restrict outer form but ineffectively deal with the bulk and density they are intended to control.
3. A conformity of housing types.
4. Waste of scarce and precious sites needed for employment giving and tax-paying industry; and at the same time, a lack of protection to the homes that have been situated on these sites, and which are permitted under the present zoning.
5. Excessive waste of land in scattered and economically unrelated store development, because of gross over-zoning of shallow commercial strips.
6. Streets needed for movement of traffic blocked because of the lack of provision for vehicle parking.

For builders and property owners, the 1916 Resolution presents a monumental task in determining permissible uses. A developer must consult and correlate three zoning maps and wade through 2500 amendments to the Resolution to avoid being guilty of breaking a provision of the law. This is a costly and time-consuming procedure, urgently in need of simplification.

Finally, the 1916 Resolution is obsolete. In the four decades since its adoption, the science of planning and land-use has matured and new principles and ideas have been developed. These are not present in the original Resolution and only summarily treated in the amendments. If the development of the remaining vacant areas in the City and the redevelopment of the older areas are to be truly in the best interests of the City—if wise planning is to be an instrument for improving New York as a place in which to live and work—then New York City must have new and modern zoning.

#### A Summary of the New Zoning Proposal

The Voorhees Walker Smith and Smith report is based upon the concept that zoning must begin with a total city image as a framework. This includes an analysis of present and future land needs; the development of a rational pattern based upon the inter-relation of these needs; and an adequate system of zoning districts to make possible a mapping of a total pattern.

In determining the rational image of the City, the consultants leaned heavily on the pattern of development in the past. This provided a realistic foundation from which to project a future pattern.

The City image, upon which the proposed Resolution is based, contemplates a population of 11 million residents. This has been deter-

mined by a projection of the growth of the City to an estimated population of 8.3 million by 1975. The zoning for a capacity of 11 million residents allows for an additional growth of 2.6 million, or a margin of 31 per cent.

While the population is projected to increase by only 6 per cent by 1975, the number of permitted dwelling units will increase by almost 10 per cent to a total of 2,854,000 units. The proposed rezoning of residential areas provides for an additional capacity of 19,749 residential acres over the 46,766 net acres in use in 1956.

The consultants' analysis of employment in major industrial categories indicates that there will not be large scale increases in the industrial labor force but, rather that there will be shifts between industries and a need for additional acreage to allow for replacement of obsolete plants and additional space for employee parking. The net acreage zoned for industrial purposes will provide an additional 5,806 acres, to a total of 17,616 acres.

Commercial employment trends in the Central Business District indicate that there will be 151,000 more "paper-handling" workers and 145,000 less "goods-handling" workers by 1975. Employment in office buildings, it is estimated, will grow by about 185,000. New rentable office space is estimated to increase by 3 million square feet per year or to a total of approximately 60 million more square feet by 1975. This would require an additional 108 to 162 acres of land zoned for commercial office purposes in the Central Business District.

The local commercial areas were grossly overzoned in the 1916 Resolution permitting such development of 18,820 acres. The proposed rezoning would provide almost double the 5,892 acres being used in 1956.

A comparison of the net acreage in use in 1956, that estimated to be required in 1975, and the acreage provided for in the proposed Zoning Resolution indicates that ample allowance for growth has been made.

NET ACRES OF LAND  
(Total City)

<u>Purpose</u>	<u>In Use, 1956</u>	<u>Estimated Required, 1975</u>	<u>Proposed Zoning</u>
Residential.....	46,766	58,661	66,515
Industrial .....	11,810	13,192	17,616
Commercial .....	5,792	---	10,696

The remainder of the City's 204,410 acres will be devoted to parks and recreation areas; institutions and community facilities; airports; and the largest portion, 55,000 acres, for streets.

The Simplified Resolution

The consultants' report recommends a simplified Resolution which provides 47 different types of districts on a single-map system. All of the regulations for each major category of District are included in a single Article; and by means of tables, charts, explanatory drawings, and an index of all uses, it is possible readily to locate all of the necessary information.

Each district is governed by three basic controls: a) use; b) bulk and intensity of development; and c) parking. These regulations incorporate the latest advances in zoning techniques.

Use Districts

The proposed Resolution provides for three major categories of use districts—Residential, Commercial, and Manufacturing. These are further subdivided to provide a more detailed breakdown on the basis

of use distinctions. Thus, there are two residential, eight commercial, and three manufacturing districts.

#### 1) Residential Districts

Two major categories of Residence Districts are proposed. The first, R1 and R2, are Single-family Districts, designed for and restricted to single-family detached houses, and distinguished from each other by the minimum lot size required. The second grouping, General Residence Districts, has seven subdivisions ranging from less densely populated R3 Districts in outlying sections to R9 Districts in the high density central areas.

The proposed Resolution also makes provision for large-scale residential developments by setting regulations for bulk controls, building spacing, and shopping facilities.

#### 2) Commercial Districts

Eight Commercial Districts are provided to fit the wide diversity of commercial activity in the City. These are of four major types: 1) Local retail and service Districts (C1 and C2), designed for local area needs; 2) General Commercial Districts (C4) designed for primary and secondary outlying shopping centers; 3) Central Commercial Districts (C5 and C6), designed for central business areas in Manhattan and downtown Brooklyn; and 4) Three special purposes Districts (C3), designed for waterfront recreation uses (C7), large outdoor amusement uses, and (C8), heavy service uses.

#### 3) Manufacturing Districts

Three Manufacturing Districts, guided by regulations which incorporate permitted uses and on "performance standards" which establish limits on noise, vibration, air pollution, and similar industrial

nuisances are classified. The M1 District is designed for industries with high performance standards (the least amount of industrial nuisances) and is used as a buffer to protect Residence or Commercial Districts from the heavy industrial District, the M3 District, which has the low performance standard. The M2 District is between the two others. Residential development is excluded from all Manufacturing districts.

### Use Groups

In addition to the Use Districts, the Resolution classifies all of the present or anticipated activities in the City into 18 "use groups" on the basis of similarity of function or common nuisance characteristics, as well as compatibility with one another and with adjacent Districts. These 18 groups have six major headings: residential; community facilities; retail and commercial; recreation; general service; and manufacturing.

By plotting the Use Districts and the Use Groups on a graph, it is possible, by cross-reference, to determine easily the permissible uses of a plot of land.

### Bulk and Intensity of Development

This section of the report deals predominantly with regulations which are intended to create adequate standards of residential development. However, the first of the controls, Floor Area Ratio, is applicable to all of the Use Districts.

Four types of bulk controls are recommended in the proposed Resolution. Their purpose is:

1. To limit the number of people living on a single tract of land or in a neighborhood, both to prevent overcrowding, and to prevent overloading of street and transit facilities, schools, parks and other neighborhood facilities.

2. To provide open space on residential lots, both for the use of the residents and to provide for adequate spacing of buildings.

3. To insure access of light and air to residential buildings and the public streets.

The proposed bulk controls, which are intended to regulate the intensity of residential development, include:

1. The Floor Area Ratio, which controls the amount of floor area which may be developed on a lot. It is determined by the number of square feet of floor area for each 100 square feet of lot area.

2. Lot area per dwelling unit regulation, which controls population density by limiting the number of dwelling units permitted on a lot. This provision is intended to prevent excessive conversion of existing dwelling units and the growth of the slums.

3. The Open Space Ratio, which regulates the amount of open space on a lot. This control is essential in providing sunlight, air and recreational space. It is determined by the number of square feet of open space on a lot for each 100 square feet of floor area in a building or buildings on that zoning lot.

4. Minimum lot area and lot width regulations, which affect the density of development.

In addition to the above regulations, other controls are recommended which will provide access to light and air in all Districts. These include provisions for yards, courts, windows and the openness of streets. There are also special regulations governing the space between buildings in large-scale residential developments.

#### Parking

One of the major objectives of the proposed Resolution is the provision for off-the-street parking. The Resolution sets new requirements for residential areas. In all Residential Districts the amount of parking spaces is determined by the number of dwelling units.

The commercial parking requirements are determined by the type of Commercial District or shopping center and the neighborhood surrounding the center and by the type of business establishment and its size.

The Manufacturing Districts have the same requirement for all three Districts and this is based upon employment and the floor area per establishment. There is, however, a particular regulation for manufacturing and industrial uses and another for storage and warehousing uses.

Commercial and Manufacturing Districts in the Central Business Districts of Manhattan and downtown Brooklyn are exempted from parking requirements.

#### Some Additional Provisions

Attention is given in the Resolution to three additional subjects: Non-conforming uses, regulation of height around airports,



and administrative regulations.

The section on non-conforming uses provides regulations designed to prevent expansion or further entrenchment of non-conforming uses, and regulations designed to eliminate the worst type of non-conforming uses by providing a schedule for their elimination from Residential Districts and for improvements in their performance standards in the non-residential districts.

The Resolution proposes limits to the height of tall buildings in the vicinity of major airports to protect property and to insure that there will be no obstructions to navigation.

Finally, the Resolution recommends the following changes in the administration of zoning regulations:

1. The addition of a small, but technically capable staff, headed by a Zoning Administrator, to the Department of Buildings;
2. A series of specific findings or conditions which must be satisfied before a variance from either the proposed use or bulk regulations can be granted; and
3. Special standards or conditions for a limited number of uses with unique characteristics, such as airports, railroad stations, race tracks and drive-in theatres, which cannot be controlled adequately by the general regulations. Two agencies are empowered to grant special permits for such uses, the Board of Standards and Appeals and the City Planning Commission. The latter agency is empowered to grant permits for those uses whose location has community-wide impact and whose characteristics require special planning study.

## Recommendations of the Committee

The Committee on City Affairs of the New York Chamber of Commerce believes that the City of New York should adopt a modern comprehensive Zoning Resolution to replace the often-amended, cumbersome and outmoded zoning plan now in effect. It is essential that the future development of the City be governed by sound principles of land use which give realistic recognition to the total needs of the modern community. The present Zoning Resolution fails to provide such a guide.

In the opinion of the Committee, the proposal for a new Zoning Resolution presented in the report of Voorhees Walker Smith and Smith, consultants to the City Planning Commission, adequately meets the needs of the City. The proposal is well conceived, is based on sound premises, and outlines a pattern of land use which should materially contribute to the orderly future development of the City of New York.

Undoubtedly many details of the proposed Zoning Resolution may be subject to modification and revision; and such revision and modification as may be necessary and desirable can be made following the public hearings which are shortly scheduled without compromising the validity of the plans as a whole.

The important thing, now, is to mobilize public opinion in support of modern zoning for New York City. The Committee recommends, therefore, that the New York Chamber of Commerce endorse, generally and in principle, the proposal for a new Zoning Resolution as contained in the report of Voorhees Walker Smith and Smith, consultants to the

City Planning Commission.

The Committee recommends, further, that the Chamber urge the City to take early and affirmative action on a new Zoning Resolution, generally as proposed by the consultants, and as it may be modified as a result of the public hearings soon to begin.

The Committee recommends, finally, that copies of this report and its recommendations be sent to the Mayor, the City Planning Commission, and to members of the Board of Estimate and the City Council.

Respectuflly submitted,

Committee on City Affairs

Attest:

John T. Gwynne  
Secretary

Isaac B. Grainger  
President.

October 19, 1959

The above report was adopted by the Chamber at its regular meeting on November 5, 1959.

COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK

99 Church Street, New York 7, N.Y.

March 14, 1960

Hon. James Felt, Chairman  
City Planning Commission  
2 Lafayette Street  
New York 7, N. Y.

Dear Chairman Felt:

As an alternative to appearing before the City Planning Commission at the public hearings commencing today on the proposed zoning resolution for the City of New York, I respectfully request that receipt of this communication be noted in the official permanent record of the hearings.

I am writing as Chairman of the City Planning and Zoning Committee of Commerce and Industry Association. It is our understanding that the proposed resolution has been undergoing change since the present version was printed in December, 1959, and that it is the intention of the Planning Commission to make further changes prior to submission of the proposed resolution to the Board of Estimate for consideration there.

In light of this understanding, Commerce and Industry Association prefers to withhold judgement on the proposed resolution at this time. When the resolution is in final form, and is considered for adoption by the Board of Estimate, we will be better able to form a final opinion.

Meantime, while the Commission is making changes in the present draft of the proposed resolution, we would suggest that consideration be given to changing it in certain particulars. The first of these is that the administrative provisions of the current resolution should

be included in any new resolution verbatim, or with necessary minor changes, as these methods have worked satisfactorily for many years, with the backing of many court decisions. The powers of the Board of Standards and Appeals should not be curtailed. Provision for court review will not be available if the specific powers granted to the Board of Standards and Appeals to grant variances from the strict interpretation of the present zoning resolution, as listed in Section 7, are mostly discarded as in the proposed resolution, leaving the so-called hardship variance only.

Our second suggestion is that the performance standards, relating to the manner of performance of industrial operations rather than to the use of land, do not belong in a zoning resolution.

Our third recommendation is that the retroactive provisions concerning non-conforming uses, which amount to confiscation without proper compensation, should receive further study.

There are various minor changes which we will recommend later, but we feel that the above suggestions are vital to make the proposed resolution more palatable to my Committee.

Sincerely yours,

Edgar I. Levy, Chairman  
Special City Planning & Zoning Committee