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June 12, 2007

Hon Michael Bloomberg  
Mayor, City of New York  
City Hall  
New York, NY 10007

Hon. Amanda Burden  
Director, New York City Department of City Planning  
22 Reade Street  
New York, NY 10007

**Re: Zoning Bulk Bonus for Dormitories**

Dear Mayor Bloomberg and Director Burden,

I write to again urge the Department of City Planning to change our city's zoning regulations to eliminate the current bulk bonus in many zoning districts for dormitory developments as compared to residential development. While the problems of inappropriate development created by this zoning bonus are long-standing, several recent developments which may facilitate fraud through this system make the need for reform more urgent now than ever.

As you know, neighborhoods like the East Village have seen woefully inappropriate development of dorms utilizing the bonus currently afforded for dorm development. The most recent and perhaps most egregious example is a 26-story 'mega-dorm' being developed for NYU at 120 East 12<sup>th</sup> Street, which will be the tallest building in the East Village. Being built on a mid-block, it will stick out like the proverbial sore thumb in every respect.

However, the problems created by the dormitory zoning bonus is now no longer simply limited to inappropriately-scaled development. There is now also the increasing threat of fraudulent development taking place utilizing this dubious provision of the zoning text, and seemingly increasing difficulty in policing such abuses.

As you know, the May 29<sup>th</sup> ruling by the New York State Appellate division in the case of 9th & 10th Street L.L.C. vs. Board of Standards and Appeals threatens the requirement that developers have a lease of at least 10 years with an accredited educational institution in place in order to receive a permit for construction of a dormitory utilizing the dormitory zoning bulk bonus. This regulation was apparently promulgated in response to cases such as 81 East 3<sup>rd</sup> Street in Manhattan, where the developer was apparently granted permits from the Department of Buildings to build a larger-than-normally allowable building because they claimed it would be a dormitory, but when construction was completed they had no school to occupy the supposed dormitory. If the 10-year lease requirement is not allowed to stand, we will no doubt see similar cases of developers claiming to build a dormitory in order to get permits for a much-larger than normally allowable building (in R7-2 zoning districts such as the one

which covers 81 East 3<sup>rd</sup> Street, the bonus for dorm development is nearly 90%). Without the requirement of a 10-year lease from a school in place, however, there will be little necessary to prove this claim

However, even if this requirement does stand (the City has said it is appealing the court ruling), it has become clear that developers, sometimes working with unscrupulous schools, will still try to get permission for construction or occupancy of larger-than-normally-allowable buildings by claiming dormitory use anyway. A recent case to look at is 159 Bleecker Street in Manhattan, where a temporary Certificate of Occupancy was granted for this building, which was built at a greater bulk due to the supposed inclusion of dormitory space, based upon a 10-year lease signed by the Dalton School. However, the Dalton School, a day school for kindergarten through 12<sup>th</sup> grade students five miles away on the Upper East Side, does not appear to provide any housing for students (nor does it appear it has at any time in its nearly 90-year history). In fact, there is considerable evidence that the units are simply intended to be used by Dalton faculty as housing, which is explicitly prohibited under current zoning regulations. However, because the requirement for proof of appropriate dorm occupancy is simply having a 10-year lease for dormitory use in place, when the school is part of the deception this makes enforcement of the provision particularly difficult, and the outcome in this case remains to be seen.

For all these reasons and others, I strongly urge the City to consider removing the dormitory bulk bonus from the zoning text. If the zoning distinction between dormitory and faculty housing or residence cannot be policed, maintaining this distinction is simply an invitation to abuse. Perhaps more importantly, however, this raises the bigger question as to why dormitories are granted a bulk bonus in the first place. Three years ago the City appropriately removed the bonus afforded faculty housing from the zoning text, seeing no difference. Now the same should be done for dormitory space as well.

Starting in 2002 the City promised to make substantial reform of community facility regulations, but only one very small reform package has been advanced thus far. It is time for the zoning preference afforded to dormitories as compared to residences to be eliminated, to prevent inappropriate overdevelopment of neighborhoods and fraud and abuse of our zoning regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Berman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andrew Berman  
Executive Director

Cc: Department of Buildings Commissioner Patricia Lancaster  
City Council Speaker Christine Quinn  
Manhattan Borough President Scott Stringer

Brooklyn Borough President Marty Markowitz  
Queens Borough President Helen Marshall  
Bronx Borough President Adolfo Carrion  
City Council Land Use Committee Chair Melinda Katz  
City Council Zoning Subcommittee Chair Tony Avella  
City Councilmember Alan Gerson  
City Councilmember Rosie Mendez  
City Councilmember David Yassky  
City Councilmember Eric Gioia  
City Councilmember Letitia James  
City Councilmember Inez Dickens  
Manhattan Community Boards 1-9  
Brooklyn Community Board 2  
Municipal Art Society  
Citywide Coalition for Community Facility Reform  
Manhattan Institute  
Queens Civic Congress  
Civitas  
Landmark West!  
East Village Community Coalition  
Hamilton Heights-West Harlem Community Preservation Organization  
Morningside Heights Neighbors  
Concerned Residents of Manhattanville, Morningside Heights, and Harlem  
Murray Hill Neighborhood Association  
Fort Greene Association  
Hamilton Heights Homeowners Association  
Union Square Community Coalition  
NoHo Neighborhood Association  
Brooklyn Heights Association  
Friends of the Upper East Side Historic Districts  
Defenders of the Historic Upper East Side  
St. Ann's Committee