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**Eugene C. Travers**

April 12, 2013

**BY EMAIL**

Mr. Maurice Spreiregen  
Director of Central Intake  
New York City Department of City Planning  
22 Reade Street  
New York, NY 10007

**Re: Application No. 130233ZRM  
945 Second Avenue  
Manhattan, New York**

Dear Mr. Spreiregen:

This firm represents 945 Realty Holdings LLC, the owner of the captioned premises, in connection with the above-referenced application for a text amendment.

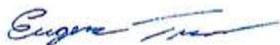
Submitted herewith are updated Pages 7 through 10 of the Project Description, previously submitted to your office on March 27, 2013.

Specifically, Page 7 of the Project Description has been revised to reflect the correct number of community districts that may be impacted by the proposed text amendment: Manhattan Community Districts 2, 3, 4, 5, 6, 7, 8, 10 and 11, as well as Queens Community District 2. Accordingly, I have been advised that the suffix of the application should be changed to "ZRY." Please note that pages 8, 9 and 10 of the Project Description do not contain any revisions, but are being resubmitted due to changes in pagination resulting from the revisions to Page 7.

With the exception of the foregoing changes, the application remains as previously submitted.

Please let us know if you require any additional information in this regard.

Very truly yours,



Enc.

Essentially, only vacant space could be changed to commercial use under the zoning amendment, since existing residential and community facility space could not be changed to commercial use, and existing commercial space would not experience any change. Therefore, the text amendment would facilitate commercial development at the density permitted by the underlying zoning without regard to the age of a building.

The proposed text amendment is appropriate because the underlying goal of preserving and protecting second-floor residential and community facility use will be maintained under the revised text. The limited applicability of the proposed text amendment to buildings with vacant second floors at the time of referral and those located on the same block frontage as another building with second floor commercial use will safeguard against the eviction of second floor residential or community facility tenants during the public review process.

Furthermore, the potential impact of the proposed text amendment on buildings with vacant second floors is extremely limited. Sites that could potentially take advantage of the proposed text are only those occupied by buildings constructed prior to 1970 where such buildings are at least partially within the affected C1 or C2 zoning districts. Based on the City's PLUTO database, there are approximately 2,100 properties containing pre-1970 buildings that are at least partially within one of the affected C1 or C2 zoning districts. These sites are located predominantly within Manhattan Community Districts 6, 7, and 8, with a small number of sites located within Manhattan Community Districts 3, 4, 5, 10 and 11. The affected zoning districts are also mapped within Manhattan Community Districts 2, and Queens Community District 2, although the PLUTO database does not indicate that there are any sites within those community districts that could take advantage of the proposed text amendment (*i.e.*, all of the buildings therein are post-1970 buildings and therefore the limitation on second floor commercial use does not apply). Out of this potential universe, the only sites that would be affected are those with second floor space that is not occupied by residential or community facility use at the time that the text amendment is referred for public review, and further, only if

those sites are located on the same block frontage as at least one other building with a second floor occupied by a use listed in Use Groups 6, 7, 8, 9 or 14.

To gather further information on the characteristics of the affected sites, a representative sample of 120 sites was generated using the Department of City Planning's online resources, and a field investigation was conducted of the sample sites. Of these 120 sites, 100 contain residential use of the second floor, and therefore would not be affected by the proposed text amendment (of these 100, for fourteen of them it was not possible to determine definitely if they were presently occupied). Fifteen of the sites already have second floor commercial use, with one of the spaces appearing to be unoccupied. One sample site includes a one-story building and a determination of the remaining six sample sites could not be made due to construction activity (2 sites), diplomatic security restrictions (1 site), or a lack of an occupancy directory (1 site). With an expectation that the vacancy rate of second floor residential space in pre-1970 buildings in the affected zoning districts is comparable to the current Manhattan residential vacancy rate of approximately one percent, and if it is conservatively assumed that the two sites under construction could take advantage of the proposed zoning text, then about two or three (1.6 to 2.5 percent) of the 120 sites could experience new second-floor commercial activity under the proposed zoning text. Extrapolating from this sampling effort, it is conservatively estimated that of the 2,100 potential sites, approximately 40 to 60 sites may be in a position to take advantage of the proposed text based on second floor vacancy at the time of referral. However, this universe is further limited due to the requirement that buildings seeking to take advantage of the text be located on the same block frontage as another building that second-floor commercial use. Out of the 120 sites sampled, only 24 (or 20 percent) are located on block frontages that contain buildings with second floor commercial use. Extrapolating from this additional limitation, it is estimated that approximately twelve sites out of the universe of 2,100 potential sites may be able to take advantage of the proposed text amendment. Note that the sample sites are generally small, with an average lot size of 4,825 square feet. If it is assumed that lots are generally 100 feet in depth, and that a 30-foot rear yard is required above the level of the first floor, the

average second floor space potentially available for commercial occupancy within each of the twelve sites would be 70% of 4,825 square feet, or 3,378 square feet.

Furthermore, only a fraction of these twelve sites would be likely to take advantage of the proposed zoning text in the foreseeable future, since in many cases the rent for second floor residential or community facility space would be greater than could be achieved for commercial use. (It stands to reason that many retail uses, particularly those that rely on high traffic volume/patron turnover, require a ground floor location. Therefore the market for second floor commercial space is much more limited, and typical second floor commercial use, based on observation, tends to comprise offices, restaurant use that also occupies the ground floor, or personal services like nail salons.) In other cases, the building layout may not be conducive to second floor commercial occupancy, for example if there is no reasonable way of providing customer access to the second floor space.

Absent the existing restrictions on pre-1970 buildings, the use of the second floor of the Development Site by the existing restaurant would otherwise comply and conform the underlying C1-9 zoning district.

No other discretionary approvals are sought in connection with this action.

### **Conclusion**

The proposed text amendment to Section 32-421 of the Zoning Resolution would allow the restaurant occupying the first floor of the Development Site to also occupy the second floor. This action would facilitate the recovery a popular neighborhood establishment that was forced to close for more than four years as a result of a tragic crane accident. Prior to its closing, the Zagat-rated restaurant received high marks from patrons and critics alike. The new restaurant at the Development Site has already revived this reputation, but to continue to be economically viable, it must expand.

The proposed use of the second floor by the restaurant is consistent with existing land uses in the area, most of which are low-rise buildings featuring eating and drinking establishments at the first and second floors. The proposed use is otherwise in compliance and conformance with the underlying C1-9 zoning regulations.

Finally, the proposed text amendment would have an extremely limited impact generally. It is estimated that there may be no more than twelve sites throughout the entire Project Area (that is, every district that would possibly be impacted by the text amendment) where new second floor commercial use would be permitted under the proposed text amendment. Even then, only a fraction of these eligible sites would likely take advantage of the proposed zoning text, since in many cases the rent for second floor residential or community facility space would be greater than could be achieved for commercial use, and in other cases, the site's floor plan may not be conducive to second floor commercial occupancy.

Although limited in scope, the proposed text amendment would promote economic development at the potential development sites by removing an unnecessary zoning impediment that has prevented commercial corridors from reaching their full economic potential. Allowing second floor commercial uses at the potential development sites would incentive investment in the affected areas by local restaurateurs and other commercial users. This investment would in turn help to develop an inviting and engaging streetscape character for pedestrians while providing for the needs of the immediate residential population.