



Amendment of the Zoning Resolution, pursuant to Section 200 of the New York City Charter, relating to Article VIII, Chapter 1, Section 81-00, and miscellaneous changes in other sections for establishing a Special Midtown District which contains growth, stabilization and preservation areas.

The proposed amendment of the Zoning Resolution and the related amendment of the Zoning Map would establish a Special Midtown District containing growth, stabilization and preservation areas. The amendments are a response to the over-concentration of development that has become a source of deep concern to community boards, civic organizations, the development community and the general public. These amendments are intended to encourage the growth of Midtown to the west and south, and to ease development pressures on its congested, highly-developed East Side core. The major features of the amendments are summarized below.

I. SUMMARY OF MAJOR FEATURES

1. The Special Midtown District is divided into Growth, Stabilization and Preservation Areas to serve as a framework for public policy and zoning decisions.
2. In the West Side Growth Area, bounded by Sixth to Eighth Avenues from 40th to 60th Streets, density on Sixth Avenue, Seventh Avenue and Broadway is increased from a floor area ratio of 15 times the lot area to a floor area ratio (FAR) of 18 times (FAR 18), subject to a six-year sunset clause. The maximum density is not increased above the present FAR 21.6. Midblocks remain at FAR 15.
3. In the East Side Stabilization Area, bounded by Sixth to Third Avenues from 40th to 60th Streets, densities would be reduced. The majority of sites could not exceed FAR 15 - 16 on the avenues and FAR 12 - 13 in the midblocks. At present most buildings can reach FAR 18 throughout Midtown and FAR 21.6 in the special Fifth Avenue district.
4. In the midblock Preservation Area, between Sixth and Fifth Avenues from the north side of 53rd Street to the north side of 56th Street, density is reduced from FAR 10-12 to FAR 8 to retain the character, scale and function of this area.

5. Midblock FAR limits would be set below those for avenue frontages, and would serve to inhibit the transfer of air rights across zoning district lines. These controls on bulk placement would help maintain traditional midtown development patterns.

6. Planning and urban design regulations would be restructured. New buildings would be required, without bonus, to:

- o Provide additional pedestrian circulation space at ground level in proportion to the building's floor area;
- o Maintain street-wall and retail continuity on designated avenues and streets. This would protect the character and function of Midtown.
- o Relocate adjacent subway stairs from the public sidewalk to the development lot;
- o Continue existing networks of through-block passageways which ease pedestrian movement in the long blocks west of Fifth Avenue.

7. Bonusable Amenities would be sharply reduced. Selected amenities of proven public value would be retained, but in most cases at lower bonus value. All others currently available would be eliminated.

- o Plaza bonuses throughout Midtown and through-block gallerias (a form of plaza bonused only in the theatre district) would be retained but could not receive a bonus greater than FAR 1, rather than the present FAR 3.
- o An urban park may transfer its air rights to a non-contiguous site by special permit if the base FAR is not increased by more than 20 percent.
- o A major subway connection improvement, such as opening the station mezzanine to light and air, providing improved connections, escalators or elevators, would generate a floor area bonus up to 20 percent of the base FAR by special permit.
- o All other bonuses would be theatre-related, available for rehabilitation, restoration or construction of theatres.
- o No combination of bonuses could increase the base FAR by more than 20 percent.

8. Special protection would be extended to existing Broadway theatres. Demolition of 44 listed theatres would be prohibited without a special permit from the Commission. Incentives for preservation would include theatre air rights transfers across zoning district lines, bonuses for rehabilitation or reconstruction, and liberalized development rights transfers for landmark theatres.
9. Construction of high-density, market-rate housing in the Special Midtown District would be encouraged by simplifying the regulations governing mixed use buildings as well as residential buildings in the FAR 10-12 range, the maximum density allowed by law.
10. New bulk regulations would insure light and air for Midtown streets while leaving the architect wide latitude for building design.
11. The cumulative effect of the above proposals would go a long way toward eliminating negotiated zoning. They would permit development to proceed on a more predictable and as-of-right basis.

This report is designed primarily as a compilation of comments received from the public on the special Midtown District zoning amendments since the amendments were certified for Uniform Land Use Review consideration on October 13, 1981. It is designed to be read in conjunction with the Final Environmental Impact Statement issued by the Department of City Planning on March 6, 1982, the June 1980 Draft Report of the Department of City Planning Midtown Development Project and the June 1981 Final Report of the Department of City Planning Midtown Development Project (DCP Report No. 81-8.)

II. THE CITYWIDE PLANNING FRAMEWORK

Midtown Manhattan is the economic heart of New York City. How well Midtown works is a critical City-wide issue. Its importance has grown as New York City's economy has continued to shift from production and manufacturing to finance, management, business services and tourism -- components of the City's national and international headquarters function.

This shift from an economy and labor force dominated by production and "blue collar" jobs to one dominated by management, service and "white collar" jobs is common to all urban areas. New York is fortunate in having great strength on which to build. Its status as a world city is attested to by the growth of its international finance and management sector, the City's growing attraction for visitors, tourists, and conventions and its dominant influence in the arts, culture and entertainment.

The long-term growth that can be expected to flow from these strengths should last through the turn of the century. In the near future the challenge will be to ensure an orderly pattern of development in all areas of the City so that the benefits from this growth are enjoyed by every community.

A. Office Development Outside Manhattan

The escalating rents and low vacancy rates in the East Midtown Stabilization Area are forcing firms with significant employment from the area. Development of the West Midtown Growth Area will provide space for many of those firms. But West Midtown cannot and should not be the only resource for future growth. The City-wide demand for office space covers a broad spectrum of space needs and costs, including many employers who could utilize multiple office locations. The City should accord the highest priority toward creating a variety of development sites for this market in order to maximize job retention and growth potential.

The Commission believes that significant opportunities exist for office development in boroughs other than Manhattan. The realization of these opportunities will require a range of policies developed and implemented through the cooperative efforts of several City agencies.

Successful office development outside Manhattan would:

- o Moderate market pressures in Midtown and thereby mitigate the adverse environmental and economic impacts of congestion;
- o Retain employment in the City by providing lower-cost office locations nearer the neighborhoods which are the source for much of the City's commercial and industrial labor pool; and
- o Stimulate additional new investment in less developed areas as firms seek local goods and services.

1. Market Evaluation - There is evidence that Midtown office market pressures have already led to office space renovation and development at selected sites in the other boroughs. New office development should be encouraged with City incentives that lower the cost of construction and occupancy to reflect prevailing market conditions at competing sites outside the City.

The Commission is pleased that several agencies, including the Office of Economic Development, the Department of Finance, and the Departments of General Services and City Planning will be analyzing key office-space development factors including:

- o The advantage of sites outside Manhattan;
- o The nature of tenant needs;
- o Alternatives to request-for-proposal procedures;
- o Necessary development incentives;
- o The structure of office rents and development costs in the boroughs; and
- o The comparative features of specific sites.

This work should result in a strategy which addresses development and operating costs and City development procedures.

2. Development Costs - The promise of lower rents is the primary incentive for Midtown firms to shift to other boroughs. However, lower rents cannot be offered in new buildings without containment of construction costs. To ensure the necessary participation of banks, major institutional investors and tenants, the City must design and offer incentives which reduce development costs.

The Industrial Development Authority's (IDA) tax-exempt bonds are a potential source of reduced rate financing, and City-sponsored Urban Development Action Grants can involve other financial partners in these projects. As a first example, the City recently submitted an \$18 million UDAG application for Baychester Commons to permit development of 2 million square feet of back office space in the Bronx. UDAG funds should be targeted to similar opportunities as they arise.

Innovative sources of development financing may be available. For example, the Board of the New York City Employees Retirement System (NYCERS) is beginning to discuss the possible investment of public pension funds in New York City office construction projects which can provide investment security and economic development benefits for special areas.

3. Taxes and Operating Costs - Recent action by the Industrial and Commercial Incentive Board makes partial tax-exemption as-of-right for most of the other boroughs. The availability of tax incentives for new office development may enable sites in these areas to compete more effectively with suburban locations, but may not close the gap. Further adjustment in the level, term or availability of property tax incentives may be necessary.

The City should analyze the impact of its commercial occupancy tax on back-office locational decisions. Relief may be appropriate in areas where office construction is desired.

High utility costs can discourage the development of back office space, particularly for major computer operations. One component of high utility costs are City taxes on Con Edison. The utility company has reduced rates in certain development areas. The City and Con Edison should consider further initiatives to encourage this policy at suitable locations.

4. City Actions - The City must convey to prospective investors its commitment to reduce development costs in the other boroughs by taking administrative actions to demonstrate its policy.

Effective packaging and marketing of sites by the City is an important element of this strategy. Coordinated efforts by all agencies engaged in this effort can ensure efficient consideration of development opportunities and facilitate the required City actions, including zoning changes, land disposition and financial incentives.

The City should be prepared to provide public improvements and amenities on specific sites as part of incentive packages. Specific transit station, street and sidewalk improvements should receive special consideration in the capital budgeting process. Exploration should continue into ways to improve public services, especially those involving security, in potential development locations.

The City's capacity to provide these incentives, as we noted in the June 1981 report, can be augmented by a development entity with powers similar to those of the Urban Development Corporation. Consideration of this initiative should be given a high priority in the preparation of a marketing strategy, together with the alternative approach of expanding the powers of the New York City Public Development Corporation (PDC). The effectiveness of PDC site assemblage, marketing and improvement programs would be enhanced by condemnation authority and the power to hold property on a tax exempt basis.

Among the most important actions the City can take are those which would redirect its own demand for office space outside of Manhattan. The Department of General Services is moving more than 400,000 square feet of Manhattan office space to downtown Brooklyn, which will reduce costs to the City and spur development in the area. More than two million square feet of City-leased space in Manhattan are due for renewal by 1986. Efforts to relocate these tenants in other borough sites would be an important indication of confidence and commitment to these areas. Plans for the relocation of State offices from the World Trade Center should be consistent with these objectives.

The skill level of technical and support employees is a critical concern of any employer with a substantial office workforce. Effective partnerships should be forged between office centers in the other boroughs and local schools. Employers can aid in the design of vocational and other skilled training curricula that are best suited to the current job market.

The Commission recognizes that the City should play an aggressive role in stimulating office development outside of Manhattan. The rezoning of Midtown recommended here should correctly be viewed as the first step to

ensure diversity and balance in the city's future commercial development. Market forces have demonstrated the robustness of New York's office market over time; it has proved to be a source of strength and vitality which the Commission believes can and should fuel economic growth in all the boroughs.

III. BACKGROUND TO THE MIDTOWN DEVELOPMENT PROJECT

In its December 1913 Report to the Board of Estimate and Apportionment, the Heights of Buildings Commission recommended enabling State legislation to restrict building heights in relation to street widths. The canyon created by the Equitable Building at 120 Broadway, which rose straight up from the lot line was an example of what would happen if heights were not controlled. A system of height controls was recommended which could vary in different districts depending on the character of existing development.

The 1916 Zoning Resolution, the first in the nation, established districts based on a set of relationships among building height and setback and street width. A tower provision permitted part of a building, up to 25 percent of the lot area, to rise without setbacks if it was a specified distance from the street.

The 1961 Zoning Resolution revised the height and setback regulations partly in reaction to the "wedding cake" form of buildings constructed in accordance with the 1916 regulations. "Sky exposure planes" replaced height districts to govern setbacks on narrow and wide streets.

The 1961 Zoning Resolution introduced the concept of floor area ratio (FAR) as a limitation on building density. The 1916 height and setback regulations along with the yard, court and coverage restrictions assured access of light and air to the streets and adjoining properties, but provided unreliable control on density. The floor area ratio device was direct and reliable, and accommodated bonus provisions and transfer of development rights. The concept was subsequently used to secure public amenities on development sites, to help implement special district plans and to support the City's landmarks preservation program.

A major goal of the 1961 Zoning Resolution was to secure open space at street level. Bonus floor area was offered for a plaza, allowing a building in a FAR 15 district to reach a maximum FAR of 18. The 1961 zoning regulations were written to be self administering as much as possible, and the plaza bonus was offered as-of-right for buildings that complied with the plaza regulations.

Midtown was the scene of an unprecedented office building boom in the 1960's, marked by a procession of towers and plazas along Park and Third Avenues and the Avenue of the Americas. The first special purpose district, the Special Theatre District, was established in 1968. The special district approach was also used to maintain Fifth and upper Madison Avenue street walls. Street wall and retail continuity were mandated, and generous bonuses were offered by special permit for covered pedestrian spaces or other indoor spaces. Bonuses were cumulative in the Theatre and Fifth Avenue Districts, bringing the maximum FAR up to 21.6.

The Special Theatre District was established in response to the threat to the Broadway theatre of the westward expansion of Midtown office construction. But this movement was cut short by the construction depression of the mid-nineteen seventies. When office construction resumed, instead of continuing westward where sites were more available and the subway lines had greater transit capacity, developers sought only sites in the East Side core almost without regard to cost.

IV. THE MIDTOWN DEVELOPMENT PROJECT

The result of these development trends was serious overbuilding in the East Side core that severely reduced the light and air at street level. Predictability and certainty, the hallmark of the 1916 zoning law, had virtually disappeared, with virtually every major new building constructed through a special permit, exception, text change or variance. The incentive zoning developed to encourage plazas had become negotiated zoning to the growing concern of Community Boards, the development community, critics, the general public, civic and professional organizations, and the Planning Commission. In response, the Department of City Planning undertook a comprehensive review of midtown zoning regulations.

From the beginning of this effort it was apparent that Midtown zoning could not be examined in isolation. Zoning is essentially a tool, and should be developed in a planning framework that provides a common denominator for other public development policies, and in the perspective of related policies.

The Midtown Development Project has been carried out as an open process with widespread and continuous public participation. Its basic premises, development strategy and specific recommendations have been shaped and refined by the views, concerns, criticism, comments and recommendations of a concerned public. During the course of the Project more than 200 meetings were held with developers, architects, mortgage bankers, community boards, professional and business groups, civic organizations, public officials and interested individuals.

A 300-page draft report released for public comment in June 1980, set forth the basic premises, development strategy and preliminary recommendations of the Project. Its appendices included the major reports of the Project's architectural, real estate and open-space consultants. One year later, the June 1981 report, Midtown Development, was published. It included specific recommendations on development strategy, special incentives, public investments and services, and zoning changes.

A. A Development Strategy

Our general development strategy for Midtown is to encourage the resumption of its expansion westward and southward. This will help accommodate anticipated Midtown growth in the next ten to twenty years, and will relieve the pressure on the East Side core.

More specifically, the development strategy we proposed would divide Midtown into three types of areas:

Growth Areas - The West Side from Avenue of the Americas to Eighth Avenue, 40th to 60th Streets; the Fifth and Sixth Avenue corridors south of 40th Street to 34th Street; 34th Street between Fifth and Eighth; and the Penn Station-Herald Square area are designated for growth.

Stabilization Area - The East Side office core area -- roughly 40th to 60th Streets between Third Avenue and Avenue of the Americas -- is the stabilization area. The strategy aims to protect this area by relieving development pressures, guiding the change and development that will occur so that it respects the existing character, values and ambience, while easing congestion and overcrowding.

Preservation Areas - The midblocks between Fifth Avenue and the Avenue of the Americas in the vicinity of the Museum of Modern Art constitute an area whose quality townhouses, low-scale buildings and streetfront shops and restaurants warrant preservation. In addition, specifically listed existing Broadway theatres would be protected.

V. PUBLIC RESPONSE TO THE PROPOSED AMENDMENTS

On October 13, 1981 the City Planning Commission certified the amendment of the zoning map establishing a Special Midtown District for ULURP reviewed by the affected Community Boards and the Manhattan Borough Board (C 820214ZMM). At the same time the Commission distributed for review and comment a draft text of the proposed regulations for the Special District (N 820253ZRM). The Department distributed a draft environmental impact statement on these proposals.

A. Community and Borough Board Consideration

Community Boards 4 (on December 2, 1981), 5 (on December 10, 1981), 6 (on December 16, 1981) and 8 (on December 16, 1981) held hearings on the Midtown proposed amendments following their review and consideration by appropriate committees. The Manhattan Borough Board considered the amendment at a scheduled meeting on January 26, 1982.

Community Board 4, whose district includes the Clinton area adjoining the western boundary of the proposed Special Midtown District, voted qualified support to the proposal. It supported the zoning changes proposed in the Stabilization Area, but questioned the need for incentives of the scope proposed for the Growth Area. The Board's major concern was that conditions on the East Side not be replicated on the West Side, thus jeopardizing the existing character of Clinton. The Board recommended that densities west of Fifth Avenue not exceed FAR 15; opposed residential development east of Seventh Avenue and FAR bonuses except for theatre preservation and subway station improvements; asked for a study to evaluate the adequacy of the City services that would support development; requested a new police precinct for Midtown; and expressed the view that ICIB tax incentives should not be as-of-right. The Board also opposed inclusion of the Coliseum site in the Growth area.

Community Board 5, whose district includes the major portion of the Special Midtown District, voted in support of the Midtown Zoning Proposals with the following recommendations. The Board asked for a ten year sunset provision for the new daylight evaluation rules with a mandated review not later than eight years from the effective date of the new zoning. It also suggested that occasional seating for elderly and handicapped persons might be necessary along Madison Avenue; that the street wall concept be expanded to include the Avenue of the Americas growth corridor; that City Planning review the history of mixed-use buildings; and that all bonuses be subject to ULURP. The Board expressed particular support for the Preservation Area and for the downzoning of the East Side midblocks.

Community Board 6, whose East Midtown district includes the proposed Special District east of Lexington Avenue, also gave conditional support to the proposed rezoning. It favored the density differential between East and West Sides; reduction of the plaza bonus; downzoning of the East Side midblocks; new daylight standards; and maintenance of street wall and retail continuity. The Board's reservations were principally concerned with protecting the residential character of Second Avenue in the forties from commercial development, permitted by current zoning; and with the need for the City Planning Commission to develop broad measures to ameliorate Midtown congestion and to deal with the movement of people and goods.

Community Board 8, which touches on the northerly boundary of the stabilization area, recommended that the Madison Avenue blockfront between 60th and 61st Streets be included in the Special Midtown District. The Commission proposal had excluded and downzoned it consistent with the zoning to the north in the Upper East Side historic district.

The Manhattan Borough Board deferred action on the proposed amendments until after the City Planning Commission Report is issued.

B. The Public Hearings

On January 20, 1982 (Cal. Nos. 23, 24 and 25), the City Planning Commission scheduled PUBLIC HEARINGS on the proposed zoning text amendment (N 820253ZRM), on the proposed Special Midtown District map changes (N820214 ZMM). A public hearing on the draft Environmental Impact Statement pursuant to the State Environmental Quality Review Act and regulations

(SEQR) and City Environmental Quality Review (CEQR) was scheduled at the same time by the Departments of City Planning and Environmental Protection.

The public hearings on these three items were held on February 3, 1982 (Cal. Nos. 52, 53 and 54) and the hearings were continued on February 24, 1982 (Cal. Nos. 62, 63 and 64). The public hearings on the zoning text and zoning map amendments were continued on March 2, 1982 (Cal. Nos. 1 and 2). The hearing on the draft Environmental Impact Statement was closed. On February 8, 1982 (Cal. No. 1), a PUBLIC HEARING was also scheduled for March 2, 1982 on additional revisions of Sections 11-11, 81-023, 81-231, 81-233, 81-241, 81-451, 81-731 and 81-734 of the Zoning Resolution (N 820253 ZRM) (A). These proposed amendments, mainly brought to the attention of the Commission at the public hearing on February 3, 1982 were considered by the Commission as appropriate for inclusion in the Special Midtown District regulations.

Forty-seven speakers were heard at the February 3rd public hearing. Speaking in support of adoption of the proposed Midtown zoning were a representative of the State Assemblyman from the 66th Assembly District; the President of the Parks Council who spoke on behalf of the President's Council, an association of eight civic groups concerned with planning and design consisting of: American Institute of Architects, New York Chapter; American Planning Association, New York Metropolitan Chapter; American Society of Landscape Architects, New York Chapter; the Architectural League; The Landmarks Conservancy; Municipal Art Society; The Parks Council; and the Regional Plan Association.

In addition the chairman of the special committee on Midtown zoning of the New York Chapter of the American Institute of Architects, a representative of the American Planning Association, the Executive Vice President of Regional Plan Association, the Executive Director of the Parks Council, the Chairman of the Urban Design and Planning Subcommittee of the Municipal Art Society of New York, and a representative of the New York Landmarks Conservancy spoke on behalf of their organizations.

So, too, did the Chairman of the Housing and Planning Committee of the Women's City Club of New York, the Chairman of the Zoning Committee of Manhattan Community Board 6, and the District Manager of Manhattan Community Board 5. Several individuals including a developer also spoke in favor of

the proposed amendments. A representative of the Committee for the Preservation of West 54th and West 55th Streets also spoke in favor and presented a petition with 177 signatures in support of the Midtown Zoning Proposal and especially endorsing the Preservation Area.

Many of those who supported adoption of the Midtown zoning amendments recommended modifications -- without delaying adoption of the amendments -- as well as areas for subsequent study. A representative of the Sierra Club who spoke about the draft EIS commended the Department of City Planning for preparing it in house, but commented that as a programmatic EIS it should have started at the beginning of the project and been more than a "shoestring" study.

A Manhattan councilman-at-large and the councilwoman from the 3rd council district voiced reservations in their support. A representative of the Shubert Organization and the League of New York Theatres stated that the incentives to preserve theatres were not adequate. A large delegation of representatives, officials, trustees and friends of the Museum of American Folk Art, 13 of whom spoke, protested the inclusion of the north side of 53rd Street in the Preservation Area as jeopardizing expansion plans of the museum.

An attorney and a planner representing the owner of 667 Madison Avenue, and a realtor representing the owner of 660 Madison Avenue, opposed the exclusion and downzoning of Madison Avenue between 60th and 61st Streets from the Special Midtown District. The Chairwoman of the Development Committee of Community Board 8 reiterated the Board's backing of the owner's position. A representative of the owner of 680 Lexington Avenue, on the northwest corner of Lexington Avenue and 56th Street, likewise protested the proposed exclusion of that property from the Special District and its downzoning.

Those who spoke in opposition to the proposed amendments included the Councilwoman from the 4th district and representatives of the Fifth Avenue and Park Avenue Associations, the Vice President of the Real Estate Board of New York, a member of the zoning committee of Citizens Housing and Planning Council of New York, and a representative of the Metropolitan Garage Owners' Association.

Also two developers of Midtown office buildings, an attorney representing property owners, and an attorney speaking on his own behalf appeared in opposition.

A number of those who opposed the proposal requested a "grandfather" clause that would permit East Side developers to use the more generous FAR rules of the current law for some period after the effective date of the new regulations. The Real Estate Board also took the position that the 20 percent FAR differential between the East and West Sides was not sufficient by itself to spur development west; that densities, up to FAR 24, should be permitted on large sites in designated areas; that the new zoning should be contingent on site assemblage assistance and predictable tax benefits, including as-of-right ICIB exemption and relief from the commercial occupancy tax for "pioneer" developers; that downzoning of the East Side required further economic study; and that the split-lot regulations should be eliminated and a bonus given for off-site subway improvements.

At the continued hearings on February 24th, 20 speakers appeared. An architect and the Chairman of the CHPC zoning committee spoke in general opposition. A representative of the Sierra Club who had appeared at the first hearing in favor spoke in opposition to indicate his "ambivalence" about the draft EIS. Two attorneys, one representing the Penn Central Corporation, owner of Grand Central Station's unused development rights, claimed that the zoning proposed for the Stabilization Area was diminishing landmark development rights. The attorney for the Museum of American Folk Art presented a land-use study in justification of the Museum's request to be excluded from the Preservation Area.

The Councilman from the 7th C.D. stated his strong support and urged that protection be given to Second Avenue as well. A similar position was stated by the President of the Turtle Bay Association.

The Chairperson of Community Board 4 reiterated her Board's position.

The real estate and economic advisor to the Midtown Development Project stated that the basic concept of encouraging Midtown expansion west and south was valid and in the interest of the City; that East Side congestion, already a problem, would get worse with the opening of the new Madison Avenue buildings and could adversely affect existing values; that West

Side improvements such as the 42nd Street Development Project and the Portman Hotel are important to encourage West Side development; that a substantial rent differential between the West Side and East Side is also important; that the development of Fifth Avenue to 34th Street did not threaten existing department stores; and that the proposed densities are reasonable.

Others who spoke in favor of the proposal were the Chairperson of Community Board 7, who also urged elimination of the Coliseum site from the Growth Area, and representatives of the Presidents' Council, the Women's City Club, Municipal Art Society, the Committee to Preserve 54th and 55th Streets, and the Friends of Cast Iron Architecture. A common theme was the call for prompt adoption and strong opposition to any grandfather provision.

Seven speakers appeared before the Commission at the public hearing on March 2, 1982. An attorney representing the Associated Builders of New York opposed the change requiring that existing buildings in a merged zoning lot be cleared of violations before a final Certificate of Occupancy was issued for the new development. He stated that it would create financing problems and be onerous for existing merger agreements.

The Executive Director of Green Guerillas called for retention of incentives for roof-top parks and gardens as presently provided in the Special Fifth Avenue District.

The Director of the Mayor's Office of Midtown Enforcement spoke in favor, stating that the time was appropriate for full development of the West Side, and thanked the Commission for including provisions suggested by his office.

The Vice President of RPA, speaking for the Presidents' Council and for RPA, and the Executive Director of the New York Chapter, AIA, thanked the Commission for including the large-site modifications of Section 81-66.

Two representatives of the Committee to Preserve West 54th and 55th Streets urged prompt action to protect the Preservation Area from inappropriate development, including a proposal for a "needle" tower on 55th Street.

The Commission has also received many written communications which it has taken into consideration, as well as the views expressed at many of the meetings on the Midtown proposals attended by members of the Commission.

VI. ISSUES AND CONSIDERATION

A. Planning Strategy

All participants in the public review and comment process appear to be in agreement with the basic development strategy of facilitating the expansion of Midtown west and south, and limiting development in the East Side core area to avoid further congestion and pressure on its overtaxed public facilities.

Questions have been raised over the extent to which public sector initiatives, particularly zoning, can actually influence the private market place. The period that led up to the Midtown Development Project indicated that zoning was primarily a restrictive regulatory tool, and that its potential as an affirmative incentive to make things happen was limited.

The Commission acknowledges that the development trends in Midtown are primarily dependent on private sector initiatives and investment decisions. Investor perception of the growing scarcity of East Side development sites and the mounting congestion of its streets and mass transit facilities will be the main forces acting to expand Midtown west and south.

Zoning can, however, influence the character of current and prospective areas by prescribing the maximum size of buildings and their impact on the surrounding area. The inadequacy of existing regulations in shaping development on terms that assured a proper relationship to the City's most significant economic center led to this effort. And many observers, including the Real Estate Board, recommended an FAR differential between East and West Sides as one way to help strengthen the natural forces at work and accelerate the movement of development west.

B. Boundary Issues

1. Madison Avenue, 60th to 61st Streets. As previously noted representatives of property owners on this avenue frontage protested its proposed exclusion from the Special District. Community Board 8 agreed that it should be included in the Special District. After further review, based on the predominant developed character of this frontage, the Commission agrees and is simultaneously certifying for ULURP a zoning map change to include 125 feet on either side of Madison Avenue between 60th and 61st Streets within the

Special Midtown District with a C5-3 designation. The midblock will be left at C5-1, consistent with its built character.

2. Lexington Avenue, 55th to 57th Streets. The exclusion of this area from the Special District was also protested by a property owner. The Commission in this instance believes that these blocks are related more to the predominantly mixed residential and commercial area to the north than to the high-density office towers to the south. Community Board 5 voted to support its exclusion from the Special Midtown District. However, the Commission is of the opinion that high-coverage development in the FAR 10 to 12 range would be appropriate to the needs of the area and consistent with existing development. Therefore it has asked the Department to develop within 90 days of adoption of the Midtown zoning a C5-2 "infill" proposal which would permit high coverage commercial or residential development on an as-of-right basis for this and other appropriate areas.

3. 53rd Street Preservation Area Boundary. As previously noted, a large delegation representing the Museum of American Folk Art protested that the south boundary of the Preservation Area at 53rd Street jeopardized expansion of the Museum. They urged that the boundary be moved to midblock between 53rd and 54th Streets. Board 5 and the Committee to Preserve 54th Street recommended that it remain where it is. The Commission recognizes the importance of 53rd Street as a "museum block" and ultimately set the boundary of the Preservation Area to protect the street's character and scale, including the museum buildings. We note, moreover, that no plan or proposal for expansion of the museum has been submitted to the Commission. While recognizing the arguments made by the many persons who spoke or wrote on behalf of the museum, the Commission is not convinced that the 53rd Street boundary of the Preservation Area need now be changed.

4. Second Avenue. While we are sympathetic to the request of Community Board 6 that the residential character of Second Avenue in the forties be protected, the extension of the Special Midtown District will not accomplish this. The Chairman of the Community Board's zoning committee, in his remarks at the Public Hearing, expressed the Board's satisfaction at the Department's commitment to work closely with the Board in recommending appropriate zoning changes for Second Avenue following adoption of the proposed amendments.

5. Eighth Avenue. The inclusion of both sides of Eighth Avenue as part of the Special Midtown District Growth Area has been urged since publication of the Midtown Development final report and at the Public Hearing. The Commission agrees and notes that following consultation with Community Board 4, the Midtown Development draft report of June 1980 included both sides of the avenue within the Growth Area boundary.

The Commission did not include the west side of Eighth Avenue within the Growth Area at this time because the Department, in consultation with the Clinton community, is currently conducting a study to identify necessary revisions of the Special Clinton District. We have been informed that the revision is expected to be ready for Commission certification in the near future and that the staff is exploring a proposal that would put both sides of Eighth Avenue on an equal footing, overlapping both the Special Clinton and Midtown Districts. Bulk regulations would be either those of the Midtown District or a variation of infill housing regulations. The base density of the avenue would remain at FAR 10 (C6-4), but could achieve FAR 14.4 for bonusable amenities by special permit. Bonuses would be for major subway station improvements, for building new or preserving existing theatres, or for a revised Special Clinton District floor area bonus.

6. Coliseum. The Commission believes that the Coliseum area should remain in the Growth Area; with completion of the Convention Center, redevelopment of the Coliseum is a logical possibility. Considering its location facing Columbus Circle and on top of a network of subway lines, the proposed C6-6 zoning which permits FAR 15 bonusable to FAR 18 is appropriate and consistent with our Midtown development strategy.

7. Fifth Avenue. Some concern has been expressed that the designation of Fifth Avenue from 38th Street south to 34th Street as a Growth Area might jeopardize the character of that part of Fifth Avenue and the department stores located there. In this instance the label may be misleading. The upzoning proposed will only make this segment of the avenue consistent with the zoning of the avenue above 38th Street, which is in the Stabilization Area. Development above FAR 15-16 is unlikely. In addition, the special design and retail use controls of the Fifth Avenue sub-district would apply. The real estate consultant to the Department has advised

that such new development would strengthen the lower Fifth Avenue department stores, a judgment in which the Commission concurs. The Fifth Avenue Association agrees and supports the rezoning of this portion of the Avenue. Indeed it urges that we include Fifth Avenue down to 25th Street as well as Park Avenue South in the Growth Area. The Real Estate Board and the Park Avenue South Association concur. As indicated in the final report, we think a decision on these areas should not proceed before we have seen the effect of our policies on the area north of 34th Street.

3. Penn Station Area. We did not extend the Special Midtown District to Eighth Avenue here because of the high concentration of industrial jobs in the area. Any changes should protect existing industry and jobs, and reflect the needs arising out of the Special Convention Center Area Study now underway.

C. Density and Bulk Issues

A number of points under this heading were made at the Public Hearing. These included arguments to increase density (FAR) limits in the Growth Area, to decrease them in the Stabilization Area, to retain or do away with the distinction between midblock and avenue zoning, to modify split lot regulations and their impact on zoning lot mergers, and whether to "grandfather."

1. FAR Limits. The Commission considered a number of alternatives in arriving at its recommendations contained in the proposed amendment. The alternatives were weighed in relation to their effectiveness in implementing the Commission's basic policy of stabilizing development in the East Midtown core and encouraging growth in the West and South Midtown areas. Alternatives were similarly considered in achieving the Commission's preservation objectives.

a. East Midtown

Alternatives ranged from continuing present FAR levels with stricter enforcement of height and setback regulations and public amenities to consideration of a moratorium on further development. The mid range of considered options included the reduction of the allowable as-of-right FAR in this area in different amounts; it also included variations between avenue and midblock development.

The Commission rejected both extremes. Continuance of the present FAR levels with strict enforcement of daylight and public amenity standards was rejected because of the inherent rigidity of the present bulk regulations. It was felt that on lots of less than 40,000 square feet, which represent the great majority of developable sites, developers would invariably seek special permit and variance relief from the rigid building envelope regulations in order to take advantage of the full FAR still accorded by the ordinance under this alternative.

At the other end of the spectrum, a moratorium for any significant period of time would raise serious constitutional and other legal questions dealing with the rights of property owners in the affected area and was therefore rejected.

The Commission considered the economic impact of the recommended downzoning on property owners. The Commission concluded that, while potentially diminishing values in some areas, on balance property values would be protected. Significant factors in reaching this conclusion were the Commission's confidence in the increased flexibility of the new daylight recommendations, which remove rigidities imposed by the present ordinance, and the adverse impact of increased congestion on existing values.

b. Preservation Areas

There were a number of options for preserving the scale, quality and function of the unique midblock area between Fifth Avenue and the Avenue of the Americas in the vicinity of the Museum of Modern Art.

Alternatives ranged from removing the basic bonus applicable in the area, thereby reducing allowable floor area, to designation as a historic district with a height limitation by the Landmarks Preservation Commission. The first alternative would still have permitted FAR 10 development where study revealed that the prevailing bulk within the area approximates FAR 8. The Historic District approach was suggested to the Landmarks Preservation Commission; it has not acted on the recommendation for the area.

Based on its analysis of the area's existing character, the Commission chose the middle ground: a zoning district with maximum FAR 8. The Commission considered the economic effect of downzoning to be balanced by the preservation of the area's unique character and the reduction of potential congestion, which would work to preserve or enhance property values.

c. West Midtown

Here the Commission's policy was to encourage growth and relate zoning recommendations to this goal. While disposed to use zoning creatively in this regard, the Commission remained conscious of its responsibility to safeguard public standards of light and air, public amenities and environmental quality, including impacts on public infrastructure. The alternatives considered ranged from allowing an unprecedented maximum 24 FAR in this area to keeping FAR levels consistent with the rest of Midtown and relying upon tax incentives and other public investment to induce development. The Commission chose an alternative which in fact grants higher FAR in this area (FAR 18 - 21.6) than in East Midtown but coupled this action with a number of safeguards which should prevent resulting densities from overburdening public facilities. These include a 6-year sunset provision; daylight standards; midblock treatment; theatre preservation and density-ameliorating amenities.

The basic FAR 15-18 split between the East and West Side avenue frontages was carefully chosen. It provides a twenty percent differential between East and West Sides together with a maximum limit of 21.6 on the West Side, both of which were originally recommended by the Real Estate Board and other concerned groups.

The Commission recognizes some disappointment in the private sector at not having the deep as-of-right tax incentives for "pioneer" West Side developers. But ICIB tax exemption will still be available on a case-by-case basis to help achieve a rent differential. And the

commitment of more than three-quarters of a billion dollars in public funds for such projects as the Convention Center, Portman Hotel and Broadway Plaza, 42nd Street Redevelopment Project, major subway station improvements and the LIRR West Side layover yard is a direct investment in upgrading the West Side.

d. South Midtown

The Commission believes that the development in this area is preferable to further concentration in the East Midtown core. The restricted density limits of FAR 10-12 imposed by the current zoning inhibit consideration of sites in this area as alternatives to core locations. Adjustments to the zoning could range up to the present FAR 21.6 maximum allowed for certain uses in the Special Fifth Avenue District, but the Commission believes that the most appropriate level is that provided for the East Midtown Stabilization Area. This classification would allow FAR 15 on the avenues and FAR 12 on the midblocks. It extends west along the 34th Street corridor and north on 6th Avenue to 42nd Street, and should provide an effective inducement to investment, while avoiding undue pressure on loft areas which house the City's important apparel industries, and maintaining the predominant scale presently found on Fifth Avenue.

2. Midblock Zoning. The lower midblock density levels prescribed throughout the proposed special Midtown District comport with the traditional development pattern in Manhattan. This feature has been encouraged since the inception of City zoning controls, which have consistently related permissible building size to the width of streets as a reflection of the basic physical facts. A combination of greater street width and shorter blockfront on avenue frontages permits proportionately more light and air to reach the street than on side streets, and avenues are generally more accessible to both pedestrian and vehicular traffic.

Reducing midblock zoning in the Stabilization Area to base FAR 12 will reduce the size and, in all likelihood, slow the pace of construction of new

midblock office towers in East Midtown. The market in that area will be most attractive to specialized commercial tenants who do not require large floor areas. Developers who have assembled midblock sites may opt for mixed commercial-residential or residential towers to tap the luxury coop and condominium market. Developers of higher density buildings seeking to attract commercial tenants with significant space needs will, at the same time, perceive advantages in looking to the west and south, which will greatly help in relieving pressure on the East Side. There are already clear signs that overconcentration of building leads to congestion of streets and strains on public transportation that threaten the very values that make the area so desirable.

3. Split-lot Regulations and Zoning Lot Mergers. The Commission believes that continuing the existing split-lot regulations, which basically restrict transfer of bulk across district lines, is essential to the midtown strategy, since they prevent the unrestricted transfer of air rights which has created so many problems in East Midtown. At the same time we agree that the split-lot provision should be modified for large-scale developments to allow for unique design opportunities and to permit more flexibility in the placement of plazas, and have provided a special permit procedure for such cases in Section 81-66.

4. Landmark Transfers. The existing zoning regulations encourage landmark preservation by allowing landmarks to transfer development rights to adjacent lots. Such transfers may extend through a chain of ownership to a receiving lot contiguous with or across the street from the landmark granting site. In the highest density commercial Midtown districts, an eligible receiving lot can, regardless of the existing scale of development, accept transfer of any amount of additional density from a landmark. Limits are placed only on the amount that any granting site can transfer. These provisions are all carried forward into the proposed special Midtown District regulations without change.

In Midtown the unused development rights above a landmark which may be transferred are limited by the FAR 18 maximum, consisting of a base FAR 15 plus an FAR 3 plaza bonus, available under the current zoning.

Under the proposed amendments, the limit in the Stabilization Area would be reduced on avenue frontages to FAR 16, consisting of the FAR 15 base together with the FAR 1 plaza bonus. This reduction of 2 FAR reflects Commission policy to restrain growth in a congested area of Midtown. Development west of the Avenue of the Americas would be encouraged by an increase in the granting lot density limit on avenue frontages from FAR 18 to FAR 19, consisting of the Growth Area base FAR 18 plus the FAR 1 plaza bonus. Midblock limits on granting sites would reflect the FAR differential provided in the proposed regulations to preserve the scale and character of the affected area.

A landmark property's development rights potential will vary depending upon its location within the Special Midtown District. From the broad planning perspective of zoning, the assignment of maximum FAR classifications treats landmarks sites no differently than any other properties. All landmarks within each zoning district are treated evenhandedly, in accordance with the well-considered plan for the Midtown area as a whole.

Public comment on the proposal has included the argument that the development rights privileges enjoyed by the Grand Central Terminal Landmark zoning lot, which was upheld by the decision of the U.S. Supreme Court in Penn Central Transportation Corp. vs. New York City, 438 U.S. 104 (1978), are reduced under the Midtown zoning amendments. The Commission was asked to grandfather the existing potential of such landmarks. While the ceiling on sending site density is lowered from FAR 18 to FAR 16 in East Midtown under the Midtown amendments, all neighboring East Midtown properties are correspondingly reduced and the relative attractiveness of the transfer privilege is thereby preserved. The greater reductions in FAR for East Midtown midblock properties eligible to receive development rights may in fact enhance the marketability of the floor area which the sending site can transfer.

The Penn Central decision upheld the constitutionality of the Grand Central designation because the property continued to enjoy a reasonable beneficial use. We believe that this use is assured, if not enhanced, by the comparable privileges available in the proposed Special Midtown District.

Any marginal diminution in the value of an individual landmark site's development transfer potential would, in our view, be outweighed by the far more significant planning advantages flowing from the reduction of permissible densities in the overly congested Stabilization Area and the incentives for development in the relatively less congested Growth Area. The Commission therefore does not find that selective grandfathering for landmark sites would be warranted.

5. Bulk Regulations. Some of the comments on the proposal viewed the two new alternate sets of bulk regulations--Daylight Compensation and Daylight Evaluation--as excessively complicated and difficult to use. We were encouraged, however, by the enthusiastic acceptance of the American Institute of Architects, which has extensively tested the new regulations, and whose spokesman stated:

"The performance system to regulate bulk and insure daylight on midtown streets which the Commission is proposing here may well be the most significant zoning concept to have been introduced in New York in many years...and the result will be that daylight on the streets henceforth will be for the public the most vividly perceived outcome of this whole exercise."

The Commission believes that the alternate sets of bulk regulations are an important component of our effort to achieve as-of-right zoning. It is the builder and his architect's choice of two systems, both based on measurable performance standards, that offers design flexibility. To assure the certainty and predictability that zoning is intended to provide, the only exceptions to the daylighting standards permitted are for landmark transfers in the highest bulk districts.

There has been criticism that the new bulk regulations permit larger buildings on small East Side sites than the present as-of-right regulations. This criticism overlooks the fact the the rigidity of the present regulations for small sites has resulted in exceptions, waivers or variances of the regulations in the majority of cases, with unpredictable and sometimes undesirable results. The combination of the new bulk regulations with the lower densities and midblock zoning would, we believe, keep new building within predictable and acceptable limits.

The new bulk regulations and the density limits in the newly mapped zoning districts go hand in hand. Bulk regulations alone would permit development of excessive density. There would be no distinction between East Side and West Side, between avenues and midblocks. Reliance on density limits with bulk regulations waived or modified, as in recent years, would lead to buildings out of proportion to their actual sites, rising straight up from the lot line without setback and creating new canyons in Midtown. The new proposals--bulk regulations, density limits, midblock zoning protected by the split-lot rule--are an integrated system, responsive to Midtown conditions and needs.

It is important to note that the daylight standards are not applicable outside Midtown. They are based on the level of daylighting that can reasonably be expected in Midtown and reflect the historic building patterns of this densely developed area. They would not be acceptable in less dense areas.

Community Board 5 recommended that the new bulk regulations be subject to a 10-year sunset provision with a mandatory review starting no later than the eighth year. A sunset provision is not practical because there would have to be an underlying set of regulations to which they would revert, and the present regulations have proved unsatisfactory. There is merit, however, in a review of the entire system after an appropriate period of experience. Accordingly we are including a provision in the Zoning Resolution mandating Planning Commission review and public hearing of the bulk regulations in the sixth year after adoption. This ties into the six year sunset provision for the as-of-right FAR 18 mapping in the Growth Area.

6. Selective Grandfathering. A number of developers in East Midtown came to the Commission seeking to preserve the FAR potential their sites enjoy under existing zoning. They offered to build structures that complied with the recommended daylighting standards but which, based on existing zoning, exceeded recommended floor areas by as much as 50 percent.

The Commission has considered these requests and rejected them for the following reasons:

First, as has been pointed out, the recommendations of lower FAR and increased daylighting cannot be separated. The daylighting regulations provide enhanced environmental protection from the disposition of building bulk; the lower FAR insures that public expectations of impacts associated with new development meet acceptable standards consistent with current conditions.

The Commission believes that the selective grandfathering proposed by these developers would take only the "carrot" of flexible bulk regulations without the "stick" of reduced FAR, and would in fact frustrate the central objectives of the proposed Special Midtown District.

The argument is made that imposition of the new zoning regulation creates a hardship for those who acquired their sites under different regulations and expectations, which is in fact always the case when more restrictive zoning is enacted. The usual rule upheld by the courts is that rights are not "vested" unless foundations are substantially completed when the new zoning is adopted, in which case the building may go ahead under the old rules. The Commission believes that a special grandfather provision is not warranted on grounds of fairness for those who have not vested, particularly since there has been ample notice and extensive public discussion of the intent to rezone Midtown.

D. Planning and Design Flexibility

There was strong public support for the as-of-right approach taken in the proposed zoning, but there was an undercurrent of concern. A number of groups, particularly the Presidents' Council and its constituent organizations, expressed the view that the as-of-right approach might foreclose developments that present exceptional planning and design opportunities, but do not strictly conform to the new standards, particularly for larger sites.

The Commission agrees that this criticism has merit, and has accordingly included in the new regulations a special permit for larger sites—60,000 square feet or over, or sites occupying a full block. The regulation would permit, as suggested by the American Institute of Architects, modification or waiver of mandatory plan elements and distribution of bulk without regard to the split-lot rule upon appropriate findings by the Commission and Board of Estimate approval. It would not permit any increase in density (FAR) limits or any waiver or modification of the daylight regulations.

F. Bonusable Amenities

Issues were raised in regard to open-space amenities, theatre preservation, and off-site subway improvements.

1. Open Space. The issues raised here concern the adequacy of the FAR 1 maximum bonus as an incentive for plazas, the practicality of the urban park provisions, the retention of incentives for roof-top gardens and terraces, and the need for more discriminating, carefully targeted incentives based on an open-space plan for Midtown. The Commission proposes to downgrade the plaza bonus which, in the view of many has been much abused, but would provide a new incentive for an urban park. The proposed plaza bonus is not intended to induce a plaza that otherwise would not be provided, but to encourage the development of the open space a builder is providing in accordance with acceptable and usable standards. Nevertheless, the Commission believes there is merit in the question raised. While there is insufficient basis to change the proposed amendments, we propose to develop a Midtown open space plan in collaboration with all interested officials, groups and individuals. Such a plan could recommend changes, if necessary, in the range of bonusable open-space amenities and their requirements.

2. Theatre Preservation. The effectiveness of the means proposed to help preserve theatres was questioned. A representative of the theatre industry expressed the view that a large number of existing theatres would in effect be "land locked", foreclosed from the benefits of selling their air rights or rehabilitation bonuses because they were not adjacent to eligible receiving sites. He suggested that development rights be allowed to transfer to non-contiguous sites within the theatre district, at any distance from the sending site.

The Commission believes that floating development rights, which has also been suggested for landmarks owned or held by not-for-profit groups, raises some difficult legal and planning issues with citywide implications. These suggestions conflict with the underlying justification for any development rights transfer, which is that the added development it permits on a receiving site is compensated by the guaranteed diminution of development potential of the granting site nearby.

It was strongly urged that the Department of City Planning maintain strong planning and urban design capability. There is every intention to do so. Reducing the burden of reviewing individual building design under negotiated zoning will give the Department greater staff capability to deal with the broader issues of planning and urban design.

E. Mandatory Plan Elements

The major issues raised by the mandatory plan elements of the Special Midtown District have concerned street-wall and retail continuity and pedestrian circulation. The maintenance of Midtown's characteristic street-wall and retail continuity on designated avenues and wide cross-town streets has been criticized as unwarranted interference with individual design judgments and the workings of the private market place. The Commission believes that this view disregards the Commission's fundamental planning responsibility for protecting and strengthening the character of Midtown and the long term viability of its streets and avenues.

Those designated streets, in the opinion of our economic consultant, have the market potential to sustain retail continuity. There is no economic hardship, since retail uses bring the greatest economic return for groundfloor space. The danger to retail continuity is the corporate or institutional developer which is not concerned with economic return or with the impact of its development on the street. Major breaks in retail continuity not only adversely affect adjoining shops but displace the convenience shops relied on by Midtown's working population, and its shoppers and visitors.

There is some competition between the requirements for retail and street-wall continuity and the setbacks which serve pedestrian circulation and other environmental considerations. The Commission has weighed these concerns and in our judgment the Special District regulations strike an appropriate balance when viewed in conjunction with the special permit provision for large sites and the changes in pedestrian-circulation requirements that we are making at the suggestion of the American Institute of Architects.

Moreover, we have significantly liberalized theatre air rights transfers in ways that go beyond the proposals already described. The proposal includes a new provision for a theatre rehabilitation bonus, and allows theatres to transfer unused development rights, including the new bonus, without regard to the split lot rule. In conjunction with the anticipated landmark designation of additional theatres (approximately half of the existing theatres are potentially eligible), we believe that these benefits will be available to a substantial majority of the theatres in the district.

3. Subway Improvements. A floor-area bonus is provided for a substantial subway entrance improvement adjacent to a development site. The suggestion of providing floor-area bonuses for subway improvements not adjacent or connected to the development site raises similar questions to those of floating theatre or landmark transfers. An off-site subway-station improvement does not provide any compensating reduction in density. The proposed bonus is justified because it improves direct access to the larger development. For off-site subway improvements direct financial incentives appear to be more appropriate than zoning measures.

G. Mixed-Use and Residential Provisions

There was conflicting testimony on our proposed mixed-use and residential provisions. The Presidents' Council and the American Institute of Architects urged that a special bonus be provided for mixed-use buildings in the Growth Area. Community Board #5 looked on mixed-use buildings with skepticism and asked that a special study be undertaken in view of the difficult problems they perceived in such projects. The Real Estate Board opposed them on the ground that they were uneconomic to build and operate. On the other hand the Real Estate Board applauded the simplified provisions for building residential structures up to FAR 12 in Midtown and suggested they be allowed to go higher, while others questioned the provisions permitting them to go from FAR 10 to FAR 12.

The Commission believes that the provisions allowing for mixed-use buildings combining residential and commercial occupancies, and high-density residential buildings throughout the Midtown, have a sound planning rationale. Increased housing strengthens Midtown. It makes Midtown more of a 24-hour

community and it helps relieve the pressure on mass transit facilities at peak hours. It should compete with commercial development for Midtown's limited and valuable sites on a market basis, however, and not receive special benefits. Allowing residential development to readily reach FAR 12, the maximum permitted anywhere for residential construction, puts it on an equal footing with commercial buildings in the East Side midblocks but does not exceed the characteristic limits of Midtown development or the commercial densities proposed for the special district. Mixed use buildings are, of course, not required, but are offered as a developer's option.

H. City Services

Community Board #4 asked for a study of City services and questioned their adequacy to support further development. We understand their concern, but we think it puts the cart before the horse. Midtown generates an overwhelming proportion of the job growth in the City today, and represents a disproportionate amount of its tax base. We must capitalize on the City's major area of economic strength.

The continued over-concentration of Midtown development in the East Side core can, however, further strain public facilities and services in that area. That is a major reason for these rezoning proposals which are based on a prudent and rational plan to spread Midtown development. It cautiously downzones the East Side and proposes measured growth on the West Side. We believe it will help shift the growth of the new Midtown office space which we anticipate the private sector will demand during this decade from a ratio of approximately 80:20 in favor of the East Side to approximately 60:40, a significant shift. We also note that the revised plans for Broadway Plaza include a Police substation, a specific request of Community Board #4.

I. Zoning Enforcement and Administration

Problems with enforcement of Midtown zoning relate partly to the special nature of Midtown's bonusable amenities and partly to the inherent difficulties in zoning enforcement.

In the 1960s and 1970s, incentive zoning was expanded to include covered pedestrian amenities as well as open public plazas. The public access feature justifying the grant of a bonus for these covered spaces, as featured in a number of Midtown buildings, proved difficult to enforce, in part, because of their location within the building, and the reluctance of its occupants to permit ready public circulation. Many have been characterized as mere super-lobbies, with no real opportunity for public use.

Open public plazas have had different enforcement problems. In some cases where traditional plazas were provided without a high level of positive public interest and activity, they invited security problems. Subsequently, fences appeared as an unsanctioned private solution to this problem.

One goal of the proposed zoning is to eliminate bonuses for those covered spaces which have proven difficult to enforce; a second goal is to refine the open space amenity standards to improve accessibility and usefulness to the public on a predominantly self-enforcing basis.

To expand generally resources for dealing with zoning enforcement throughout the City, the Commission recommends:

- o A training program for Community Board District Managers, in cooperation with the Department of Buildings, which would prepare them for a role in monitoring the enforcement of zoning compliance. Such a role would be supportive of the Buildings Department, whose responsibility is zoning enforcement. The program could be designed and undertaken by government and interested civic groups. To the extent that this expansion of community board functions requires the adoption of legislation, the Commission is prepared to support such an initiative.
- o Creation of a pro bono lawyers group to bring zoning enforcement actions on behalf of the Law Department. Such a group could be secured through the cooperation of the various Bar Associations in the City.

This initiative is aimed at the problem of continuous monitoring of violations as well as the problem of effectively prosecuting and correcting them.

Administration of zoning is much broader than simply enforcement. When there is a fundamental change in regulations, it is important that the body that writes the regulations and those that administer them work together.

In cooperation with the Commissioner of Buildings, we have worked out the following program:

- o The Commission will publish a "plainEnglish" version of the Midtown Special District to aid interpretation.
- o The Daylight Evaluation Program will be computerized to permit simplified and speedy scoring by the Department of Buildings.
- o The Department of City Planning will write and publish a "Midtown Zoning Operations Manual" for the use of Buildings Department examiners, architects, developers, and interested public.
- o City Planning staff who developed the new regulations will be available to assist Buildings Department examiners in reviewing applications during the first year.

In addition, we have had special briefings and working sessions with the Board of Standards and Appeals and the Mayor's Office of Midtown Enforcement.

The Commission considered, at its March 2, 1982 public hearing, the addition of Section 81-023 to the proposed Midtown legislation which would make the removal of any code violation in existing buildings on merged zoning lots a condition to issuance of a certificate of occupancy within the Special Midtown District. In response to comments from a number of interested groups and individuals, we believe that the prospective benefits and impacts of this measure deserve further study before a determination is made on whether this zoning resolution amendment is appropriate. This matter will be given priority by the Commission which expects to make a determination within the near future.

VII. CHANGES IN MIDTOWN TEXT

After the Commission reviewed recommendations made at the public hearing on February 3, 1982 as well as written comments by public and private organizations, it scheduled a special public hearing for March 2, 1982 on additional amendments to the Special Midtown District developed in response to these recommendations. Following the March 2, 1982 hearing, the Commission incorporated the following provisions in the proposal.

Integration Clauses (81-024)

By their nature some Midtown district regulations are so closely integrated with others that they are not severable. Thus, the regulation provides that a zoning map modification in the Midtown District will take the property affected by this change out of the Special Midtown District. Similarly, the bulk regulations (Sections 81-20 to 81-28) are an integral unit, and the regulation provides that if a court adjudges any one provision to be invalid, the ruling will invalidate all the other related bulk regulations.

Floor Area Bonus for Urban Plazas (81-23, 81-231 and 81-233)

The standards for the location of urban plazas qualifying for a floor area bonus have been made somewhat less restrictive, and the orientation requirements have been simplified. The floor area bonus generated by the urban plaza will be usable without regard to the split-lot rule, provided that the maximum FAR limit for that portion of the lot is not exceeded.

Maximum Residential Floor Area Ratio (81-241)

The recreational space in a residential building or in the residential portion of a mixed use building that must be provided in order to achieve maximum FAR has been modified in order to avoid any adverse impact on small lots. The minimum amount of recreational space required on a single level has been reduced to 500 square feet from 2500 square feet.

Arcades (81-451)

Includes special design standards and illumination provisions for arcades located in the Theatre Subdistrict.

Large Scale Projects (81-66)

This change allows the City Planning Commission, by special permit subject to Board of Estimate approval, to modify the mandatory district plan elements of Section 81-40 and the split-lot provisions of Section 77-22 for zoning lots that are at least 60,000 square feet with a full wide street block frontage, or zoning lots occupying an entire block. The Commission must find that the design, scale and location of the new construction is compatible with the surrounding area, that adverse impact on retail continuity is minimized, and that the modification is consistent with both the purposes of the mandatory district plan elements and the basic strategy of the Special Midtown District.

Sign Regulations (81-731)

Language changes are made in this section to simplify and clarify the regulations for signs, store windows, banners and canopies in the Theatre Subdistrict.

Central Refuse Storage (81-734)

This section has been added to require all new buildings to provide an area for central refuse storage accessible on a 24 hour basis to all users of the building and for carting purposes.

Other Changes

Subsequent to the public hearings on February 3, February 24 and March 2, 1982, the Commission made the following minor changes and clarifications:

Special Frontage Regulations (81-142 and 81-731)

The transparent glazing of ground floor street walls required by these sections has been reworded so as to clarify the area of street walls subject to the requirement.

Maximum Floor Area Ratios for Non-residential and Mixed Buildings (81-211)

The table in this section has been clarified to show in greater detail by district the maximum FAR for lots containing landmarks, the maximum development rights transferable from a landmark sending lot to a receiving lot, and the maximum amount of transferable rights that may be utilized on a receiving site; e.g., development rights amounting to 1.6 FAR may be utilized on a receiving site in the C5P District.

Special Provisions for Transfer of Development Rights from Landmark Sites (81-212)

The method for calculating the transferable development rights of a landmark sending lot in high bulk districts is clarified. The C5-2.5 and C6-4.5 districts are added to the high bulk districts in which these provisions apply.

Termination of Districts with Basic Maximum Floor Area Ratio of 18.0 (81-214)

A provision has been added to this section requiring the City Planning Commission to hold a public hearing approximately six months before the termination date to evaluate the development that has taken place in the highest bulk districts and the effectiveness of the Special Midtown District's height and setback regulations.

Standards for Urban Plazas (81-231)

The changes in this section clarify what plans and other documents must be submitted with applications to the Commission for certification, and make it clear that the covered portion of an urban plaza may not include its sides.

Height and Setback Regulations - Daylight Compensation (81-26)

Formula No. 2 in the length and height rules (Section 81-265) has been simplified.

Mandatory District Plan Elements (81-45)

Modifications of this section include adding a building entrance recess area as an element which may qualify for meeting pedestrian circulation space requirements; requiring qualifying sidewalk widenings and arcades to

extend the full length of the block front on wide streets except where they match an existing widening or arcade, and to extend for a continuous length of a 100 feet on a narrow street; increasing the area of an urban plaza qualifying for pedestrian circulation space; exempting an interior lot with a frontage of less than 80 feet on a wide street from pedestrian circulation space requirements; and exempting a lot of less than 20,000 square feet from the restrictions on location of major building entrances. These changes help provide sufficient options to meet pedestrian circulation space requirements so that it should not be necessary for the building to be set back from the street line unless so desired by the architect and developer.

Subway Stations Improvements (81-53)

A provision is added allowing special permit authorizations to include modifications of the street wall continuity requirements along designated streets where required for the entrance area to a major subway station improvement.

VIII. CITY ENVIRONMENTAL QUALITY REVIEW

A Draft Environmental Impact Statement (EIS) concerning the proposed zoning revisions was issued on October 12, 1981. Public hearings on the Draft EIS were held on February 3 and 24, 1982 by the Department of City Planning and the Department of Environmental Protection, as lead agencies for City Environmental Quality Review, concurrently with the Commission's hearings under the City Charter. Having considered the Draft EIS, the testimony received at the public hearings, and the Final EIS, the Commission finds that the requirements of the State Environmental Quality Review Act and regulations and City Executive Order No. 91 have been met and that:

- (1) consistent with social, economic and other essential considerations from among the reasonable alternatives thereto, the actions to be approved are ones which minimize or avoid adverse environmental effects to the maximum extent practicable; and
- (2) consistent with social, economic and other essential considerations to the maximum extent practicable, the adverse environmental impacts revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable. In addition to those mitigative measures which are part of this zoning action, the Commission has concurrently adopted a comprehensive amendment to the Zoning Resolution which institutes zoning controls over off-street parking in Manhattan in order to achieve air quality goals (N 810276 ZRM).

This report, together with the Notice of Completion of Final Environmental Impact Statement issued by the Department of City Planning and Environmental Protection, dated March 6, 1982, shall constitute the written statement of facts and conclusions relied upon in the EIS supporting the decision and indicating the social, economic, and other factors and standards which form the basis of the decision, pursuant to 6 NYCRR 617.9(C)(3).

IX. CONCLUSION AND RESOLUTION

The Commission has determined that the amendments as modified are appropriate and adopted the following resolution, which is duly filed with the Secretary of the Board of Estimate, pursuant to Section 200 of the New York City Charter:

RESOLVED, by the City Planning Commission that the Zoning Resolution of the City of New York, effective as of December 15, 1961, and subsequently amended, is further amended by changes relating to Article VIII, Chapter 1, Section 81-00 through 81-90, the deletion of the Special Theatre District and Special Fifth Avenue District, and miscellaneous changes in other sections regarding the establishment of the Special Midtown District as modified as follows:

(See Attached Text)