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Testimony  
of Stefanie Marazzi, William R. Ginsberg Practitioner Fellow at  
Citizens Housing and Planning Council, for the  
New York City Council Subcommittee on Zoning and Franchises  
on the FRESH zoning text amendment

October 26, 2009

Good morning Chairman Avella and members of the Subcommittee. My name is Stefanie Marazzi and I am a William R. Ginsberg Practitioner Fellow at Citizens Housing and Planning Council. Thank you for the opportunity to testify at today's hearing.

We have previously submitted written comments to DCP on this matter, and we are delighted that DCP eliminated a requirement that residential stories have a minimum floor-to-ceiling height of 8 feet 6 inches in mixed and mixed-use buildings that include a FRESH food store. The eliminated requirement would have added 6 inches per story to the 8 foot minimum required under the NYC Building Code, thereby detracting from the additional 15 feet for the maximum building height provided by the FRESH zoning incentive.

There is a dire need for food markets selling fresh fruits and vegetables in New York City's neediest neighborhoods and we applaud DCP's efforts to highlight this issue and to incentivize the creation and retention of fresh food markets across the city. However, we have serious reservations about the unintended disincentives that this amendment may create. We anticipate that prospective grocery store developers will find the program restrictions excessively costly and burdensome. Unless the amendment is modified, it may not encourage new grocery development and ownership in New York City's neediest and most economically depressed neighborhoods. To ensure that these measures in fact encourage the creation of much needed fresh food stores in underserved communities, we recommend the following modifications:

1. Allow an increase of up to 15 feet to the maximum base height in addition to an increase of up to 15 feet to the maximum building height of buildings containing a FRESH food store. Additional floors above the setback suffer from inefficient layout and are costlier to build than floors along the street wall, especially considering the additional rear setback requirements required in many neighborhoods.

2. Allow modifications to maximum building or base height as-of-right, or, at the very least, by certification. The extra time and added costs of the authorization process, which includes CEQR analysis, at the inception of the project would discourage developers from participating in the FRESH program. Development projects often require extra height to accommodate additional floor area; by making the height bonus burdensome, the amendment, as written, would effectively eliminate the floor area bonus.
3. Allow an owner to, as of right, change the use of a building with a FRESH food store to a complying use if there is no non-compliance. In such a case, an owner might record a declaration (in a form pre-approved by DCP) stating that the FRESH use has been discontinued. The mutability of uses over time is a vital (and inevitable) characteristic of urban land; as demographics change and time passes, so too does commercial enterprise. The amendment must allow for the natural fluctuation of uses over time by lessening the burden of converting the site to another use in the event that the FRESH food store becomes economically unviable.
4. Include a sunset provision, with an option to extend, in the text amendment. After a period of time (perhaps ten years), the FRESH program should automatically terminate, unless extended by CPC, in which case CPC should undertake a mandatory review of the NYC neighborhoods underserved by grocery stores and amend the program to include those underserved areas.

Finally, we do think it's important to consider that the Zoning Resolution may not be the appropriate tool to address social problems such as this. By doing so, DCP runs the risk of making the Zoning Resolution more confusing for the public and too burdensome for the public sector to enforce. We believe our proposals adequately balance the competing needs of cost-viable grocery development and sensible urban design and planning – and we hope that you consider our opinion as you review this amendment. Thank you.