

THE NEW YORK LANDMARKS CONSERVANCY

March 27, 2018

STATEMENT OF THE NEW YORK LANDMARKS CONSERVANCY BEFORE THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION REGARDING OMNIBUS RULES AMENDMENTS, PROPOSED AMENDMENTS TO CHAPTERS 2, 3, 5, 7 AND 11 OF TITLE 63 OF THE RULES OF THE CITY OF NEW YORK

Good day, Chair Srinivasan and Commissioners. I am Andrea Goldwyn speaking on behalf of the New York Landmarks Conservancy in regards to the proposed Rules amendments.

First, we would like to thank the Chair and LPC staff for the lengthy engagement and outreach process they have conducted over the last year. Our staff and board have attended multiple meetings and we appreciate the work to educate the public on this proposal. The Conservancy is fortunate to have several staff members who previously worked here at the Commission. They have been invaluable in reviewing the many pages of amendments, parsing terms, evaluating impacts and considering potential scenarios of how these new Rules will work in the real world.

We support the goals that the Commission has laid out for these amendments: greater transparency and predictability for the public and a more efficient schedule for the Commissioners, who donate their time nearly every week. The reorganization of existing Rules, and codification of staff practices and Commission decisions is a sound idea. After poring over the pages, however, we do not believe that the amendments will meet those goals.

Instead, they will add a complicated layer of bureaucracy to the permit process. We cannot imagine how an applicant who does not have some combination of architectural, legal or expediting experience will be able to interpret the expanded Rules. At a minimum, we hope that LPC will be updating its Rowhouse manual and Permit Application Guide, which both feature very useful plain language and illustrations. We would also recommend additional guides that organize the Rules for other building types, such as free-standing houses, large and small apartment buildings and commercial buildings, and storefronts, so that applicants do not have to wade through the entire Rules text. The presentations of amendments that codify staff practices or Commission decisions show successful examples; these would be good illustrations. Some Rules and guides, for instance, storefronts, should be translated into multiple languages. LPC should also provide training sessions for practitioners.

We are also concerned that the amendments will create burdens for the staff. The decrease in Commission workload is likely to increase the staff's. They will need training on the amendments. And there are several instances where staff will have to make determinations that might be outside of their expertise. On accessibility, the Rules will ask staff to make appropriateness determinations on applications that follow ADA-standards, but also applications in which the applicant is defining accessibility. On health, safety, and utility equipment, the new Rules leave it to staff to approve DOB-compliant applications even if they are not appropriate or ask them to devise feasible alternatives. The Rules allow staff to make more decisions on use of substitute materials; does all staff receive consistent training on new products and technologies?

We are sensitive to the concerns of the public, local advocates, and Community Boards who will have fewer opportunities to learn about and comment on construction in their neighborhoods. These constituencies often know local buildings very well, and are able to make valuable contributions at Commission hearings. Some of the most high-profile applications are those that affect the street-level experience of living or visiting a historic district, such as canopies, rooftop and rear yard additions and excavations. We would like to know how many applications are currently reviewed at staff-level, and how many are expected to move from a public hearing to staff-level review due to the amendments.

In order to balance this loss of public review, we recommend that applications that will no longer go to a public hearing should still go to the Community Board for advisory review. There are also several ways to provide and solicit more complete information on the agency's website:

- Combine sections that list Commission decisions made prior to a permit being issued, and that show all permits over the previous two years.
- Instead of listing applications in progress as "pending," include a brief description of the proposed work.
- Follow DOB's example and include all documents submitted as part of the application.
- If necessary, start by prioritizing high-profile applications, such as excavations, and rear yard and rooftop additions.
- Create a stronger option for public comment on the home page or Quick Links section, and staff this section with public information officers, who are versed in the intricacies of the Rules.

We have comments on specific language in the Rules that will be submitted as written testimony, but would like to call out one item in particular here. The Storefronts and Awnings section introduces the term: "Where a building in a historic district is... **not a building for which the district was designated.**" Many district designation reports don't have one specific rationale for designation, and many districts have multiple building types and styles. This language is not in the Landmarks Law and it could set a dangerous precedent. It should be removed.

Thank you for the opportunity to express the Conservancy's views.

Comments are organized in page order generally; there are a few exceptions where similar issues are grouped.

§2-11 Repair, Restoration, Replacement and Re-creation of Building Façades and Related Exterior Elements.

p. 23 (c)(2)(i)(B) "A particular finish that is already required pursuant to an LPC Modification of Use or Bulk, or was an important criteria for an approval of a Certificate of Appropriateness application, will be maintained."

We recommend that similar language be used throughout the proposed Rules to prevent restorative work from being removed or undone, for example, "Vault lights restored pursuant to an LPC Modification of Use or Bulk, or was an important criteria for an approval of a Certificate of Appropriateness application, will be maintained." p.27 & 28 appropriately call out MOU projects as exceptions. All exceptions noted for Individual Landmarks should also apply to MOU projects, for example at p.58 (B).

p.27 (d) *Replacement of Deteriorated Architectural Features.*(1)(iii)(B) For wood-sided buildings the use of fiber cement board or another substitute material on primary facades will be allowed only if applicable building, fire or other code(s) prohibit the use of wood, provided the use of such substitute material is the minimum required by such code(s).

This puts a burden on staff to know fire and building code requirements and will require additional staff training.

p.28 (1)(v)(2)(i) Fiberglass (also known as Fiberglass Reinforced Plastic ("FRP")).

We recommend providing an explanation as to why fiberglass is being called out in particular and the properties of the material and installation that the staff is focused on when evaluating its appropriateness in a project.

p.30 (e) *Reconstruction of Facades.* (2) "If the building is characterized in the designation report as not having a style or otherwise does not contribute to the landmark or historic district, LPC Staff will not be authorized to approve the re-creating of the existing façade, but can approve a restoration of the original or historic façade, if such restoration satisfies the requirements of subdivision (f) of this section."

We recommend that "or otherwise does not contribute to the landmark or historic district" should be changed to "or otherwise has been determined by the Commission at a Public Hearing as not a building for which the district was designated."

§2-12 Storefronts, Awnings and Canopies

p. 35 (c) *Storefront infill*. (1) 'Where a building in a historic district is identified in the designation report as "Style: None" or otherwise as not a building for which the district was designated, the design of a storefront must be consistent with the design of the building or buildings in the district, or does not detract from adjacent buildings in the district.'

We recommend that "or otherwise as not a building for which the district was designated" should be changed to "or otherwise *has been determined by the Commission at a Public Hearing* as not a building for which the district was designated."

p.37 (8) "Where a building in a historic district is identified in the designation report as "Style: None" or otherwise as not a building for which the district was designated, LPC Staff may approve either wood or metal."

See recommendation above.

p.37 (9) "New storefront infill must have a finish that recalls the finish of historic storefronts. Where a building in a historic district is identified in the designation report as "Style: None" or otherwise as not a building for which the district was designated, the finish is consistent with the existing finish or does not detract from adjacent buildings or buildings on the street in the district.

See recommendation above.

p.36 (c)*Storefront infill*. (3)(i)(D) "In the case of a serving window,..."

We recommend defining "serving window" in (a) *Definitions*.

p.36 (c)*Storefront infill*. (3)(ii)

There are many places in the amendments where a drawing would be very helpful – this item is a good example.

p. 36 (5) Orientation. "New infill must be installed parallel to the building's sidewalk and consistent with the plane of the facade, and must be set back from the face of the existing storefront surround the minimum dimension required to avoid concealing any significant architectural feature, including features previously concealed by existing storefront infill, but in no event less than four (4) inches from the face of the storefront surround.

Change to "New infill must be installed parallel to the building's sidewalk *and/or* consistent with the plane of the façade,..."

p.36 (6) Bulkhead. "The bulkhead must be between eighteen (18) and thirty (30) inches in height, including a stone or masonry curb, unless the historic storefront prototype indicates a lower or higher bulkhead, in which case the bulkhead may match the height of the historic prototype, and must feature details or materials that recall the

articulation of historic storefronts except: (i) Where the infill is based on a traditional example or model, the bulkhead must feature panels and stiles, rails, and moldings that match historic prototypes; or”

Provide drawings or description of “historic storefront prototype” and “traditional example or model.”

p.37 (10) (v) Dropped soffits at the ceiling may be no closer than twelve (12) inches to the glass of the display or transom window and may be dropped the minimum distance necessary to address the structural or other issues requiring such dropped soffit.

This puts a burden on staff to know necessary minimum distance.

p.38 (12)(B) “If a significant portion of the historic storefront surround exists underneath the cladding, but no historic storefront infill remains, the storefront surround must be restored, pursuant to § 2- 11(f), as part of the application for new storefront infill under this paragraph.”

We recommend defining “storefront surround” in (a) *Definitions*.

p.38 (13) Restoration of the original storefront opening. If the original storefront opening has been reduced or increased in size the design must include the restoration of the height and width of the original opening, except that: (i) The existing storefront opening may be maintained where the size, and organization of storefront bays and entrances were altered in a way that is consistent with other buildings within the historic district that include storefronts, or

In (i) the comma after “size” is confusing.

p.38 (14) (ii) The new door opening will not be installed through decorative cladding;

We recommend defining “decorative cladding” in (a) *Definitions*.

p.38 (14)(iii) The width of the new door opening is the minimum necessary to provide for an accessible door and, if needed, sidelight, and the height of the door opening is aligned with the height of the storefront or other storefront feature and does not call undue attention to itself; and

Define “accessible door.” Is this an ADA compliant door? Should this read “aligned with the height of the storefront?”

p.39 (14) (iv) The design of the new door is consistent with existing storefront doors or is consistent with this the criteria for a replacement door.

This sentence is very confusing: "or is consistent with this the criteria for a replacement door."

p.39(B)(b) The housing for the roll-gates is installed so as not to protrude, or protrudes the least amount feasible, beyond the face of the storefront display window or transom, and it is finished to match the storefront framing;

Change "roll-gates" to "roll-down security gates" for consistency. The outline format becomes complicated to follow in this and many other sections.

p.39 [(1)] (i) LPC [staff shall] Staff will issue a certificate of no effect or a permit for minor work for recladding [of] existing awnings and sidewalk canopies if the proposed recladding meets both of the following criteria:

p.41 [(f)] (3) Installation of new awnings on storefronts, display windows and doorways. LPC [staff shall] Staff will issue a certificate of no effect or a permit for minor work for new awnings on ground story storefronts, display windows and doorways if the proposed work meets all of the following criteria applicable for such installation:

Capitalize names of permit types.

p.40 [(2)] (ii) [In the event]If a new storefront is being installed, an existing storefront awning or canopy in noncompliance with the criteria set forth in [subsection] paragraph [(f)](3) below cannot be retained unless the applicant can demonstrate to [LPC] Commission staff that the new storefront installation will not require even the temporary removal of the existing awning or [awnings] canopy. [€] (2) [Installation of new awnings on residential windows, doors and porches] Installation of new awnings on windows, doors and porches that are not associated with storefronts. LPC [staff shall] Staff will issue a certificate of no effect or a permit for minor work for new awnings on residential windows, doors and porches if the proposed awning meets all of the following criteria applicable for such installation:

Is it "Commission staff" or "LPC Staff?"

p.42 [(7)] (vii) The lowest framed portion of the awning [shall] will be at least [8] eight (8) feet above the sidewalk. The lowest unframed portion [shall] will be at least [7] seven (7) feet above the sidewalk or otherwise meet applicable Department of Buildings and/or Department of Transportation criteria.

Staff will have to know what otherwise meets DOB/DOT criteria.

p.42 (xii) (A) Have a "lean-to" frame with no connecting part between the top bar and the horizontal back projection bar; (B) The horizontal back projection bar is round in shape;

Define or rephrase "horizontal back projection bar." Perhaps "side bar perpendicular to the façade."

§2-14 Windows and Doors

p.53 (b) **Molding.** "Molding" means a piece of trim that introduces varieties of outline or curved contours in edges or surfaces as on window or door jambs and heads. Moldings are generally divided into 3 categories: rectilinear, curved and composite-curved.

Define to rephrase "composite-curved." This reinforces the need for an illustrated appendix.

p.53 (b) **Noncontributing building.** "Noncontributing building" means a building that is identified or characterized in the designation report as having no architectural style and or otherwise is not a building for which the historic district or landmark was designated.

We recommend that "or otherwise as not a building for which the district was designated" should be changed to "or otherwise *has been determined by the Commission at a Public Hearing* as not a building for which the district was designated."

p.54 **Rail.** "Rail" means a horizontal sash member.

Elaborate on definition so that general public understands. This is best illustrated.

P. 55 **Stile.** "Stile" means a vertical sash member.

See recommendation above. Both terms have always been a source of confusion for the general public.

p.55 **Special window or special door.** "Special window" or "special door" means a window or door that possesses rare or distinctive traits reflective of its style and age, including but not limited to:

This section elaborates with regard to windows, but not doors.

p. 55 (1) A rare shape and distinctive pattern, including but not limited to true arch-headed window sash; square sash with complex arched paneling; diamond and oval sash; sash with intersecting curved muntins; and multi-light sash with densely-gridded window panes of thirty (30) square inches or less. Unless otherwise classified as a special window, the following window types are not considered special windows: square sash; square sash with simple arched paneling (e.g., halfround arch, elliptical arch, quarter-round arch, pointed arch); sash with simply curved muntins; and multi-light sash with large panes of more than thirty (30) square inches.

This reinforces the need for an illustrated appendix. What is "sash with simply curved muntins?"

p. 57 *Special Windows and Special Doors; Any Façade.* (1) If existing original or historic windows or doors are deteriorated beyond reasonable repair, as described in a condition assessment submitted by the applicant, or need to be replaced to meet functionality or code requirements, new windows or doors may be approved if they

match the original or historic windows and doors in terms of details, materials, operation, configuration and finish. For purposes of this subdivision, the criteria established for window replacement at Primary Facades of Individual Landmarks will be used, with the additional variations and exceptions as described in paragraph (f)(1).

How should staff determine if windows “need to be replaced to meet functionality or code requirements?” What does “functionality” mean? Can special casement windows be removed to allow for window ac units that are easier to insert into double-hung windows?

p.59 (2)(i)(A) Existing original or historic window and door openings. If original or historic windows or doors are deteriorated beyond reasonable repair due to physical conditions as described in a condition assessment submitted by the applicant, or need to be replaced to meet functionality or code requirements, new windows or doors will be approved if they match the original or historic windows and doors in terms of configuration, operation, details, material and finish.

See above.

p.58 (D) Except at Individual Landmarks, the historic operation of a pivot window may be changed to a hinged operation matching the vertical or horizontal orientation of the pivot operation; and

Does this mean that a pivot window can be replaced with a casement window?

p. 62 (g)(1)(i) and p.63 (2)(B) “...At large residential and large commercial buildings only, if all of the existing windows on a secondary facade are non-historic, new windows may match the existing or the predominant condition on that facade, if fewer than ten percent of the windows are being replaced at the same time and the proposal is not for a master plan.”

How will it be determined that fewer than 10 percent of the windows are being replaced at the same time? Can only one permit be issued like this every four years? If not, will a NOC be required for the first permit before others can be issued? The cumulative effect will be the same over time.

p. 62 (g)(1)(ii)(A) and P. 64 (1)(ii) p.64(2)(i)(A) “...Notwithstanding the foregoing, original or historic window openings at the top floor of a building built as part of a row cannot be filled in,” and similar language.

Clarify that this applies to the original top floor of the building, not a roof top addition. What about a building that had a full floor added?

p. 63 (h) *Secondary Facades; Nonvisible and Minimally Visible Facades.*

Minimally visible should be defined to be consistent if mechanical equipment and additions rules are going to lay out specific guidelines.

p.64(2)(i)(B) With respect to the bottom two floor levels, a modified window and door opening can combine all windows and doors on a floor, and may span vertically between the bottom two floor levels to create a single large opening, if the modified opening will maintain at least 24 inches of masonry or wall cladding at the outer piers and between the floors above the modified opening, and provided there is a spandrel or horizontal element of at least twelve (12) inches that marks the location of the missing floor; and

Clarify if this applies to bottom floor levels created as a result of excavation.

p.66 (6)(i) The new entrance will be accessible if feasible or required by law; and

Insert "the applicant can prove" before "required by law."

§2-15 Additions: Rooftop and Rear Yard Additions or Enlargements

p.68 (ii)(E) The specific historic district is characterized by visibility of similar structures.

p.70 (i) "...and the historic district is characterized by buildings with elevator bulkheads adjacent to the front façade;"

We recommend listing which historic districts these items refer to, and following language found on p.79 (2) Garden historic districts, which is helpful: *This paragraph applies to proposals to install walls and fences in garden-style houses and apartment buildings in districts designated in part for the relationship between gardens and plantings and the buildings, including but not limited to buildings in the Sunnyside Gardens Historic District and the Jackson Heights Historic District.* Language on p.80 (d)(1)(i) New driveway is another good example: *LPC Staff will approve a new driveway only in districts where driveways are a common feature. As a general matter, these districts are comprised of what were historically detached single-family dwellings.*

p. 71 (4) Except as otherwise permitted, a majority of the buildings of a similar type that share the open space within the interior of the block, within the historic district, feature rear yard additions or els;

Change "els" to "extensions."

p.71 (5)" Except as otherwise permitted, the depth and height of the proposed addition is not deeper than the predominant depth or taller than the predominant height of additions or els on buildings of a similar type..."

See above.

p.71 (5) "except that parapets and railings may extend above the predominant height of additions, to the minimum height above the roof surface of the addition required by the Building or Fire Codes,"

Does this mean 42"? If so, perhaps just say that.

§2-17 Front, Side and Rear Yards

p.79 (iii) Jackson Heights Historic District. In the case of a single- or two-family house in the Jackson Heights Historic District, LPC Staff will approve a low brick retaining wall at the border of the sidewalk and front yard if:

Change to “*an originally* single- or two-family house” to account for those that have been divided into more units since they were constructed.

§2-18 Barrier-Free Access

p.84 (vi) The replacement doors and accompanying elements must recall the historic condition in terms of configuration, detailing, material, if it meets code, and finish; and

This sentence is awkward-the historic condition in terms of if it meets code?

§ 2-19 Sidewalks.

p.88 (b)(2) Other approvals. In addition to the requirements set forth in this section, all methods and materials for sidewalk work must conform to all applicable rules, requirements and guidelines of the Department of Transportation (“DOT”) and the Department of Design and Construction.

Staff will need to know requirements and guidelines of those agencies.

p.89(b)(2) (ii) The edges of the pavers can be sawn, rubbed or thermal.

Photos are needed to illustrate these options.

p.89(3)(v) For purposes of this paragraph (3), if the enlargement of a sidewalk tree pit requires the removal of some or all of a bluestone paver:

Who determines whether a tree pit needs to be enlarged? The Parks Department?

p.90 (c)(3) Unique or decorative scoring patterns may be used at front entryways of large apartment buildings, hotel or commercial buildings in historic districts, provided the use of such decorative patterns is a characteristic of the building or historic district and does not call undue attention to itself or detract from the significant architectural features of the building or streetscape.

In what historic districts are decorative patterns a characteristic?

p.91 (3) (iv) In considering the replacement material in accordance with subparagraphs (ii) and (iii), LPC Staff may permit new concrete instead of diamond plate if the historic district in which the building exists is not characterized.

Which historic districts are characterized by vault lights and/or diamond plate and which are not?

p.91 (2) Protection of existing, uncovered and deteriorated vault lights. Existing uncovered vault lights that are in a deteriorated state and are no longer water-tight may be protected by covering the vault lights with dark-finished diamond plate steel. Vault lights at vertical surfaces and lower-traffic areas such as steps and landings should remain uncovered where feasible. However, LPC Staff may approve the removal of up to two (2) panels of vault lights if the vault lights are deteriorated beyond repair and no other vault lights exist in any sidewalk on the same side of the block in the historic district, and replaced with concrete or granite to match the adjacent sidewalk instead of diamond plate steel.

(ii) If the existing vault lights underneath the diamond plate or concrete are highly deteriorated or broken, they may be removed and replaced with new vault lights in accordance with subdivision (a), or may be removed altogether, and new dark finished diamond plate steel reinstalled where the diamond plate or concrete had previously existed;

This section focuses more on removal of existing vault lights than protection. Insert language that prevents an applicant from covering deteriorated vault lights, and then saying they are highly deteriorated and may be removed.

p. 92 (f)(1)(iii) Detectable warning units may be surface applied or imbedded into the concrete or stone; and

Define "detectable warning units" just as "neckdown" is helpfully defined in the prior paragraph.

(iv) The dimensions and slope of the ramp, and color differentiation for detectable warning units comply with applicable federal, state and city codes and requirements. (2) Sloping sidewalks. LPC Staff will issue an approval to slope a concrete sidewalk in order to make a store or space accessible if the color and scoring pattern of the concrete matches the existing sidewalk and the work complies with all applicable federal, state and city codes and requirements, including the requirements of § 2-18 of these rules, provided that the work will not result in damage to or concealment of significant architectural features of the building.

Staff will need to know "all applicable federal, state and city codes and requirements."

p. 93 Appendix A.

A list of historic districts to which these Rules do not apply would accommodate future district designations more easily and be more user-friendly.
