Proposed

KEY TERMS CLARIFICATION Text Amendment

DEPARTMENT OF CITY PLANNING

Key Terms

The key terms that are the subject of this text amendment are:

Development

and

Building

This zoning text amendment proposes to change the way these terms are defined and to clarify how these terms are used throughout the Zoning Resolution.

Defined terms are the backbone of the Zoning Resolution. These two defined terms are among the most commonly used terms in the Zoning Resolution. As a result, this text amendment involves hundreds of pages of clarifications.

Purpose and Need

As shown in the following slides, there are numerous problems resulting from the way key terms are currently defined and used in the Zoning Resolution. This proposal will resolve these problems.

Clearer regulations will benefit:

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

Current Definition of Development

The current definition of **“development”** is:

A "development“ includes the construction of a new building or other structure on a zoning lot, the relocation of an existing building on another zoning lot, or the use of a tract of land for a new use.

Current uses of the term “Development” in the Zoning Resolution

Depending on the context, the term “development” refers to:

- **a single new building**
- **a single new or existing building**
- **all buildings on a zoning lot**

Current Definition of Development

A recent court decision ruled that the term "development" did not apply to an existing 100-year old building in the context of curb cut regulations. This highlighted a potential problem that other regulations using the term "development" may be interpreted to exclude existing buildings.

The Department of City Planning has reviewed the use of the term "development" throughout the Zoning Resolution and has:

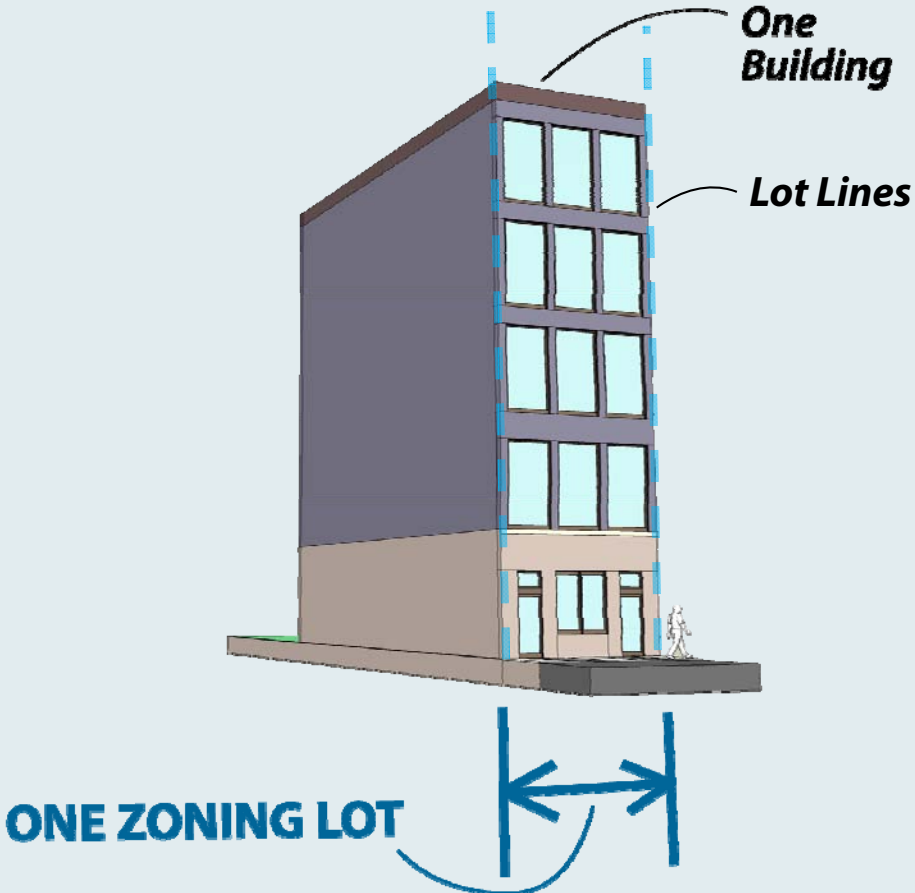
- **retained** the term **"development"** where the rule was intended to apply only to new buildings;
- **replaced** the term **"development"** with the term **"building"** where the rule was intended to apply to both new and existing buildings; and
- **replaced** the term **"development"** with the term **"zoning lot"** where the rule was intended to apply to all buildings or all uses on a zoning lot.

Because the term "development" refers to a new "building," it was also necessary to review the use of the defined term "**building.**"

Current Definition of Building

A building is any structure which:

- *is permanently affixed to the land*
- *has one or more floors and a roof*
- *is bounded by either open area or the lot lines of a zoning lot*



Current Definition of Building

RESULT:
Abutting buildings on a single zoning lot that function independently *<u>are considered a single building</u>*

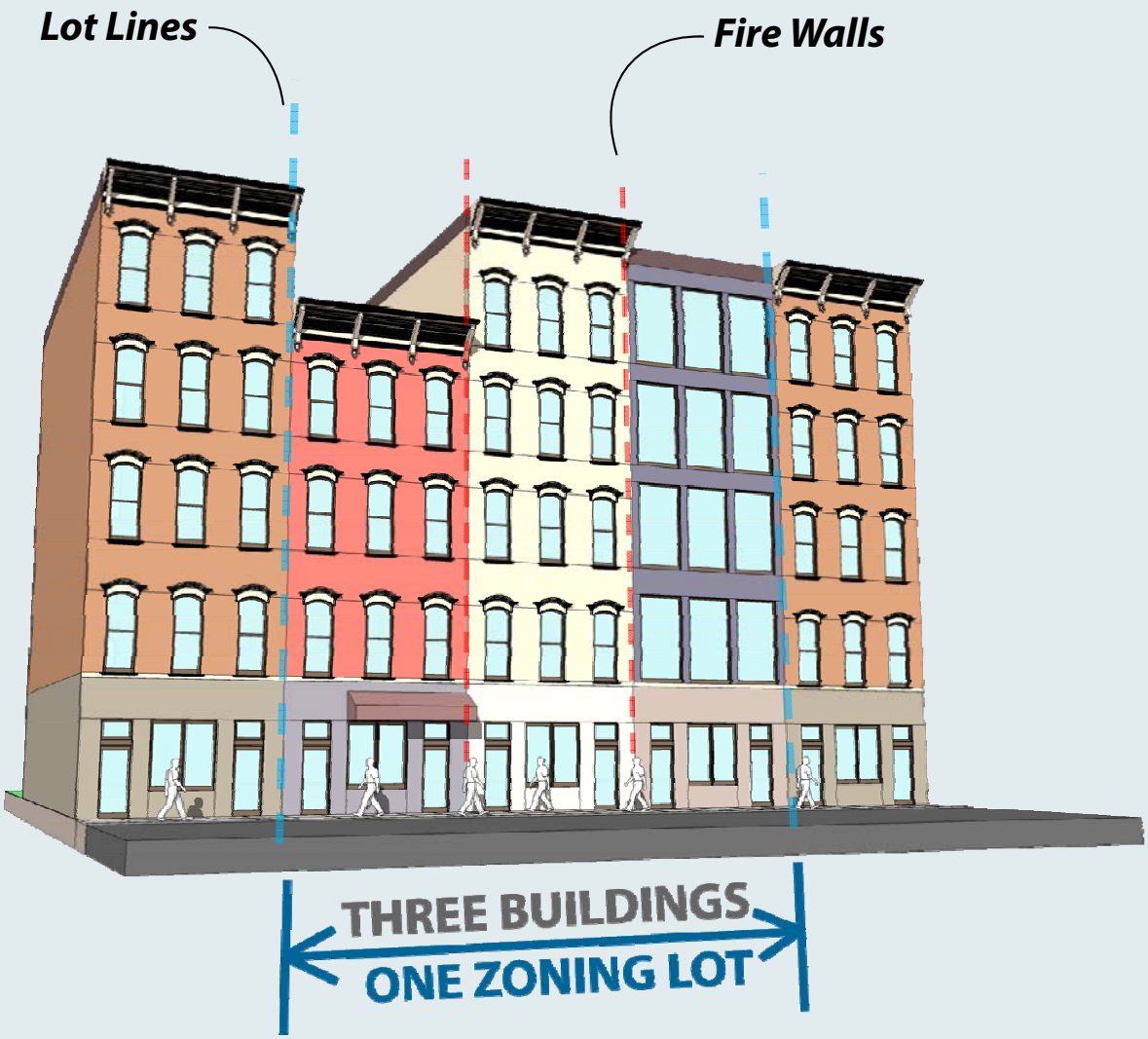
A "<u>zoning lot</u>" can be one tax lot or many tax lots. Owners of separate tax lots may combine their properties into one zoning lot for zoning purposes.

Proposed Definition of Building

Any structure which:

- *is located within a zoning lot*
- *is permanently affixed to the land*
- *has one or more floors and a roof*
- *is bounded by fire walls or open area*

RESULT :
Abutting buildings on a single zoning lot that function independently will be considered separate buildings.



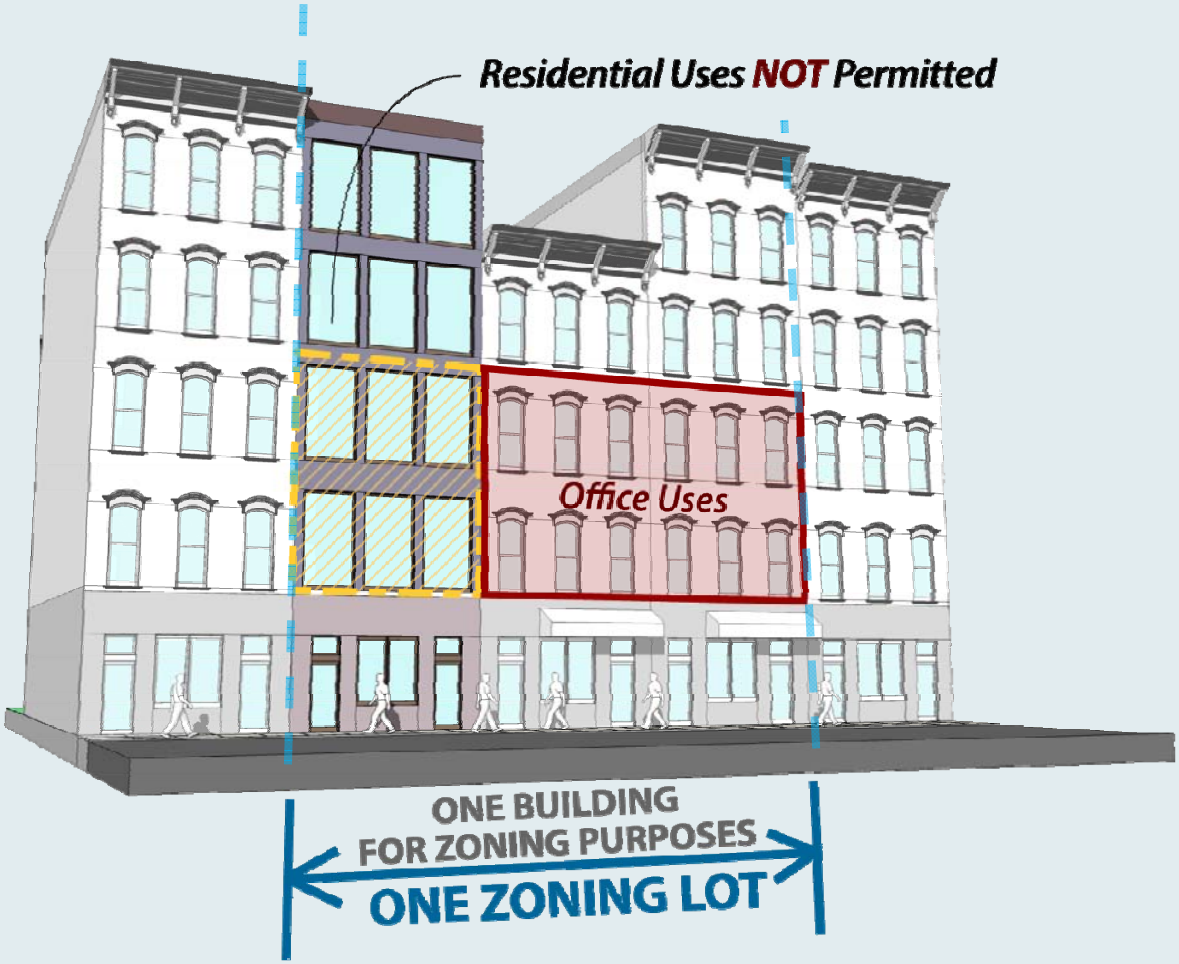
Location of Uses - Current rule

Applicable in C4, C5 and C6 districts

This rule was intended to prevent conflicts between residential and commercial uses in the same building.

Commercial uses are only permitted below the lowest residential use in the building.

RESULT:
The second and third stories of the new structure shown at right cannot be used for residences since they are on the same story as offices in the zoning building.

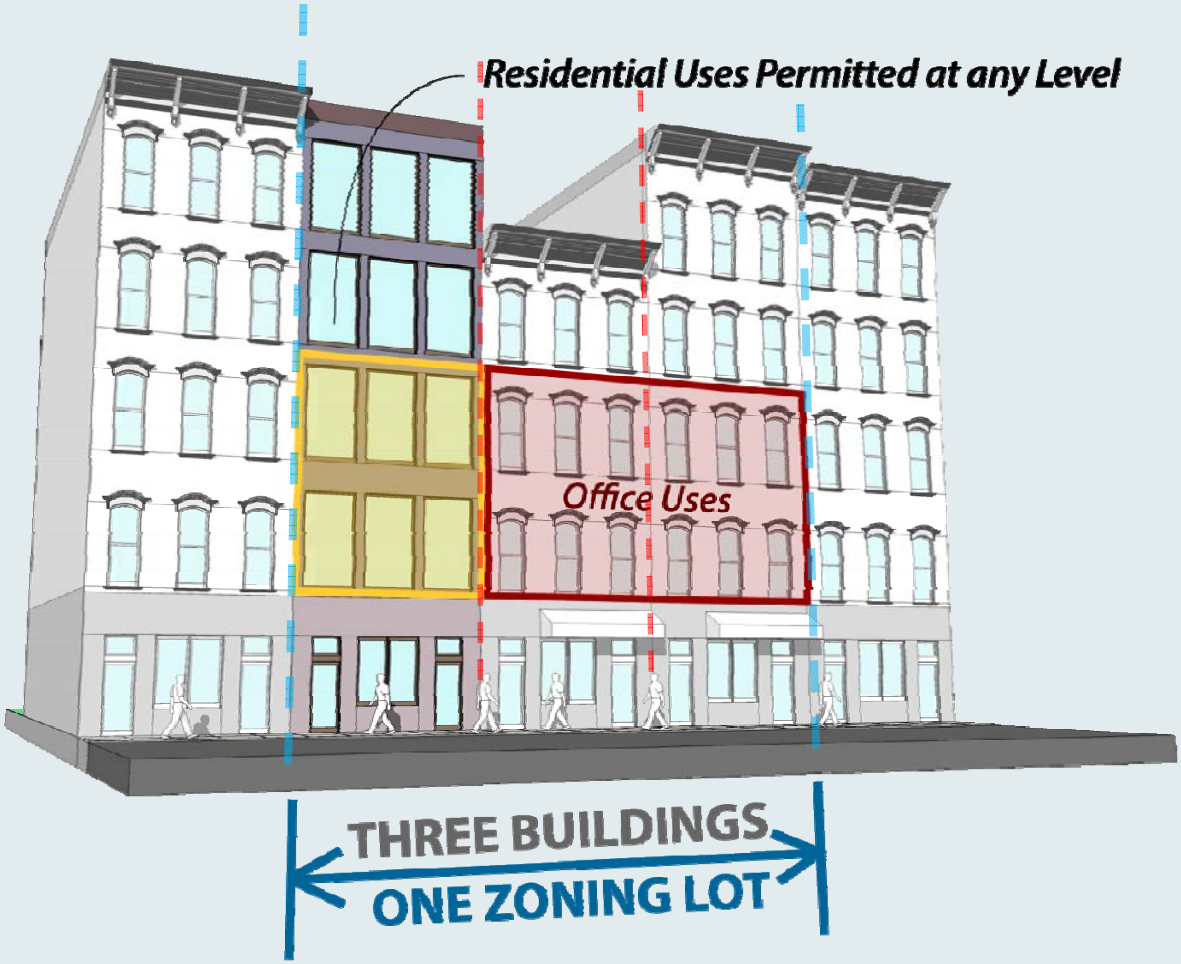


Location of Uses – Proposed rule

Applicable in C4, C5 and C6 districts

The Location Rule will apply to each building separately.

RESULT:
AS THREE BUILDINGS,
residential uses are permitted on the second and third floors of the new building.

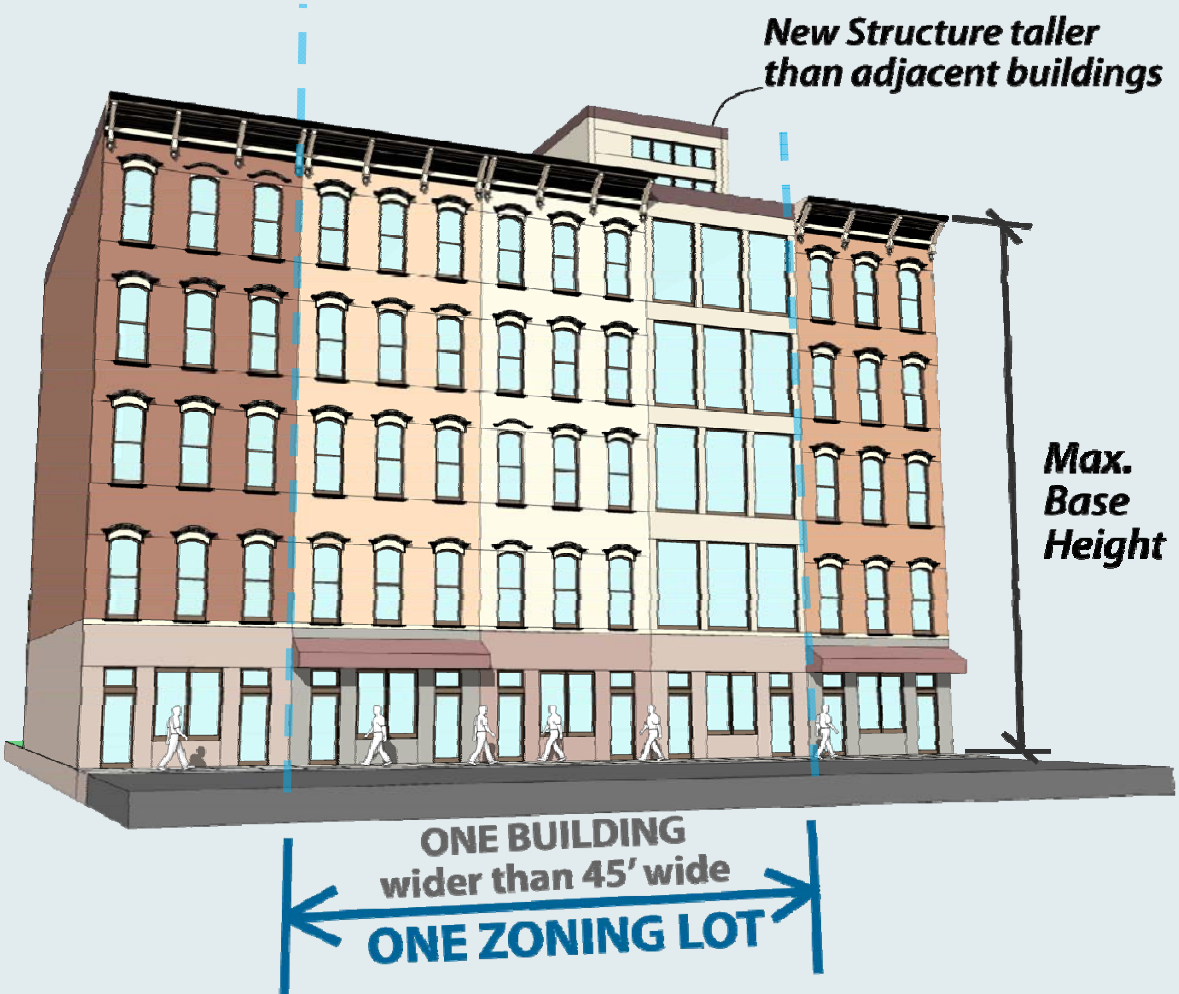


Sliver Rule – Current

Applicable in R7-2, R7D, R8, R9 and R10 districts and their commercial equivalents

The Sliver Rule was intended to prevent buildings less than 45 feet wide from being taller than adjacent buildings. It does not work as intended where abutting structures create a wide "zoning building"

RESULT:
New structure is exempt because the "zoning building" is wider than 45' at the maximum base height.



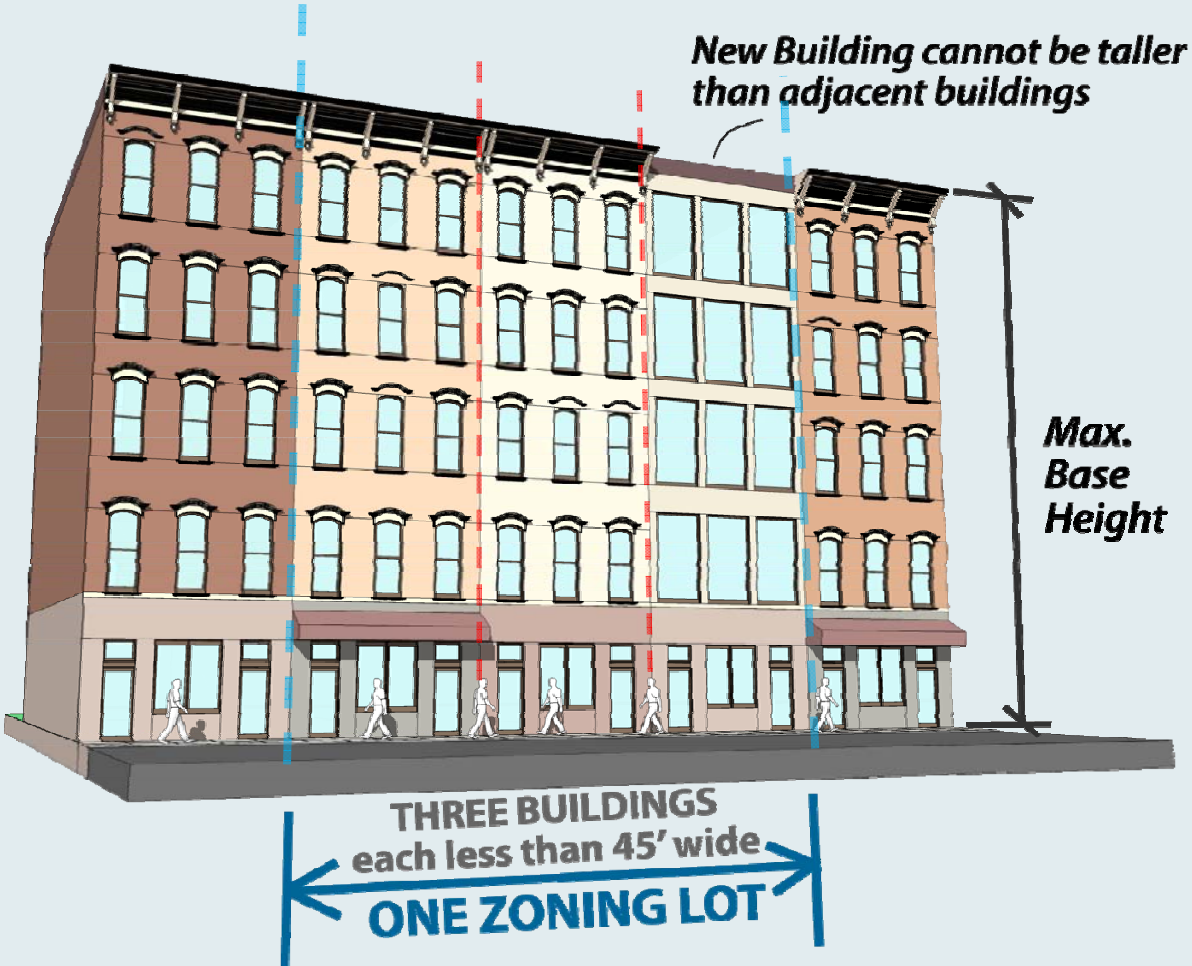
Definition of "building"

Sliver Rule – Proposed

Applicable in R7-2, R7D, R8, R9 and R10 districts and their commercial equivalents

Sliver Rule will apply to each building separately

RESULT:
Height of new building is limited by Sliver Rule.

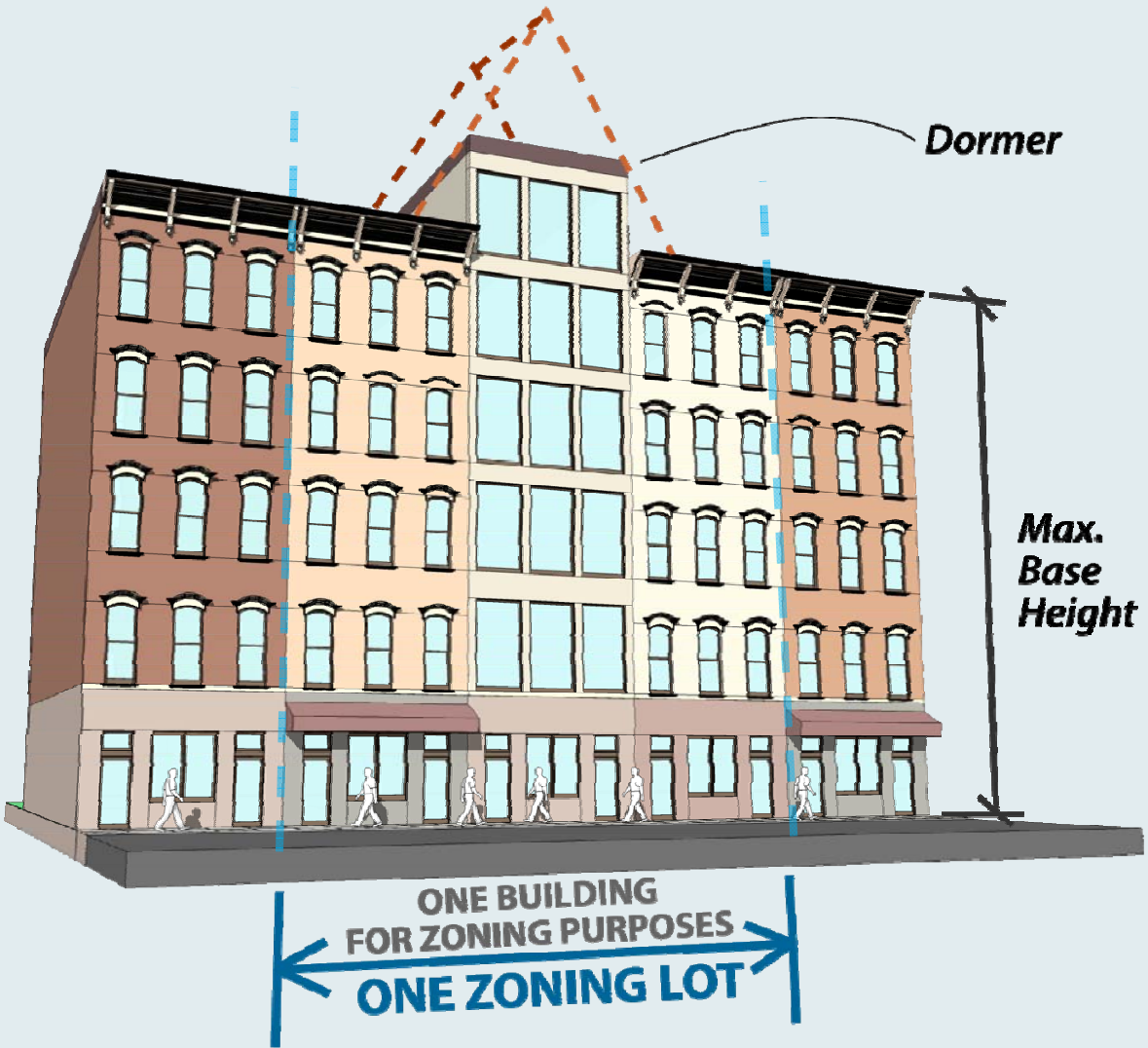


Dormer Rule – Current

Applicable to Quality Housing buildings in R6 –R10 districts and their commercial equivalents

Dormers are allowed above a maximum base height to provide variation in the street wall of a building. Larger dormers are allowed for wider buildings.

RESULT: *A new structure can be part of a wide "zoning building" and construct a dormer that reads simply as another story without any variation from the stories below.*

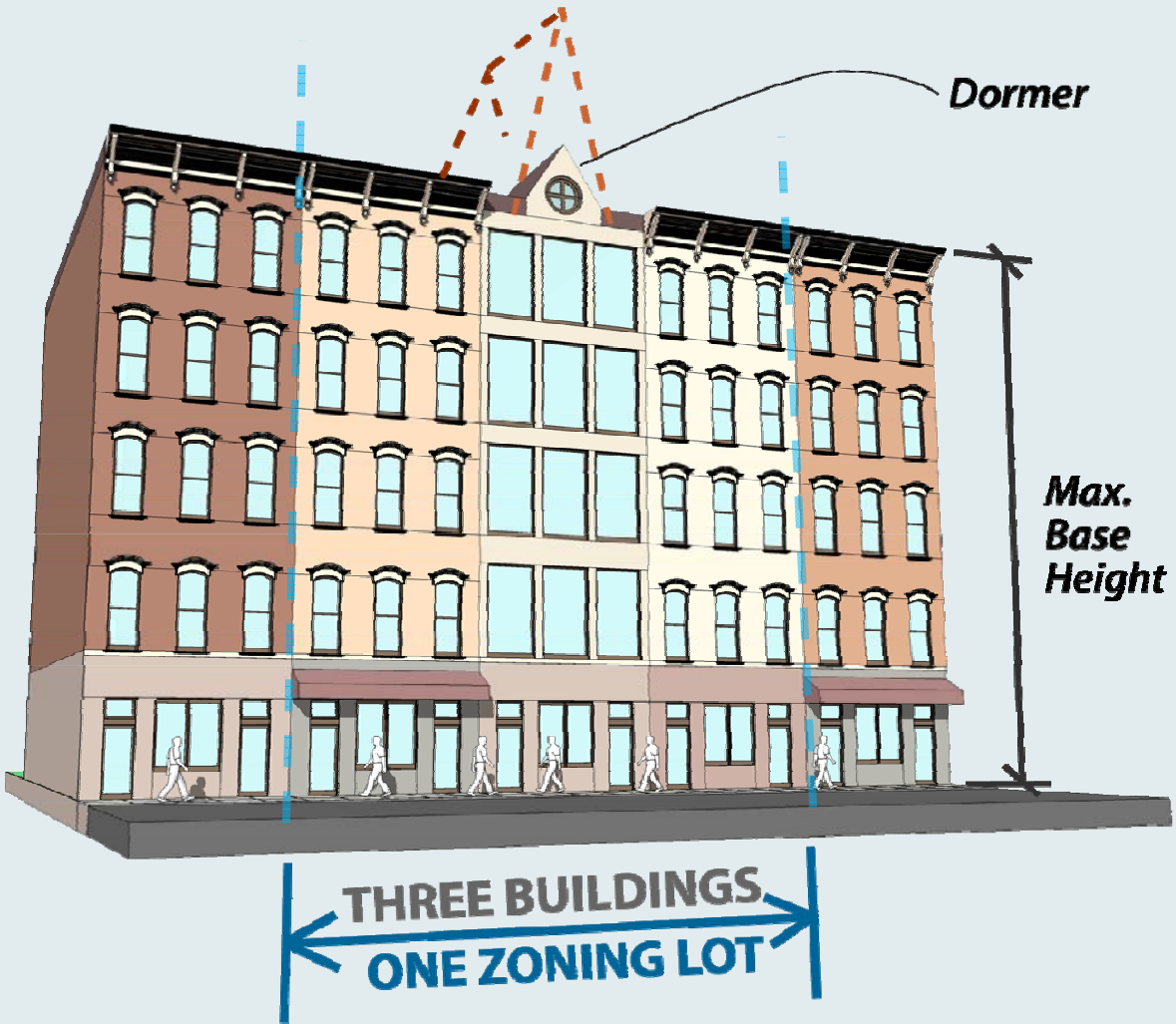


Dormer Rule – Proposed

Applicable to Quality Housing buildings in R6 –R10 districts and their commercial equivalents

Dormers will apply to each building separately

RESULT:
The size of dormers will be appropriately proportioned to each building.



Recess Rule – Current

Applicable in R6 –R10 contextual districts and their commercial equivalents

Recess Rules generally allow up to 30% of a street wall to be recessed so that facades can be articulated while maintaining street wall continuity.

RESULT:
30% of the street wall of the "zoning building" is recessed, but there is no façade articulation of the new structure, and the street wall continuity of the block has been broken.

Recess Rule – Proposed

Applicable in R6 – R10 contextual districts and their commercial equivalents

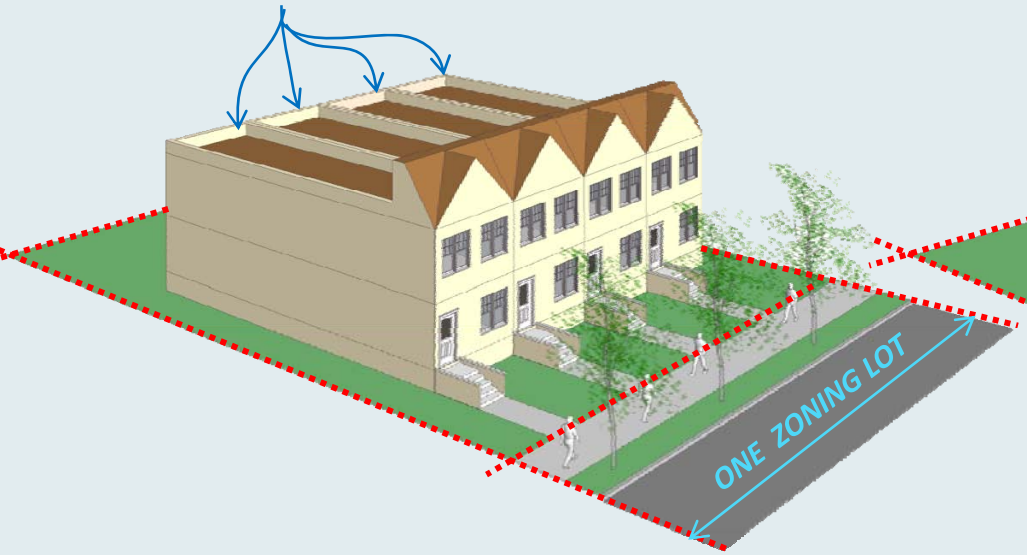
Rule permitting recesses will apply to each building separately

RESULT:
Up to 30% of the street wall of the new building can be recessed to provide façade articulation while maintaining street wall continuity.

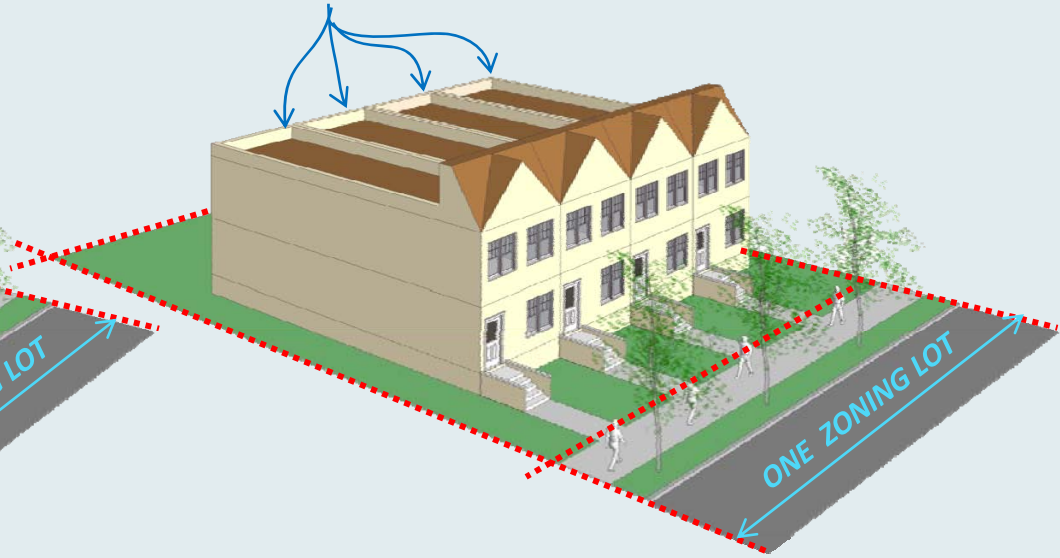
Definition of "building"

Detached/Attached Building

ONE ZONING BUILDING



FOUR ATTACHED BUILDINGS

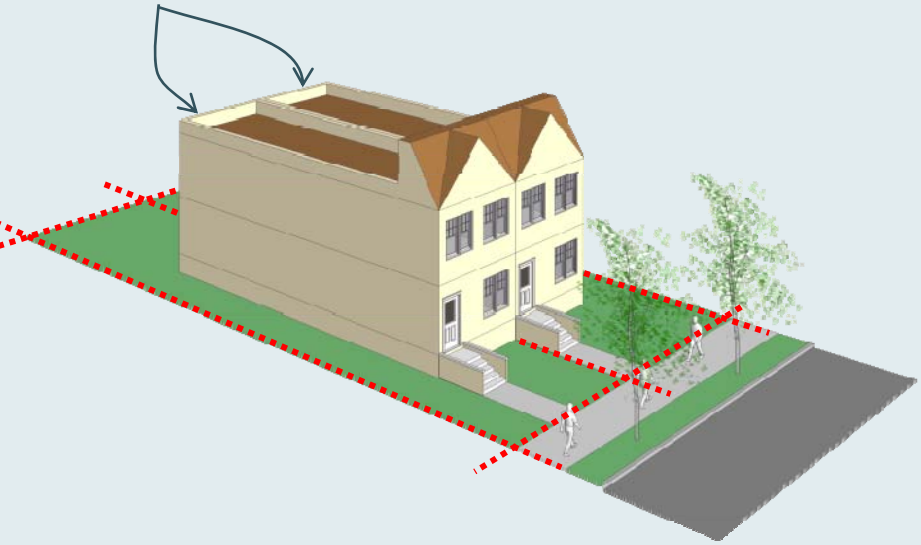


CURRENT RULE:
One detached zoning building even though it functions as four separate row-house buildings

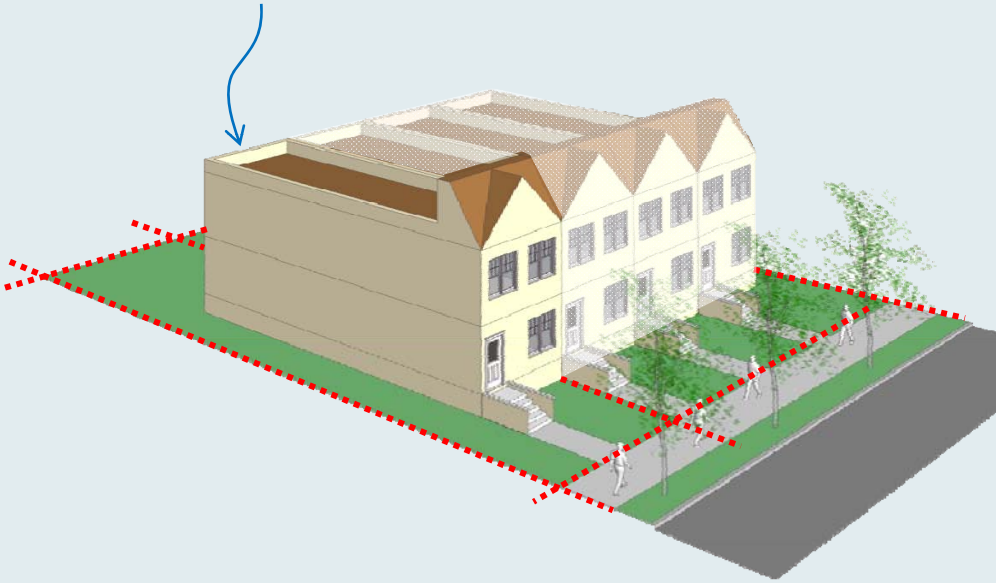
PROPOSED RULE:
Consistent with common understanding of separate row-house buildings

Semi-detached/Attached Building

TWO SEMI-DETACHED BUILDINGS



ONE ATTACHED BUILDING



CURRENT AND PROPOSED RULE:
SEMI-DETACHED BUILDINGS
abut one building on adjacent zoning lot; bounded on other side by yards or open space

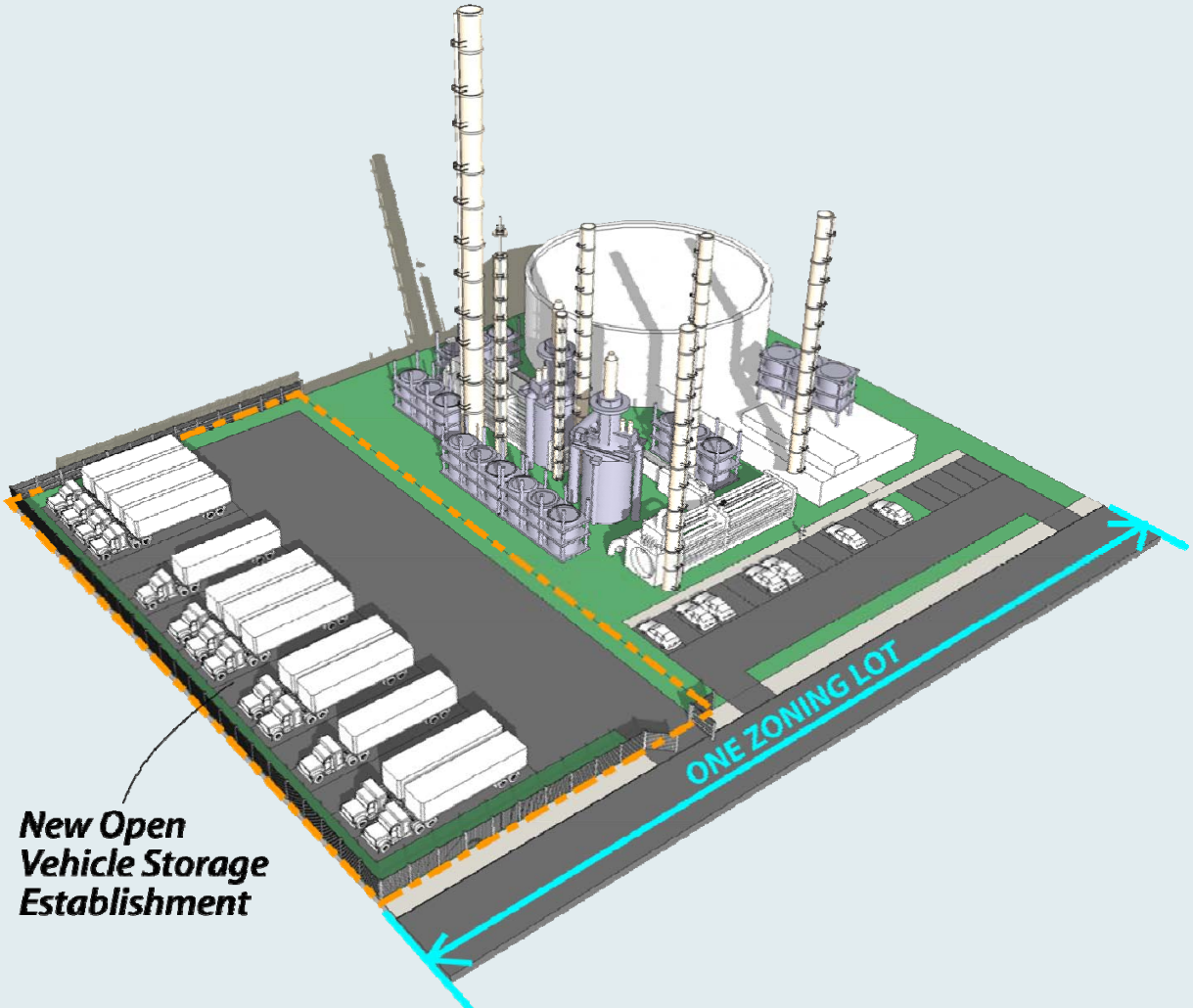
PROPOSED RULE:
The end unit *in a row of attached buildings is currently considered semi-detached; with the proposed amendment it will be considered an attached building*

New Open Use of Land - Clarification

CURRENT RULE: *The definition of "development" includes "the use of a tract of land for a new use." It was unclear that this referred only to new open uses.*

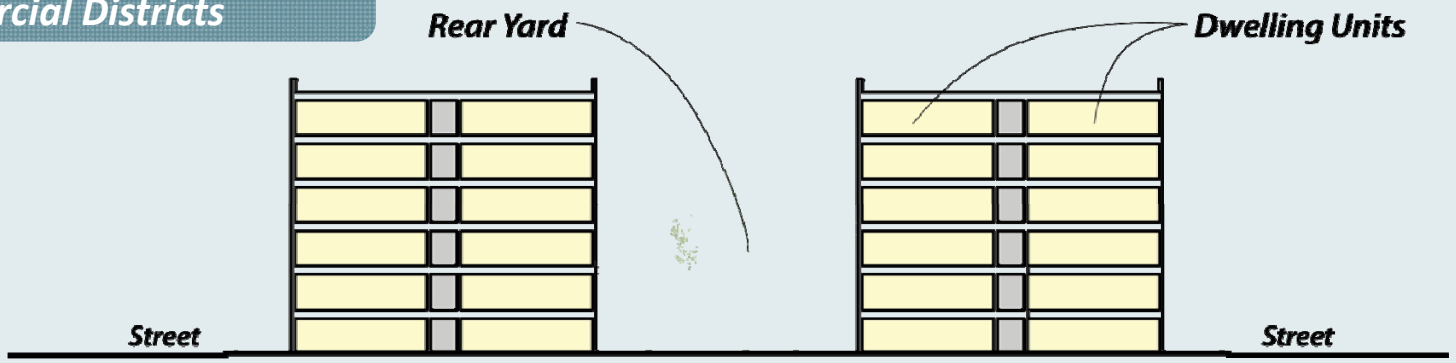
PROPOSED RULE*: The amendment will clarify that "the establishment of a new open use, other than an accessory use" is a "development."*

For example, an open portion of a lot used for a new commercial vehicle storage yard as a separate use unrelated to the industrial use on the lot is a "development."

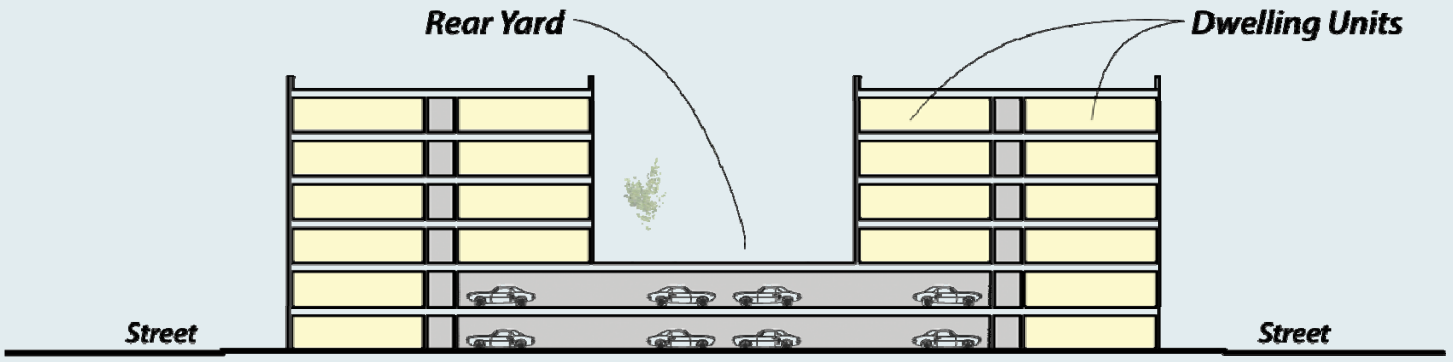


Level of Residential Rear Yard

Applicable to Mixed Buildings in Commercial Districts



CURRENT RULE: *Requires 30-foot residential rear yard at lowest level containing dwelling units; otherwise 20-foot commercial rear yard is required.*



PROPOSED RULE: *Requires 30-foot residential rear yard at lowest level containing dwelling units <u>with windows that face the rear yard</u>; otherwise 20-foot commercial rear yard is required.*

Applicability of Community Facility Height and Setback Regulations to Residential Portions of Buildings

Applicable in R1 to R5 Districts

CURRENT RULE:
Community Facility height and setback regulations apply to **entire building** containing residential and community facility uses

PROPOSED RULE:
Residential height and setback regulations apply to **residential portion** of building containing residential and community facility uses.

R3-2 Example

Applicability of Community Facility Height and Setback Regulations to Residential Portions of Buildings

Applicable in R1 to R5 Districts

CURRENT RULE:
Community Facility height and setback regulations apply to **entire building** containing residential and community facility uses

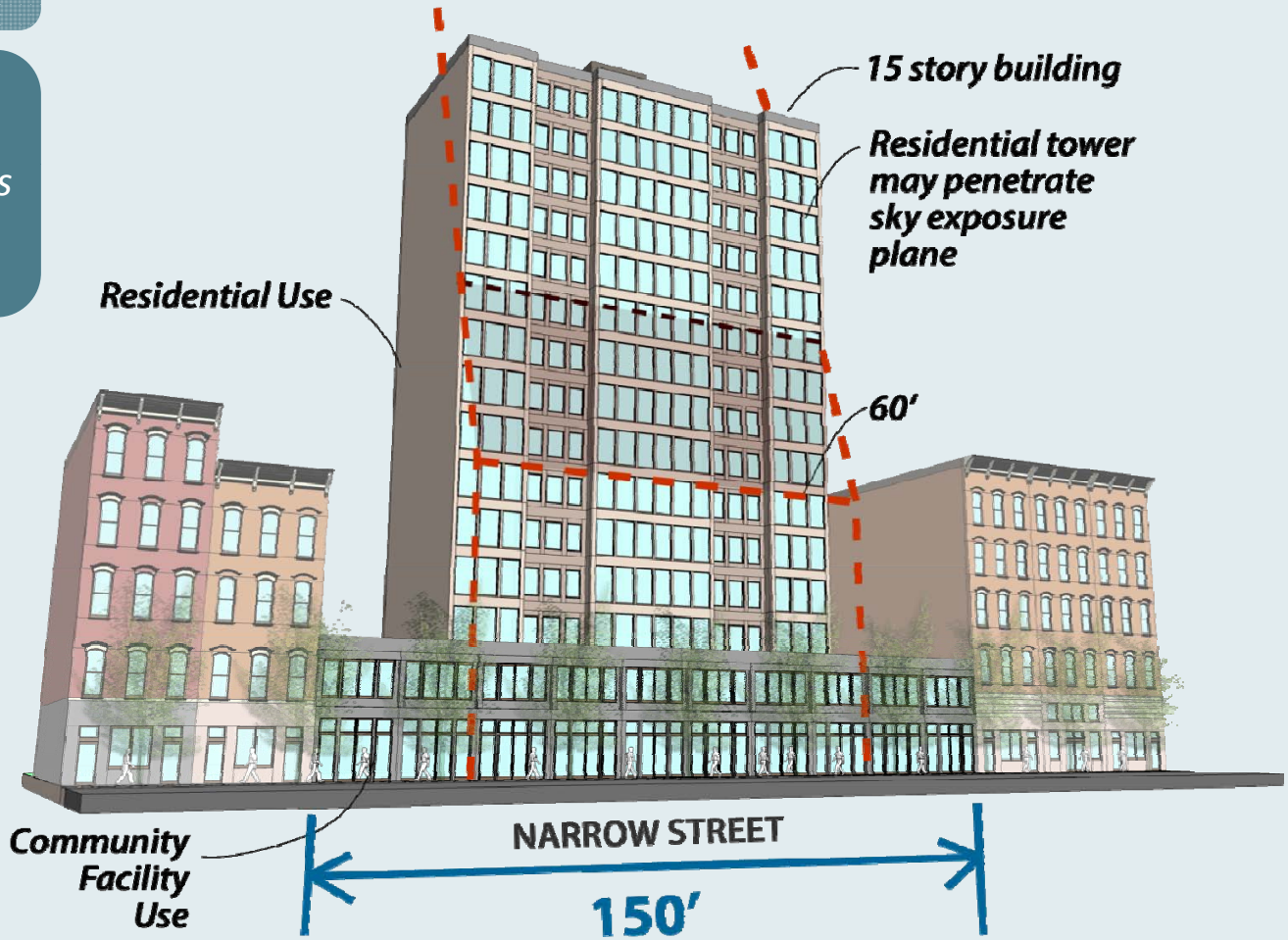
PROPOSED RULE:
Residential height and setback regulations apply to **residential portion** of building containing residential and community facility uses.

R5 Example

Current Height and Setback Rules for Residential Portions of Buildings with Community Facilities

Applicable in R7-2 and R8 Districts

CURRENT RULE: *Community Facility regulations allow towers for Residential portions of buildings containing Community Facility uses*



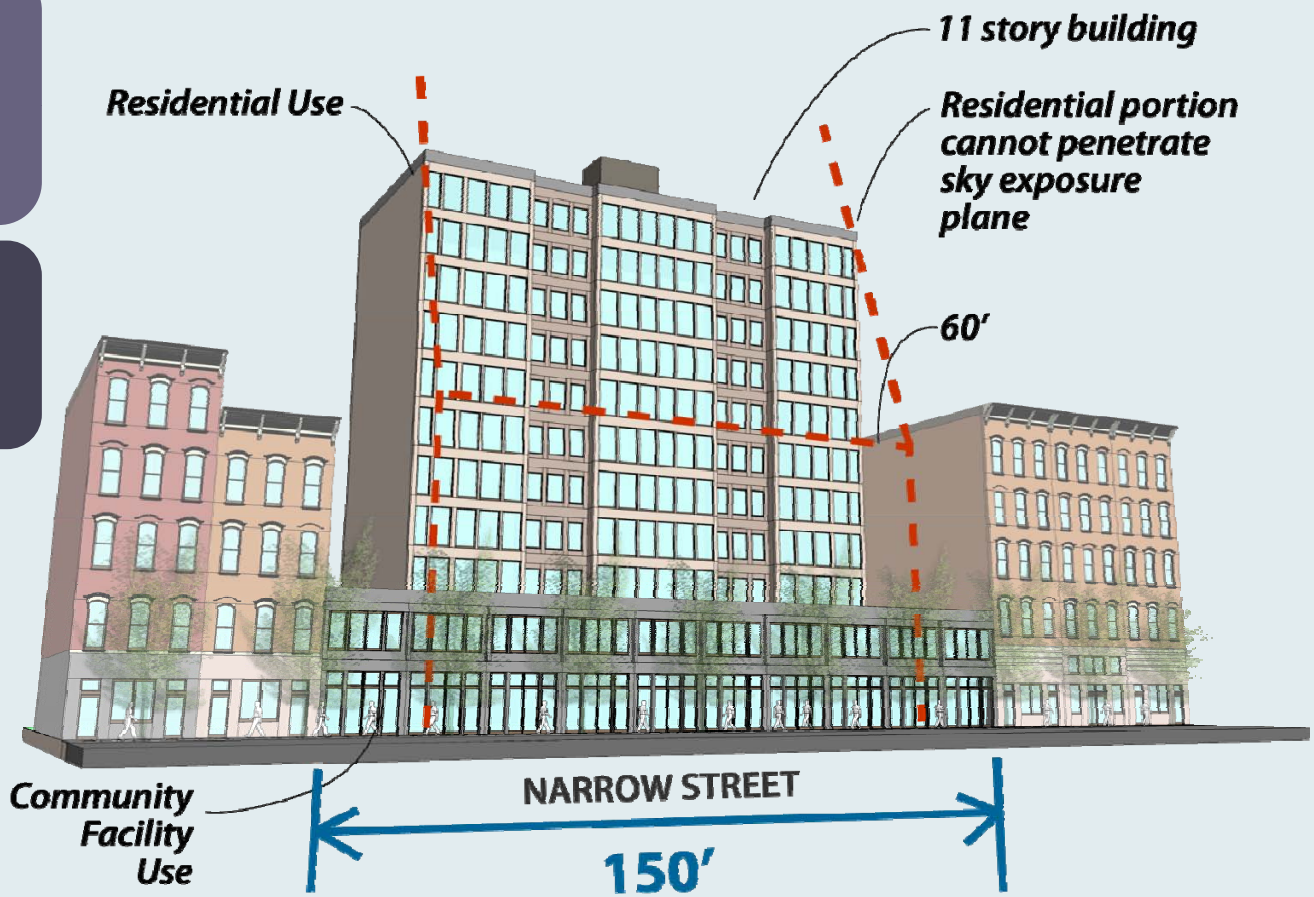
R7-2 Example

Proposed Height and Setback Rules for Residential Portions of Buildings with Community Facilities

Applicable in R7-2 and R8 Districts

PROPOSED RULE: *Residential height and setback regulations apply to Residential portions of building containing Community Facility uses*

OPTION 1: *Height Factor regulations with sky exposure plane applies to Residential portion of building*



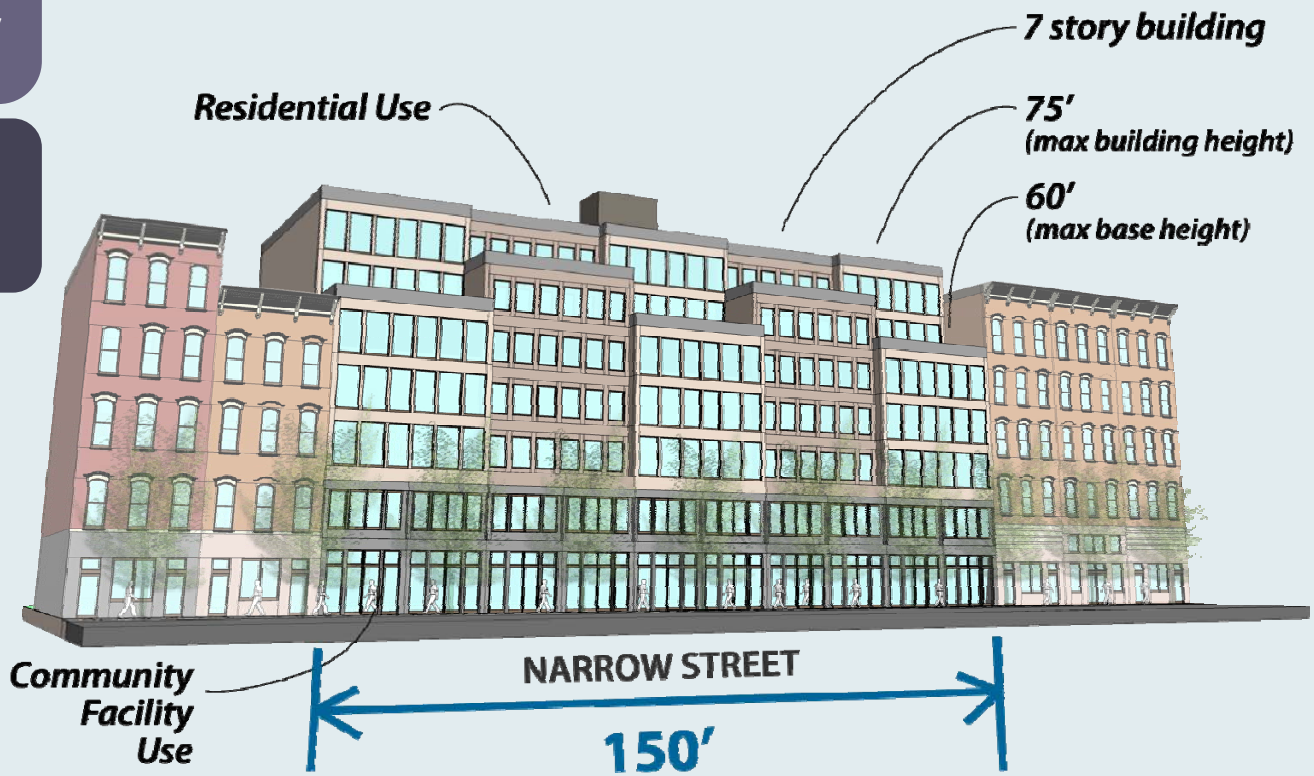
R7-2 Example

Proposed Height and Setback Rules for Residential Portions of Buildings with Community Facilities

Applicable in R7-2 and R8 Districts

PROPOSED RULE: *Residential height and setback regulations apply to Residential portions of building containing Community Facility uses*

OPTION 2: *Quality Housing regulations apply to entire building*



R7-2 Example

Applicability of Yard Regulations to Zoning Lots with Residences and Community Facilities

Applicability of Yard Regulations in R1 - R5 Districts

*The **Residential front yard** regulations of Article 2 Chapter 3 will apply to entire zoning lot containing both residential and community facility uses. This proposal will extend the front yard planting regulations to zoning lots with a mixture of both uses.*

*The **Community Facility side yard** regulations of Article 2 Chapter 4 will apply to entire zoning lot containing both residential and community facility uses (no change from current rule)*

*The **Community facility rear yard** regulations of Article 2 Chapter 4 will apply to entire zoning lot containing both residential and community facility uses (no change from current rule)*

Clarifications – Height and Setback

CURRENT RULE: Some height and setback regulations currently only apply to "developments or enlargements." Technically, this would allow existing buildings that are altered but not enlarged to exceed height limitations, which was not the intent.

BEFORE ALTERATION

AFTER ALTERATION

PROPOSED RULE: This text amendment will clarify that height and setback regulations apply to all buildings, including **altered buildings**.

Clarifications – Retail Continuity

New buildings in commercial districts with R9 and R10 density are required to provide **ground floor retail**. Many special districts have similar requirements.

Where it was clear from Commission reports that this requirement was intended to apply only to **new** buildings, the text has been clarified to include dates specifying that the rule applies to buildings constructed after the date the rule became effective. Where research showed that the rule was intended to apply to all buildings, regardless of the date the building was constructed, the text will state so.

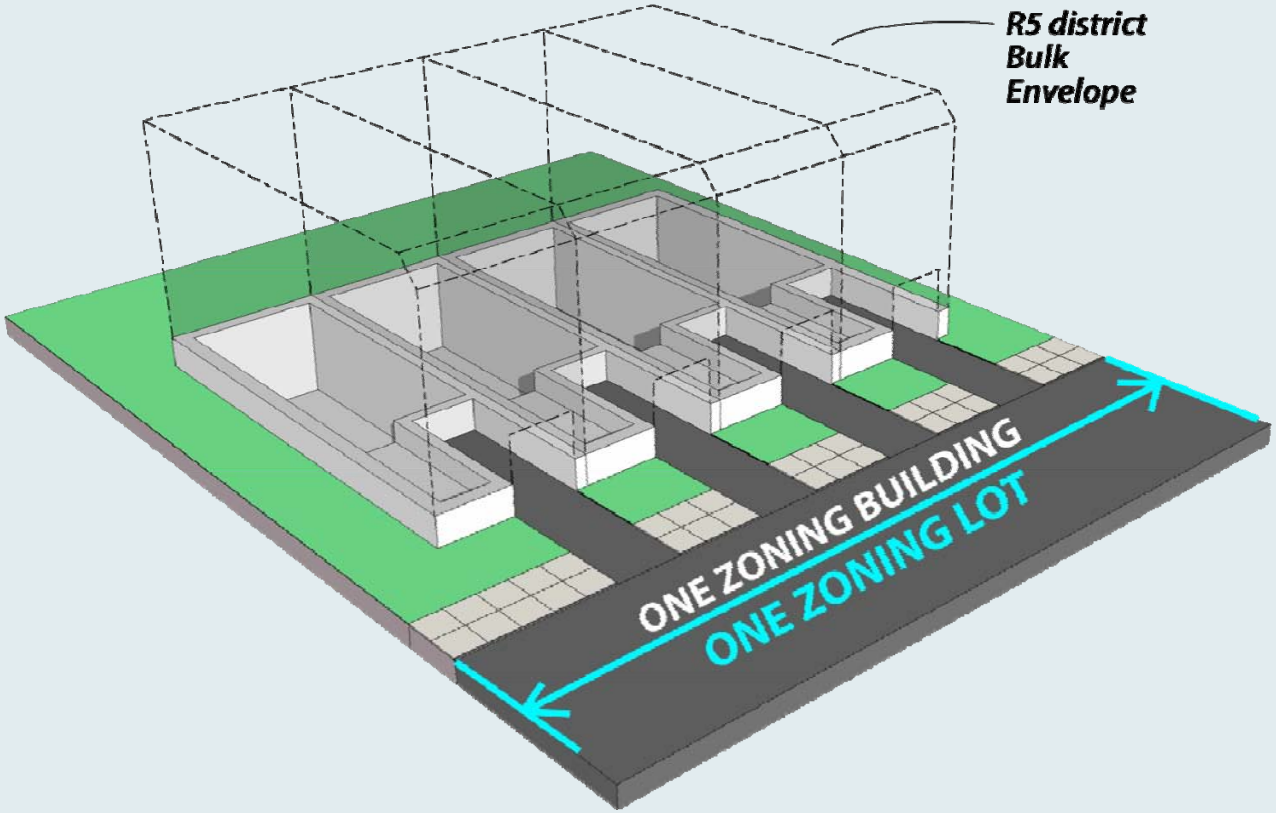
Clarifications – Vesting

CURRENT RULE:
AS ONE ZONING"BUILDING," the entire foundation must be completed in order to continue construction in accordance with the rules of the previously mapped district.

PROPOSED RULE:
New text will specify that abutting buildings on a single zoning lot SHALL BE CONSIDERED ONE BUILDING. The status quo will be maintained.

Remapping from R5 to R3-2

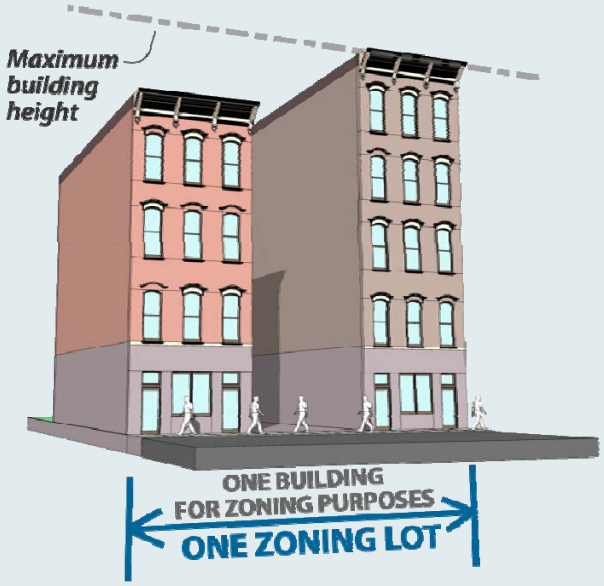
(both districts allow attached housing types)



Clarifications – Damage and Destruction

CURRENT RULE: *Buildings that are less than 75% damaged or destroyed can be reconstructed to former bulk, even if they were non-complying. Abutting buildings on same zoning lot can be used to determine 75% threshold.*

Legal Pre-Existing Non-Complying Building



Demolition (approximately 33% destroyed)

Reconstruction permitted

PROPOSED RULE: *New text will specify that abutting buildings on a single zoning lot SHALL BE CONSIDERED ONE BUILDING. The status quo will be maintained. (One- and two-family homes can always be reconstructed even if 100 percent destroyed.)*

Demolition/Alteration

When a building is demolished and replaced with a building of the same or less floor area using the same foundation, it is currently unclear whether the replacement building is a new building and therefore triggers requirements for developments.

Wherever **public amenities** must be provided by a "development," the text amendment will clarify that the **demolition and reconstruction of a building is considered a "development" if:**

More than 75% of its floor area is removed, and
More than 25% of its perimeter walls are removed

This rule will apply to amenities such as:

- **Street trees**
- **Retail Continuity requirements triggered by "developments"**
- **Subway stair relocations**
- **125th Street arts space requirements**

For More Information

This text amendment involves three types of changes:

• **Clarifications** of current rules. These types of changes typically restate a rule with clearer language to remove ambiguities.
• **Modifications** of rules consistent with Department of Buildings interpretations and intent of City Planning Commission. These types of changes typically involve new language that reflects the original intent of the rule and the way it is interpreted by the Department of Buildings.
• **Substantive changes** of rules for purposes of consistency with proposed definitions of "development" and "building" and return to original intent. These types of changes result in a change in the way rules will be interpreted by the Department of Buildings.

This presentation highlights most substantive changes and some clarifications. For a list of major clarifications, modifications and all proposed substantive changes, go to http://www.nyc.gov/html/dcp/html/key_terms/index.shtml or contact the Department of City Planning at 212-720-3234.