CITY PLANNING COMMISSION

December 18, 2013, Calendar No. 9 N 130232 ZRY

IN THE MATTER OF an application submitted by 945 Realty Holdings, LLC pursuant to Section 201 of the New York City Charter for an amendment of the Zoning Resolution of the City of New York, concerning Article III, Chapter 2 to amend Section 32-421 to permit commercial use on the second floors of buildings in C1 and C2 districts mapped within R9 & R10 districts and in C1-8, C1-9, C2-7, & C2-8 districts.

This application for a zoning text amendment to ZR Section 32-421 was filed by 945 Realty Holdings, LLC on March 27, 2013 to facilitate the placement of 1,280 square feet of commercial (restaurant) use on the second story of a four-story building located at 945 Second Avenue (Block 1324, Lot 23) which is on the west side of Second Avenue between East 50th and East 51st Streets. Currently, commercial use is prohibited by ZR Section 32-421 on the second story of the building.

Background

This application would facilitate the use of 1,280 square feet on the second story of 945 Second Avenue (Block 1324, Lot 23) as a restaurant. The restaurant, Crave Fishbar, was located at 946 Second Avenue until March 2008, when the building at that location was greatly damaged in the collapse of a construction crane and had to be subsequently demolished. The applicant purchased 945 Second Avenue, located across Second Avenue from the damaged building, and after the purchase realized that commercial use above the first floor was prohibited by Section 32-421 of the Zoning Resolution (ZR). The small footprint of 945 Second Ave. means that the restaurant can only occupy 1,400 square feet on the first floor with 46 seats. If the applicant could occupy the second floor the restaurant could be expanded to a total of 2,680 square feet and 74 seats.

The site is located in the Kip's Bay neighborhood on the east side of Manhattan. The neighborhood is predominantly mixed use with low rise (4-5 stories) residential buildings along both sides of Second Avenue and with larger residential building on the corners. The

neighborhood also, especially to the south, has some larger office buildings. The side streets feature low-rise residential buildings. Two blocks south of the site is the Turtle Bay Gardens Historic District. Across Second Avenue from the site (the former location of the restaurant) is vacant. The two neighboring buildings along Second Avenue are both 4-story mixed buildings with ground-floor retail.

The site is currently occupied by a 40-foot tall, 4-story mixed building. The first floor is occupied by Crave Fishbar, the second floor is currently vacant and the upper two floors are each occupied by a residential unit. As the site is zoned C1-9 the commercial FAR allowed is 2.0 and the residential floor area allowed is 10.0. The site contains 5,240 sf of floor area for an FAR of 3.74.

The affected zoning districts are mapped extensively on the Upper East and Upper West sides of Manhattan as well as the Midtown East area where 945 Second Avenue is located as well as smaller portions of lower and midtown Manhattan as well as the Hunters Point Section of Queens.

The applicant proposes to modify ZR Sec. 32-421 to allow commercial use on the second story. ZR Section 32-421 prohibits second-story commercial use listed in Use Groups 6 (which includes restaurant uses), 7, 8, 9 or 14 in C1 or C2 districts mapped within R9 or R10 district or in C1-8, C1-9, C2-7 or C2-8 districts for buildings with residential and/or community facility use on its upper stories, that were built before September 17, 1970. The provision was originally written into the Zoning Resolution to help preserve residential space above the ground floor of buildings in the above-listed districts. The proposed text amendment would allow non-residential use on the lowest two stories of a building constructed before September 17, 1970 in these districts, if the second story on May 1, 2013 was not occupied by a community facility use, dwelling unit or rooming unit. In this way the residential and community facility use would be preserved while at the same time permitting the applicant to expand the commercial use to the second floor of the building. Also, the text would ensure that the commercial use could only be placed on the second floor if there is another building on the same block front with a second

story Use Group 6, 7, 8, 9, or 14 use. In this way the second story commercial use could only be placed in a building if such placement would fit within the context of the neighborhood.

ENVIRONMENTAL REVIEW

This application was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 13DCP111M. The lead is the City Planning Commission.

After a study of the potential impact of the proposed action, a Negative Declaration was issued on April 22, 2013.

PUBLIC REVIEW

This application was referred to Community Boards 2, 3, 4, 5, 6, 7, 8, 10, 11 in Manhattan and Community Board 2 in Queens and the Manhattan and Queens Borough Presidents by the Department of City Planning for information and review on April 22, 2013 in accordance with the procedures for non-ULURP matters.

Community Board Public Hearings

Of the ten Community Boards which received the referred application five waived having a hearing and did not issue a response (Manhattan CBs 2, 3, 5, 10, 11). One held a hearing but did not follow up with a letter (Queens CB 2).

Two Manhattan Community Boards, 6 and 7, issued letters approving the application:

Community Board 6 (where the site is located) at a public meeting on June 12, 2013, voted to approve the proposal with 35 in favor, 6 opposed, 0 abstentions, and 1 not entitled to vote.

Community Board 7, at a public meeting on June 4, 2013, voted to approve the project with 33 in favor, 0 against, and 3 abstentions.

Two Manhattan Community Boards issued letters disapproving the application:

In a letter dated June 21, 2013 Community Board 4 noted that they were concerned that this amendment could result in an extension of a nightlife venue or activity to the second floor of a building, which could potentially affect the quality of life of the adjacent residents and residents above the second floor. The Board also requested that the text amendment exclude the Special Hudson Yards District, the Special West Chelsea District, and the Special Clinton District. It was unclear from the letter what date the public meeting took place or what the vote count was.

In a letter dated May 14, 2013, Community Board 8 stated that at their public meeting on May 22, 2013 the Board voted 29 in favor, 0 opposed, 0 abstentions and 0 not voting for cause to disapprove but the letter did not state a rationale for the vote.

Borough President Recommendations

This application was considered by the Manhattan Borough President, who issued a recommendation on July 1, 2013 recommending disapproval of the application, stating that:

- The sample of potential sites analyzed by the applicant's environmental consultants was not a statistically significant portrayal of the impacts of the amendment.
- The text does not prevent a landlord from evicting a tenant from a unit that was vacant on the date of referral but is subsequently occupied.
- It would be unclear what a landlord could submit to the Department of Buildings to demonstrate vacancy.
- With the expansion of commercial uses comes unintended consequences of commercial uses conflicting with residential uses.
- The provision of the text that requires another commercial use on the block is inadequate to limit the impact on the block's character.
- The Borough President recommended that an authorization be placed in the proposed text that
    - requires proof of no residential displacement;
    - prevents the loss of rent-protected units;
    - determines vacancy on the second story; and

• finds that the use is in character with the block's commercial context.

The Queens Borough President did not issue a response.

City Planning Commission Public Hearing

On July 10, 2013 (Calendar No. 8) the City Planning Commission scheduled July 24, 2013 for a public hearing on this application. The hearing was duly held on July 24, 2013 (Calendar No. 28). There were two speakers: the applicant's representative, who explained why the text amendment was needed and how it would help the applicant to expand the restaurant, and a representative of the Manhattan Borough President's office reiterated the Borough President's disapproval of the proposal and explained the Borough President Office's objections to the proposal and their recommendations.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this application for a zoning text amendment, as modified, is appropriate.

The Commission believes that as originally referred the text amendment was intended to enable the applicant/owner to achieve the goal of placing a restaurant use on the second story of the building.

The Commission believes that the requirement that an additional second story commercial unit be present on the same block front as the applicant's site would ensure that the placement of the commercial unit would not be in areas where such use is out of context.

The Commission believes that there are few sites in the City that could take advantage of this text amendment because there are only a few sites with a second floor that was not used as a

community facility, residential, or commercial use (as a commercial use would be grandfathered in and so have no use for this text amendment) on May 1, 2013 and additionally located on a block front with another second story commercial use. Nevertheless, the Commission believes that the proposed text is not sufficiently narrow.

Most of the 10 community boards that examined the initial proposal either voted to approve the application or did not express on opinion. Manhattan Community Boards 4 and 8, however, both voted to disapprove the application. The Commission believes that there is no benefit in extending the applicability of the text amendment to parts of the City where the subject site is not located, and as Manhattan Community Board 6 voted to approve the application, the Commission herein modifies the text to limit its applicability to Manhattan Community District 6.

Furthermore, to further ensure that residential space loss does not occur the Commission is modifying the text to require that the space to be used for commercial use must not have been occupied with a community facility use, a dwelling unit, or a rooming unit from May 1, 2013 onward.

Finally, the Commission is modifying the text to require a Chair Certification that the space was not occupied with a community facility use, a dwelling unit, or a rooming unit from May 1, 2013 onward. This is to ensure that the applicant present evidence that the site to be converted to commercial use was not used for such uses. The Commission notes that the applicant will need to obtain this Certification at a later date to be allowed to place the commercial use on the second story.

The Commission believes that the proposed text amendment would be effective in achieving the applicant's goals while also putting in place safeguards to ensure that subsequent use would occur only in appropriate locations without causing the future displacement of residential units.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the actions described herein will have no significant impact on the environment; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and subsequently amended, is further amended as follows:

Matter in <u>underline</u> is new, to be added;
Matter in ~~strikeout~~ is old, to be deleted;
Matter in # # is defined in Section 12-10;
* * * indicate where unchanged text appears in the Zoning Resolution

Article III: Commercial District Regulations

*** * ***

Chapter 2: Use Regulations

*** * ***

32-421
Limitation on floors occupied by commercial uses

C1 C2 C3

In the districts indicated, in any #building#, or portion of a #building# occupied on one or more of its upper #stories# by #residential uses# or by #community facility uses#, no #commercial uses# listed in Use Group 6, 7, 8, 9 or 14 shall be located above the level of the first #story# ceiling, provided, however, that permitted #signs#, other than #advertising signs#, #accessory# to such #commercial uses# may extend to a maximum height of two feet above the level of the finished floor of the second #story#, but in no event higher than six inches below the lowest window sill of the second #story#. In any other #building#, or portion thereof, not more than two #stories# may be occupied by #commercial uses# listed in Use Group 6A, 6B, 6C, 6F, 7, 8, 9 or 14.

~~Non-#residential uses# listed in Use Group 6, 7, 8, 9 or 14, where permitted by the applicable district regulations, may occupy the lowest two #stories# in any #building# constructed after~~

~~September 17, 1970 in C1 or C2 Districts mapped within R9 or R10 Districts or in C1-8, C1-9, C2-7 or C2-8 Districts.~~

However, in C1 or C2 Districts mapped within R9 or R10 Districts or in C1-8, C1-9, C2-7 or C2-8 Districts, non-#residential uses# listed in Use Group 6, 7, 8, 9 or 14, where permitted by the applicable district regulations, may occupy the lowest two #stories# in any #building# constructed after September 17, 1970. For #buildings# constructed in such districts prior to September 17, 1970 located in Manhattan Community District Six, such non-#residential uses# may occupy the lowest two #stories# in such #building#, provided that:

(a) the Chairperson of the City Planning Commission certifies to the Commissioner of Buildings that the second #story# has not been occupied by a #community facility use#, a #dwelling unit# or a #rooming unit#, notwithstanding the certificate of occupancy, if any, for a continuous period from May 1, 2013 until a certification has been issued pursuant to this Section; and

(b) the second #story# of at least one other #building# on the same #block# frontage is occupied by a #use# listed in Use Groups 6, 7, 8, 9, or 14.

End Text

The above resolution, duly adopted by the City Planning Commission on December 18, 2013 (Calendar No. 9), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

KENNETH J. KNUCKLES, ESQ., Vice Chairman
ANGELA M. BATTAGLIA, RAYANN BESSER, ALFRED C. CERULLO, III,
BETTY Y. CHEN, MICHELLE R. DE LA UZ, MARIA M. DEL TORO,
JOSEPH I. DOUEK, RICHARD W. EADDY, ANNA HAYES LEVIN,
ORLANDO MARIN, Commissioners

SANDRO SHERROD
CHAIR

VICE-CHAIRS
RICHARD EGGERS, 1ST
CLAUDE L. WINFIELD, 2ND
CHARLES BUCHWALD
ELLEN IMBIMBO
LETTY SIMON

THE CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD SIX
866 UNITED NATIONS PLAZA, SUITE 308
NEW YORK, NY 10017

TONI CARLINA
DISTRICT MANAGER

BEATRICE DISMAN
TREASURER

AARON HUMPHREY
SECRETARY

June 25, 2013

Amanda Burden
Commissioner
Dept. of City Planning
22 Reade Street
New York, NY 10007

RE: In support of Application N130232 ZRM, 945 Second Avenue text amendment to Section 32-241 for limitations on floors occupied by commercial use

Dear Ms. Burden:

At the June 12th, Full Board meeting of Community Board 6 the following resolution was adopted:

Whereas, attorney Eugene Travers of Goldman Harris LLC, representing 945 Second Avenue, appeared before the Land Use & Waterfront Committee on 5 June 2013 to present the application; and

Whereas, DCP has stated that this application is not subject to ULURP and does not require a public hearing, but is being referred to CB6 for comment and recommendations; and

Whereas, the proposed text amendment to Section 32-241, while it would apply to all buildings in the listed district, is intended to allow an existing ground-floor restaurant at 945 Second Avenue to also occupy the second floor; and

Whereas, the restaurant was closed for more than 4 years as a result of the 2008 crane collapse; and

Whereas, the applicant did not file for a variance through the Board of Standards & Appeals because the application did not meet the findings required for such application; and

Whereas, Manhattan Community Districts 2,3,4,5,6,7,8,10 and 11, as well as Queens Community District 2 include districts that would be affected by the text amendment; and

Whereas, the proposed text amendment is appropriately restricted to 1) a block frontage on which there is existing commercial use on the second floor and 2) buildings that can establish that the second floor space was not occupied on the date of referral, 22 April 2013, by a community facility use, dwelling unit, or rooming unit, which means, essentially, that the space is unoccupied as of that date; and

Whereas, the applicant completed an analysis, revealing that approximately 12 sites in Manhattan could possibly benefit from the text amendment; and

Whereas, the LU&WF committee found the likelihood little or none that any building other than 945 Second Avenue would meet both requirements;

now, therefore be it

Resolved, that Community Board Six does not oppose the amendment to Section 32-241 for the limitations on floors occupied by commercial uses.

VOTE: 35 in Favor 6 Opposed 0 Abstention 1 Not Entitled

Yours truly,

Toni Carlina

Toni Carlina
District Manager

Cc: Hon. Scott Stringer
Hon. Liz Krueger
Hon. Brad Hoylman
Hon. Dick Gottfried
Hon. Brian Kavanagh
Hon. Dan Quart
Hon. Dan Garodnick
Hon. Jessica Lappin
Hon. Rosie Mendez
Robert LiMandri, Cmmsr.-DOB
Steve Figuerido
Donminick Answini
Terrence O'Neal

RESOLUTION

Date: June 4, 2013
Committee of Origin: Land Use
Re: 945 Second Avenue Text Amendment/ ZR Sec. 32-41. Application # N130232ZRM by the Department of City Planning to amend Zoning Resolution Section 32-421. The proposed text amendment would allow non-residential use on the second story of a building in the affected districts constructed after September 17, 1970 if the second story on the date of referral was not occupied by a community facility use, dwelling unit or rooming unit.
Full Board Vote: 33 In Favor 0 Against 3 Abstentions 0 Present

The following facts and concerns were taken into account in arriving at our conclusions:

- While other affected Boards were a given the opportunity to comment, CB-2, CB-3, CB-5 and CB-11 waived hearing this application owing to no knowledge of the particular site of neighborhood concerns. However, CB-4 was sensitive to potential harassment issues regarding existing residential tenants. Our understanding of the issues regarding the potential downside of limiting expansion of successful establishments, having been involved in the refinement of other similar text amendments related to retail establishments, most notably approval of the recent *Special Enhanced Commercial District Upper West Side Neighborhood Retail Streets* Text Amendment, approved by the City Council on June 28, 2012, the Land Use Committee of Community Board 7 / Manhattan, we were confident that we would comment on this particular out-of-district application.
- Furthermore, in reaching our conclusions, because CB7 has been involved in seeking solutions to encourage smaller businesses and because we have a significant number of second floor commercial users throughout our district, having relied on the facts and the specific and limited circumstances where this text amendment could apply, we are able to support this application.

THEREFORE, BE IT RESOLVED THAT Community Board 7 / Manhattan **approves** of the proposed text amendment that would affect a limited number of pre-1970 properties and also seeks to protect existing residential tenants in these types of buildings.
Committee: 7-0-0-0. Non-Committee Board Member: 1-0-0-0.

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Nicholas Viest
Chair

Latha Thompson
District Manager

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The City of New York
Manhattan Community Board 8

May 14, 2013

Hon. Amanda M. Burden
Chair
The Department of City Planning
22 Reade Street
New York, New York 10007

CORRECTED COPY

Re: N 130232ZRM, 945 Zoning Text Amendments

Dear Chair Burden:

At its Full Board meeting on Wednesday, May 22, 2013 Community Board 8M **disapproved** the following zoning text amendment by a vote of 29 in favor, 0 opposed, 0 abstentions and 0 not voting for cause.

Whereas, The proposed text amendment would allow non-residential use on the second story of a building in the affected districts constructed after September 17, 1970, if the second story on the date of referral was not occupied by a community facility use, dwelling unit or rooming unit. The application for the zoning text amendment (N 130232ZRM) is not subject to the Uniform Land Use Review Procedure (ULURP) and does not require a public hearing by the community board. However, if you have any comments or recommendations, please submit them by July 1, 2013.

Whereas, Community Board 8M held a public hearing regarding this matter; therefore

Be It Resolved that Community Board 8 **disapproves** the proposed text amendment that would allow non-residential use on the second story of a building in the affected districts constructed after September 17, 1970.

Please advise this office of any decision made by City Planning concerning this matter.

Sincerely,

Nicholas Viest

Nicholas Viest
Chair

cc: Honorable Michael Bloomberg, Mayor of the City of New York
Honorable Scott Stringer, Manhattan Borough President
Honorable Carolyn Maloney, 14th Congressional District Representative
Honorable Liz Krueger, NYS Senator, 26th Senatorial District
Honorable Micah Kellner, NYS Assembly Member, 65th Assembly District

Honorable Dan Quart, NYS Assembly Member, 73rd Assembly District
Honorable Jessica Lappin, NYC Council Member, 5th Council District
Honorable Daniel Garodnick, NYC Council Member, 4th Council District
Eugene C. Travers, Goldman, Harris LLC

CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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COREY JOHNSON
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

June 21, 2013

Amanda Burden
Chair
City Planning Commission
22 Reade Street
New York, NY 10007

Re: Text Amendment Application No. 130233ZRM

Dear Chair Burden:

Manhattan Community Board 4 voted to deny the application to amend the ZR §32-421 unless the Special Clinton District (SCD), Special Hudson Yards District (SHYD) and Special West Chelsea District (SWCD) are exempt from the change.

Reason for Proposal

The proposed text amendment would allow a first-floor restaurant on the East Side of Manhattan to also operate on the second floor. Under present zoning it cannot. We feel the proposed amendment has the potential to affect Manhattan Community District 4.

Current Zoning

ZR §32-421 permits second floor commercial use in buildings located in C1-8, C1-9, C2-7 or C2-8 districts or in C1 or C2 districts mapped within R9 or R10 districts only if constructed after September 17, 1970. The rationale of this limitation is to protect second floor residential uses in older buildings.

Proposed Text Amendment

§32-421 would be amended to allow second floor commercial use in buildings constructed before September 17, 1970, provided that two conditions are met:
(1) The second floor was not occupied by residential or community facility use on April 22, 2013 (the date this application was referred for public review); and
(2) The subject building is located on a block front that includes at least one other building with a commercial second floor.

Potential Sites

The universe of potential sites affected by the proposed text is extremely small. There are approximately 2,100 pre-1970 buildings located at least partially within the affected zoning districts. A field sampling of 120 of these sites was conducted. Based on that sampling, it is estimated that about 12 sites may be in a position to take advantage of the proposed text change.

Board's Rationale

The Board notes that the estimated number of sites which could take advantage of the proposed text change was based only on a field sampling, not on a complete survey. Given our years of experience with how certain owners operate and our awareness of the enforcement capabilities of the Department of Buildings, we are concerned that this change could have an effect in certain areas of Community District 4. The effect we are most concerned about is an extension of a nightlife venue or activity to the second floor of a building, potentially affecting the quality of life of the adjacent residents and residents above the second floor.

The Board believes the best and only way to prevent this possibility is to exclude from the proposed text amendment the special districts within District 4: the Special Hudson Yards District, the Special West Chelsea District, and, particularly, since its rationale was to strengthen and defend a residential neighborhood, the Special Clinton District.

Sincerely,

Corey Johnson
Chair

Jean-Daniel Noland, Co-Chair
Clinton/Hell's Kitchen Land Use Committee

cc: Eugene Travers, Esq., representative for applicant
Dominick Answini, Department of City Planning
Melanie LaRocca, Harriet Sedgwick, Speaker Christine Quinn's Office
Brian Cook, Michael Sandler, Manhattan Borough President's Office

THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

July 1, 2013

Amanda M. Burden, FAICP, Chair
City Planning Commission
22 Reade Street
New York, NY 10007

Re: 945 Second Avenue Text Amendment (N 130232 ZRM)

Dear Chair Burden:

Thank you for the opportunity to comment on the application submitted by 945 Realty Holdings, Inc. ("the applicant") for the approval of a zoning text amendment that would modify section 32-421 of the Zoning Resolution (limitations on floors occupied by commercial uses) to permit commercial uses to be located on the second floor of buildings built prior to September 17, 1970, within selected zoning districts in Manhattan and Queens.

Under the existing text, commercial uses are permitted within C1 or C2 overlay districts mapped within R9 and R10 districts, as well as within the equivalent C1-8, C1-9, C2-7 and C2-8 districts, but only if the site of such a second-floor commercial use is within a building constructed after September 17, 1970.[1] The intent of the regulation is to preserve second floor residential and community facility uses in older buildings located within high-density, mixed-use districts with a primarily residential character.

The text would enable a building at 945 Second Avenue (Block 1324, Lot 23) in Manhattan Community District 6 to expand ground floor commercial uses into a vacant second floor space. The subject site is a turn-of-the-century, four-story tenement building located within a C1-9 zoning district. The applicant is the operator of Crave Fishbar, a restaurant, and the owner of 945 Second Avenue.

The proposed text would allow similar new retail uses or expansions in older buildings on an as-of-right basis, provided that the second floor was not occupied by residential or

[1] The continuation of existing, non-conforming uses is permitted.

community facility use on the date of referral for this application,[2] and the building is located on a block frontage with at least one other building with an existing, second-floor commercial use.[3]

The text amendment as proposed has the potential to be widely applicable across the affected zoning districts[4] and applies to approximately 2,100 buildings. Due to the broad nature of the proposed regulation, this application was referred to Manhattan Community Boards 2-8, 10 and 11 and Queens Community Board 2 for review.

To understand the potential impacts, the applicant undertook a limited survey of 120 representative sites. The applicant's study estimated that 12 buildings throughout the affected Community Districts could potentially take advantage of the proposed text. Due to the limited sample size, the study has a margin of error of approximately 10%. The study performed by the applicant does not give a statistically significant portrayal of the impacts of the text amendment.

The uncertainty regarding impacts was reflected in the Community Boards' votes. Four out of the 10 affected Community Boards passed resolutions on this application. While CB 6 and CB 7 approved the application, CB 8 rejected it and CB 4 recommended that its district be carved out of the text amendment, citing tenant harassment issues. The remaining boards waived the option to hear the application. The wide variety of responses indicates the similarly wide variety of impacts each Community Board determined it could anticipate within its own district boundaries. Yet the consistent concern, whether in discussion or in resolution, was the importance of limiting the possibility of residential tenant displacement.

The primary purpose of the existing limitation was to prevent the loss of space to house community facility uses and, more critically, the loss of residential units, many of which were and continue to be rent-stabilized. The loss of affordable housing is an unacceptable negative impact, particularly when the problem is exacerbated by the potential for tenant harassment.

As written, the text does not prevent a landlord from evicting a tenant from a unit that was vacant as of May 1, 2013, but subsequently occupied. Further, New York City does not keep records of leases, and it is not in the Department of Building's normal purview to assess vacancy. As a result, it is unclear what evidence a property owner can or would submit to the Department of Buildings to demonstrate vacancy, and this regulation may be difficult to enforce. The potential for residential displacement and the loss of rent-protected units is unknown.

Finally, from a land use character perspective, the proposed criteria do not ensure that the text will not create unintended conflicts. The text would allow for an expansion of the commercial plane and introduce the potential for conflicts with residential uses; a single

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[2] Application N 130232 was referred by the Commission for public review on May 1, 2013.
[3] As defined by Use Groups 6, 7, 8, 9 or 14.
[4] C1 or C2 overlays mapped within R9 and R10 districts, and C1-8, C1-9, C2-7 and C2-8 districts

bad actor can introduce noise or other noxious conditions that would diminish a neighborhood's quality of life. The text attempts to limit incompatibility by requiring that another second-floor commercial establishment already exists on the subject block. But with no further limitations to address adjacencies and character, the enabling commercial use could be located up to a full block (e.g. 800 feet) away from a new second-floor commercial use. Such a change could dramatically alter the character of a primarily residential block, and even precipitate additional loss of residential units.

Based on the above concerns, the proposed text and associated study must be reconsidered and does not warrant approval.

However, if the goals of the proposed text are deemed appropriate, then the text should be modified to permit such changes not in an as-of-right scenario but through an authorization process that:

- requires proof of no residential displacement;
- prevents the loss of rent-protected units;
- determines vacancy on the second story; and
- finds that the use is in character with the block's commercial context.

In addition, I urge the Commission to further tighten the window of opportunity property owners have to take advantage of this proposed amendment by requiring that the second story have been continually vacant since May 1, 2013. The adoption of an authorization establishes a process that would guarantee greater CPC oversight over future projects seeking to take advantage of this change.

Thank you again for the opportunity to review the proposed text amendment. I look forward to continuing to work with you on this application.

Sincerely,

Scott M. Stringer
Manhattan Borough President

cc. City Planning Commission
Department of City Planning
Manhattan Community Board 4
Manhattan Community Board 6
Manhattan Community Board 7
Manhattan Community Board 8
945 Realty Holdings, Inc.
GoldmanHarris, LLC