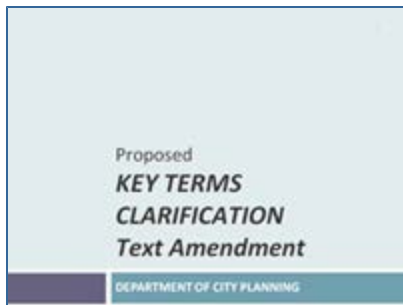


**Update February 2, 2011:**

On February 2, 2011, the City Council adopted the Key Terms Clarification Text Amendment. The text changes are now in effect. [View the adopted text.](#)

Overview

The purpose of this text amendment is to clarify and preserve the intent of the zoning regulations in relation to the terms *development* and *building*, as they are defined in the [Zoning Resolution](#). The City Planning Department has examined each section of the Zoning Resolution which uses the terms "development" or "building" and has concluded that in order to clarify the meaning of the regulations consistent with their intent, it is necessary to amend these definitions. In addition to rules relating to the terms "development" and "building," the Department proposes other text modifications that are necessary to clarify the intent of the Zoning Resolution, resolve conflicting regulations, or bring a regulation into accordance with current Department of Buildings practice.

Background

[View the presentation.](#)

1. The Term "Development"

At the time of adoption of the 1961 Zoning Resolution, the term "development" was intended to refer to a new building constructed under the then-new regulations. However, since then, two things have occurred:

1. the continuing applicability of the regulations to "developments" (new buildings) which are now existing buildings (no longer "new") has been questioned, and
2. zoning text amendments using the term "development" have applied it inconsistently. In some cases the term has been intended to mean only the new construction on the *zoning lot*, and in some cases the term has been used to mean new construction as well as existing buildings on the zoning lot.

Thus, the meaning of the term "development" as currently used in the Zoning Resolution is unclear.

2. The Term "Building"

In defining a "building" as being bounded by open area or *lot lines*, the 1961 Zoning Resolution created a situation where if all buildings on a single zoning lot abut one another, they are considered one "building." This treatment of separate buildings as one building for zoning purposes has caused confusion and resulted in undesirable outcomes. In some cases, rules intended to apply to one building do not work as intended when they are applied to several abutting buildings on a single zoning lot. The problem has become more acute since 1961 due to the increasing complexity of zoning lot configurations.



Another problem related to the current definition of "building" is that a new building that is constructed so that it abuts an existing building on the same zoning lot is considered an "enlargement" in zoning terms. This can lead to certain projects not meeting requirements that are applicable to developments but not enlargements. For example "enlargements" up to a specified size on the waterfront need not provide a waterfront public access area whereas all "developments" must provide a public access area. Similarly, street trees need not be provided for "enlargements" up to a specified size.

In addition to new definitions for the terms "development" and "building", additional text modifications are proposed that change or clarify the applicability of existing regulations, resolve potentially conflicting regulations, or revise outdated language.

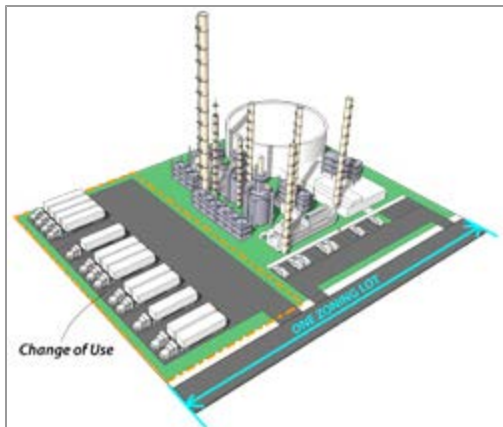
Clearer regulations will benefit:

- property owners, through clearer expectations of what can be built on their property;
- the general public, through clearer expectations of what can be built in their neighborhoods;
- the Department of Buildings, through more efficient processing of building permits and clearer standards for compliance during plan examination;
- architects and developers, through clearer regulations that provide certainty and remove ambiguities that can lead to zoning disputes.

Proposed Zoning Text Amendment

This text amendment would clarify and preserve the intent of the zoning regulations in relation to the terms development and building, as they are defined in the Zoning Resolution.

1. The Term "Development"

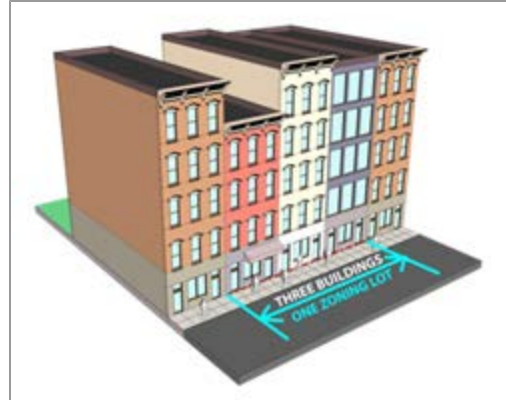


A "development" includes a new open use on a portion of a zoning lot. For instance, when an existing manufacturing facility rents out an underutilized open portion of the lot for a new commercial vehicle storage yard as a separate use unrelated to the industrial use, that is a "development" - [View a larger image](#)

"development," has caused much confusion. This phrase was not intended to apply to new uses within buildings located on a tract of land. Instead, this phrase refers to new **open** uses, even on a zoning lot that already has an open use. The Department proposes to amend the phrase "use of a tract of land for a new use" by stating that a "development" includes the establishment of a new open use on a zoning lot or a portion of a zoning lot.

New accessory open uses on a zoning lot or portion thereof will be explicitly exempted from the

Existing regulations consider abutting buildings on the same zoning lot to be one "zoning building." - [View a larger image](#)



Proposed regulations would consider abutting buildings separated by fire walls as separate buildings - [View a larger image](#)

definition of "development." However, two provisions of the Zoning Resolution which impose requirements upon accessory open uses will be clarified, including landscaping for [commercial](#) and [community facility](#) parking lots, and enclosure or screening of storage in [manufacturing districts](#).


The revised definition of "development" will also reference a new Section 11-23, which clarifies the distinction between substantial alterations and developments. It specifies that the demolition of an existing building that results in both the removal of more than 75 percent of the floor area of the existing building and more than 25 percent of its perimeter walls and the replacement of any portion shall be considered a new building -- thus triggering the requirements of public amenities listed in the section, including street tree planting, planting strips, retail continuity, transit easements, subway improvements or subway stair relocation, or street wall transparency, and provision of arts and entertainment uses in the 125th Street Special District.


2. *The Term "Building"*

The amended definition of "[building](#)" will use the concept of "[fire walls](#)" to differentiate one building from another in a way that corresponds to the intent of the City Planning Commission, the [Building Code](#), and to a layperson's common understanding of what differentiates two buildings that abut. The amended definition will also include key construction features, including the independence of essential life safety systems, which are **already required** by the New York City Building Code. Consistency with the Code will avoid confusion for the public and practitioners, as well as ensure that zoning regulations operate as intended.

View [Changes Resulting from New Definition of "Building"](#).

View [Other Modifications](#).

View  "[Table 1: Substantive Changes](#)" for a more detailed analysis of all of the proposed substantive changes.

View  "[Table II: Clarifications and Modifications Consistent with Department of Buildings Practice](#)" for a list of all of the proposed clarifications.

Public Review

The Key Terms Clarification text amendment began formal public review on September 27, 2010 with the City Planning Commission's referral of the non-ULURP zoning text amendment (N 110090 ZRY) to all Community Boards, Borough Boards, and Borough Presidents for a 60-day review period.

Milestones	Dates
City Planning Commission Referral	September 27, 2010
Community Board/Borough President/Borough Board Approval	December 6, 2010
City Planning Commission Public Hearing	December 15, 2010
City Planning Commission Approval (with modifications*). Read the CPC Report .	January 5, 2011
City Council Approval	February 2, 2011

***CPC Modifications**

In response to issues raised during the public review, the Commission approved the zoning text amendment with the following modifications:

1. The Commission modified the application to clarify that, for optional Quality Housing buildings on wide streets, the higher floor area ratio applies only to the portion of the zoning lot within 100 feet of a wide street.
2. The Commission modified the application to allow a one-year extension of time for small and medium-sized enlargements and alterations to complete construction. If not

completed within the additional year, these projects must then comply with the changes in the Key Terms Clarification text amendment.

3. The Commission also made minor changes and technical corrections, as described in the CPC report.
4. The Commission severed one sentence in Section 24-111 from the rest of the application pending the outcome of litigation related to that sentence.

For more information about the proposal, call the Zoning Division of the Department of City Planning at 212-720-3234 or email KeyTerms@planning.nyc.gov.

Key Terms Clarification Text Amendment

Changes Resulting from New Definition of “Building”

The following zoning regulations do not work as intended when there are two or more abutting buildings on a single zoning lot. The proposed change in the definition of “building” allows these rules to work as intended, so that the rules apply to structurally separate buildings instead of collectively to all abutting buildings on a zoning lot.

Location of Uses. Commercial uses are only permitted below the lowest residential use in the building. This regulation was intended to prevent conflicts between residential and commercial uses in the same building. In accordance with the current definition of “building,” where two buildings are adjacent on a single zoning lot, a commercial use located on an upper floor in one building could prevent the creation of residences on stories next to and below that floor in the adjacent building. The new definition of “building” will clarify that separate abutting buildings on the same zoning lot have no effect upon each other regarding location of residential uses above commercial uses. This amendment is considered a clarification, as it is consistent with current practice at the Department of Buildings. (Section 32-42)

The Sliver Rule was intended to prevent narrow buildings that are taller than adjacent buildings. The Sliver Rule states that a Quality Housing building wider than 45 feet at the maximum base height may be exempt from the height restrictions of the Sliver Rule. In accordance with the current definition of “building,” a narrow Quality Housing building that abuts an existing building on the same zoning lot may utilize the width at the base height of such adjacent building to qualify for the exemption from the Sliver Rule and thus may add narrow stories above the base. This is contrary to the intent of the Sliver Rule, and will be corrected. As a result of the amended definition of “building,” the Sliver Rule will apply to each building separately. Therefore, narrow Quality Housing buildings will no longer be exempt from the Sliver Rule. (Sections 23-692 and 33-492)

The Dormer Rule was intended to allow modest projections above the maximum base height to encourage building articulation. Currently, dormers are calculated based on a permitted percentage of the width of a “building.” Because of the current definition of “building,” the width of a building includes the width of adjacent buildings on the same zoning lot, consequently allowing large portions of buildings to project above the maximum base height. This proposal corrects this by defining “buildings” separately from one another on a zoning lot and establishes that dormers will be calculated based on individual buildings even if there are multiple abutting buildings on a zoning lot. The size and height of dormers will be related to the width of each separate building. (Sections 23-621(c) and 35-24 (a))

Recess Rules are intended to allow street wall articulation in building façades while maintaining street wall continuity. Recesses are calculated based on a permitted percentage of the width of a street wall. Because the width of a street wall includes abutting buildings on the same zoning lot, a new building may be entirely recessed, resulting in no street wall articulation and a lack of street wall continuity. This amendment establishes that recesses will be calculated based on individual buildings. Therefore, abutting buildings on a zoning lot will no longer qualify as contributing to building width, resulting in recesses that relate in size to the width of each separate building. (Sections 23-633(a) and 35-24(b))

Building Types – Detached, Semi-detached, Attached. Currently, a “detached building” may consist of a group of row houses on a zoning lot that has two side yards. The proposed definition of “building” will identify each row house as a separate building, and therefore each building is identifiable as an “attached” building, where the end unit is currently considered semi-detached. The definition of “attached building” has been modified to include the end unit in a row of attached buildings. The definition of “semi-detached building” has been modified to explicitly state that it may abut only one other building, other than an “attached building,” so that semi-detached buildings may only come in pairs. These definitions more closely match the commonly understood use of the terms, and more closely match the intent of other regulations in the Zoning Resolution. (Section 12-10)

New buildings will no longer be considered enlargements. The current definition of “building”

allows a new building that abuts other buildings on a zoning lot to be considered an "enlargement." With the new definition of "building," every new building will be considered a "development." Because requirements for providing waterfront public access areas and street trees are based on developments of any size and enlargements up to a certain size, some new buildings that currently would not be required to provide these amenities will be required to do so under the proposal. (Sections 12-10, 23-03, 33-03, 43-02, 62-52)

Key Terms Clarification Text Amendment

Other Modifications

The definition of the term "residential building" will be modified in order to achieve consistency with the definitions of the terms "commercial building" and "community facility building." The terms "commercial building" and "community facility building" denote a building occupied exclusively by such use. Currently, a "residential building" is a building that contains one or more residences and may or may not include other uses. The proposal will define the term "residential building" as a building that is used exclusively for residential uses. (Section 12-10)

The definition of "land with minor improvements" will be modified to account for inflation. The existing definition cites a \$2,000 maximum value, which has not been updated to account for inflation since 1961. The change to the definition calls for Consumer Price Index increases to be made by DCP annually. The more restrictive provisions regarding non-conforming uses will apply to more sites as a result of this amendment. (Sections 12-10, 52-32, 52-52, 52-72)

Section 24-01 (Applicability of this Chapter) will be modified so that buildings that are used partly for community facility use and partly for residential use will be governed by the residential bulk regulations for the residential portion of the building. Currently, for buildings that contain both community facility uses and residential uses, the bulk regulations for community facilities apply to all portions of the building, except where the regulations specifically refer to residential bulk regulations. With the proposed change, all residential portions of buildings will be controlled by residential bulk regulations. Rules for such mixed buildings will change regarding lot coverage, height and setback, side yard setback, and courts. (Sections 24-01, 24-11, 24-12, 24-521, 24-54, 24-551, 24-671, 62-323 and 62-324)

The applicability of yard regulations for zoning lots that are occupied by both a community facility use and a residential use will be specified. Currently, community facility yard requirements apply to zoning lots containing both uses. This amendment creates a new Section 24-31 (Applicability of Yard Regulations), which states that the residential front yard requirements and the side and rear yard requirements of the community facility chapter apply to the zoning lot. (Section 24-31)

R7-2 R8 Tower. Current interpretation of rules would allow a residential tower in a building that contains a single community facility use in R7-2 and R8 districts. Since this result was not intended, the text will be amended to specify that residential portions of such buildings must be beneath a sky exposure plane or constructed as Quality Housing buildings. (Sections 24-01 and 24-54)

The rules for rear yards in mixed buildings will be modified. Currently, a 30-foot residential rear yard must be provided at the lowest level containing dwelling units. The proposed change requires a residential rear yard at the level of dwelling units that have a window facing the rear yard. This will ensure that a 30-foot rear yard is provided where it is needed to provide light and air to dwelling units. (Sections 35-53, 117-525 and 123-652)

Minimum base height rule for interim uses. New rule specifies that in contextual districts a building may be constructed to less than the minimum base height so long as there is no subsequent development or enlargement of other buildings on the same zoning lot that exceed such minimum base heights. This is necessary to ensure that for zoning lots with multiple buildings, the minimum street wall height is provided upon full development of the zoning lot. (Sections 23-633(d) and 35-24(e)(4))

Correction of conflicting parking requirements for Quality Housing buildings. Currently, Quality Housing buildings in R6 and R7-1 districts have a parking requirement of 50 percent. However for R6 and R7-1 districts with commercial overlays, Section 36-331 requires Quality Housing buildings to provide a greater ratio of parking spaces (60 percent in R7-1 and 70 percent in R6). This was an oversight in the original drafting of the Quality Housing program. This proposal will establish a parking requirement of 50 percent for Quality Housing buildings in commercial overlay districts mapped in R6 and R7-1 districts by referring to one set of parking regulations for all residential uses. This change preserves the original intent of the Commission. (Sections 25-23 and 36-331)

FRESH foods bonus. This proposal will specify that only residential floor area in a mixed building may be increased for the provision of FRESH food store. Current text states that floor area can be increased

up to 20,000 square feet for the provision of a FRESH food store, if the permitted floor area for non-residential uses is not more than that of residential use. This revision is consistent with the legislative intent of the FRESH foods text amendment. (Section 63-211)


The following modifications are also proposed citywide:

1. The applicability of existing parking lot landscaping rules will be extended to include new open parking lots accessory to existing buildings where the parking lot contains 18 or more spaces or is greater than 6,000 square feet in area. (Sections 25-67 and 37-91) In addition, parking lot maneuverability and landscaping standards will be modified to apply, as intended, to all new commercial and community facility parking lots, including new parking lots accessory to existing buildings. (Sections 25-623, 25-67, 36-58, 37-91, 44-47 and 44-48)
2. In contextual districts and for Quality Housing buildings, where planting requirements apply between a street wall and a street line, the regulations will be modified to specify that plants must be provided in the ground or in planters permanently affixed to the ground. (Sections 23-892 and 28-33)
3. The surface area of directional and identification signs for hospitals will be calculated for each building frontage instead of for each zoning lot. (Section 22-331)
4. The change in the definition of "semi-detached building" will result in a change in the side yard requirement for the end unit in a row of attached residences on a corner lot in R3-2 and non-contextual R4 and R5 districts. The end unit will be considered "attached" and the side yard will be decreased from 20 feet to 8 feet, consistent with side yard rules for attached buildings. (Section 23-461(b))
5. R9 tower-on-a-base rules will be made more practical by eliminating height factors and open space ratios which conflict with street wall requirements. (Section 23-148)
6. Balconies and other projections in low-density contextual districts will be calculated in relation to each individual building, resulting in projections that are proportional to the size of each building. (Section 23-45(b))
7. Elevator shafts and associated vestibules will be permitted obstructions on rooftops to permit access to rooftop recreation space in compliance with ADA requirements. (Section 23-62)
8. Curb cuts restrictions in R4B and R5B will be modified to allow curb cuts on subdivided lots if the resulting lots are at least 40 feet wide, consistent with the intent of the recent "Residential Streetscapes" text amendment. (Section 25-631)
9. The definition of "floor area" will be revised to include floor space that is unused or inaccessible. This rule currently applies to existing buildings, and will be revised to apply to all buildings. (Section 12-10)

The following modifications are proposed in the following Special Districts:

1. The Midtown residential bonus for recreation space will be revised to remove a reference to obsolete room counts (consistent with Lower Manhattan methodology). (Section 81-241)
2. The Midtown minimum street wall rule that permits low buildings as interim uses will be modified to match proposed citywide minimum base height rule for interim uses. (Section 81-43)
3. The Forest Hills security gates rule will be modified to apply to all buildings with new security gates. (Section 86-15)
4. Lower Manhattan lot coverage rules for buildings with more than one base height will be revised to resolve conflicts with street wall continuity requirements. (Section 91-33)
5. Hudson Yards ground floor retail requirement will be modified to ensure a 50-foot depth where sidewalk widenings are required. (Section 93-14)
6. South Richmond District regulations will be amended so that yard regulations apply to vertical enlargements. (Section 107-02)


7. South Richmond District minimum lot area and lot width rules will apply differently to row houses on a single zoning lot in R3-2 districts as a result of the amended definition of "attached building." This change will have no practical effect because of other bulk and parking regulations. (Section 107-42)
8. The South Richmond District special as-of-right exemption from front yard requirements will be eliminated. (Section 107-466)
9. Little Italy height and setback regulations will be modified to apply to enlargements. (Section 109-124)
10. Little Italy curb cut restrictions will be modified to apply to all zoning lots, not just zoning lots with new buildings. (Section 109-352)
11. The Grand Concourse District will be modified to resolve unclear parking regulations for commercial infill sites by requiring that existing parking must be replaced if a site is redeveloped. (Section 122-60)
12. The College Point District will be modified to require street trees for all conversions of 20 percent or more of floor area. (Section 126-21)
13. The Coney Island District will be modified to not require rear yards in Coney East subdistrict. (Section 131-31)
14. The Coney Island District will be modified to make a certification for height limit modification for amusement uses applicable to the entire Coney East subdistrict. (Section 131-42)

View  "[Table 1: Substantive Changes](#)" for a more detailed analysis of all of the proposed substantive changes.

View  "[Table II: Clarifications and Modifications Consistent with Department of Buildings Practice](#)" for a list of all of the proposed clarifications.

View the  [proposed text amendment](#).

Related Notes

-  Items accompanied by this symbol require the [free Adobe Acrobat Reader](#).
- Brief explanations of terms in *green italics* can be viewed by [visiting glossary page](#). Words and phrases followed by an asterisk (*) are defined terms in the Zoning Resolution, primarily in Section 12-10. Consult the Zoning Resolution for the official and legally binding definitions of these words and phrases.