

## NOTICE OF PUBLIC HEARING

**Subject:** Opportunity to comment on proposed Department of City Planning rule concerning applications for certification for limited increases in maximum frontage limits in the Upper West Side Enhanced Commercial District.

**Date / Time:** September 21<sup>st</sup>, 2012 at 10:00 A.M.

**Location:** 2<sup>nd</sup> Floor Barrish Conference Room, 22 Reade Street, New York, NY 10007

**Contact:** Barak Wrobel, 22 Reade Street, New York, NY 10007.  
bwrobel@planning.nyc.gov

### **Proposed Rule Amendment**

Pursuant to the authority vested in it by Section 1043 of the New York City Charter, the New York City Department of City Planning proposes to establish a new Chapter 9 within Title 62 of the Rules of the City of New York. This rule was included in the agency's regulatory agenda.

### **Instructions**

- Prior to the hearing, you may submit written comments about the proposed amendment to the Deputy Counsel of the Department of City Planning by mail at 22 Reade Street, New York, NY 10007, or electronically through NYC RULES at [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules) by 5:00 P.M. on September 21<sup>st</sup>, 2012.
- Any person in attendance at this hearing will be given a reasonable opportunity to present oral or written statements and to submit other documents concerning the proposed changes. Each speaker has a maximum of three (3) minutes.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Barak Wrobel at (212) 720-3259 or bwrobel@planning.nyc.gov by September 14<sup>th</sup>, 2012.
- Written comments and a tape recording of oral comments received at the hearing will be available for public inspection within a reasonable time after receipt

between the hours of 9:00 a.m. and 5:00 p.m. at the Freedom of Information Law Desk, 22 Reade Street #2W, telephone number (212) 720-3208.

## **STATEMENT OF BASIS AND PURPOSE**

The Department of City Planning is proposing to amend Title 62 of the Rules of the City of New York pursuant to its authority under Section 1043 of the New York City Charter.

The proposed amendment would add a new Chapter 9 to Title 62 in order to establish and clarify procedures and requirements for obtaining certifications for a limited increase in street wall width pursuant to Section 132-51 of Article XIII, Chapter 2 of the New York City Zoning Resolution (Zoning Resolution or ZR). ZR Section 132-51 became effective on June 28, 2012.

### *Zoning Resolution Section 132-51*

ZR Section 132-11(b) establishes the location of Special Enhanced Commercial District 2 as designated portions of Amsterdam and Columbus Avenues in the Upper West Side of Manhattan. Pursuant to ZR Section 132-24, within Special Enhanced Commercial District 2, the maximum street wall width of any non-residential ground floor establishment, other than banks or loan offices, shall not exceed 40 feet. However, a certification from the Chairperson of the City Planning Commission may be applied for pursuant to ZR Section 132-51 to exceed the 40-foot maximum street wall width, provided the conditions set forth in the Section are met. In addition, ZR Section 132-51 provides that a certification that has been granted pursuant to that Section will lapse if substantial construction has not been completed within one year of the effective date of the certification.

### *Proposed Rule*

The proposed rule (1) describes the process for the submission and review of applications for certifications to allow a limited increase in street wall width pursuant to ZR Section 132-51, and (2) clarifies the lapse provision contained within ZR Section 132-51 and the effect of a lapse for the purposes of ZR 132-51(c)(2).

### **1) Application Process**

Given that only a limited number of expansions may be available for approval within a particular geographic area, and that multiple applications within a particular geographic area may be simultaneously pending, the rule sets forth procedures to ensure that all applications are reviewed and processed in a predictable, fair and orderly manner. Specifically, the proposed rule requires that:

- a) Draft applications must be submitted for pre-filing review.
- b) Draft applications will be reviewed in order of receipt.

- c) The applicant may only formally file an application upon notification that the draft application is considered complete.
- d) Complete filed applications for establishments within the same set of geographic boundaries will be reviewed in order of application filing date and time.

## 2) Lapse

The proposed rule also describes the effect of a lapse of a certification granted pursuant to ZR Section 132-51, or the lapse of an authorization granted pursuant to ZR Section 132-52, for the purposes of ZR Section 132-51(c)(2). In addition, the proposed rule defines “substantial construction” for the purposes of ZR Section 132-51.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

New text is underlined; deleted material is in [brackets].

\* \* \*

Section 1. Title 62 of the Rules of the City of New York is amended by adding a new Chapter 9, to read as follows:

### Chapter 9: Rules for the Processing of Applications for Certification to Allow a Limited Increase in Street Wall Width Pursuant to Section 132-51 of the Zoning Resolution

#### § 9-01 Purpose

These rules of procedure are established for the review of applications for Certification to Allow a Limited Increase in Street Wall Width pursuant to Section 132-51 of the Zoning Resolution (ZR).

#### § 9-02 Pre-Filing Process

(a) The applicant must submit for review a draft application, either electronically or in hard copy. Such draft application must include material required by the Department of City Planning (“the Department”) demonstrating the information and items set forth in ZR Section 132-51. Draft applications must be submitted to the specific division of the Department that is designated on the application form for receipt of an application filed pursuant to ZR Section 132-51, by delivery or by mail to: the division so named on the application form, New York City Department of City Planning, 22 Reade Street, New York, New York 10007, or by email to: RetailEC@planning.nyc.gov. Upon receipt, the Department will record the date and time of receipt.

(b) The Department will review each draft application for accuracy and completeness in order of receipt. The Department will notify the applicant in order of receipt whether the draft application is complete and may be filed in accordance with the provisions of § 9-03 of this title, or whether the draft application is incomplete and requires revision. Such notification will be provided via the delivery method identified by the applicant on the application form (email, fax, or mail), and will include a specification of the portions of the application that are incorrect or incomplete and require revision, if applicable.

(c) The Department will record the date and time of receipt of any revised draft application submitted in response to a notification provided under subdivision (b) of this section. A revised draft application will be reviewed for completeness and the applicant will be notified of the Department's further determination in order of receipt of the revised draft application. Such notification of the Department's further determination will be provided pursuant to the procedure set forth in subdivision (b) of this section.

### **§ 9-03 Filing of Applications**

Following notification pursuant to § 9-02(b) or (c) of this title that a draft application is complete, the applicant must file nine (9) copies of the application at the Department of City Planning, Central Intake Office, 22 Reade Street, New York, New York 10007. Applications that have not been reviewed and determined to be complete pursuant to § 9-02 will not be accepted for filing. Applications that are not accompanied by the payment of all applicable fees in accordance with § 3-07(e)(4) of this title will not be accepted for filing. Applications accepted for filing in accordance with these rules will be stamped by the Department with the date and time of filing.

### **§ 9-04 Review and Certification of Applications**

For applications for establishments within the same set of applicable geographic boundaries as set forth in ZR Section 132-51(c), review and certification of applications will be made in the order of application filing date and time. As set forth in ZR Section 132-51(c), the set of applicable geographic boundaries means the same block frontage containing the applicant's establishment, the block frontage directly across the street from the block containing such establishment, and the blocks fronting on the commercial street immediately adjacent to the north and south of the block containing the applicant's establishment.

### **§ 9-05 Lapse of Certification**

(a) *Effect of Lapse.* If a certification granted pursuant to ZR Section 132-51 lapses in accordance with the provisions set forth in the final paragraph of that section, or if an authorization granted pursuant to ZR Section 132-52 lapses in accordance with the provisions set forth in ZR Section 11-42, the effect of such lapse is that the underlying

application for such certification or authorization will not be considered an “approved application” for purposes of ZR Section 132-51(c)(2).

(b) *Substantial Construction.* For purposes of ZR Section 132-51, the term “substantial construction” means that the entirety of the interior space associated with the extension pursuant to the certification has been combined, has been made a part of the operations of the enlarged establishment, and remains open to customers from any and all doorways located along the approved retail frontage, except that entrances serving portions of the establishment reserved for employees only do not need to be open to customers.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Upper West Side Enhanced Commercial District Certification**

**REFERENCE NUMBER: DCP-1**

**RULEMAKING AGENCY: Department of City Planning**

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Rachel Squire  
Mayor's Office of Operations

8/20/2012  
Date

**NEW YORK CITY LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-788-1087**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE: Upper West Side Enhanced Commercial District Certification**

**REFERENCE NUMBER: 2012 RG 066**

**RULEMAKING AGENCY: Department of City Planning**

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN  
Acting Corporation Counsel

Date: August 16, 2012