NYC Buildings

Zoning Challenge and Appeal Form

(for approved applications)

Must be typewritten

1 Property Information *Required for **all** challenges.*

BIS Job Number 122887224 BIS Document Number 7

Borough Manhattan House No(s) 200 Street Name Amsterdam Avenue

2 Challenger Information *Optional.*

***Note to all challengers**: This form will be scanned and posted to the Department's website.*

Last Name Janes First Name George Middle Initial M

Affiliated Organization Prepared for: The Committee for Environmentally Sound Development

E-Mail george@georgejanes.com Contact Number 917-612-7478

3 Description of Challenge *Required for **all** challenges.*

***Note**: Use this form **only** for challenges related to the Zoning Resolution*

Select one: ☒ Initial challenge ☐ Appeal to a previously denied challenge (denied challenge must be attached)

Indicate total number of pages submitted with challenge, including attachments: 14 ***(attachment may not be larger than 11" x 17")***

Indicate relevant Zoning Resolution section(s) below. *Improper citation of the Zoning Resolution may affect the processing and review of this challenge.*

12-10 #Open Space# & Permitted Obstructions in Open Space, 23-44, 23-62(g) & MDL §4.35(a) & (b)

Describe the challenge in detail below: (continue on page 2 if additional space is required)

Please see attached.

***Note to challengers:** An official decision to the challenge will be made available no earlier than 75 days after the Development Challenge process begins. For more information on the status of the Development Challenge process see the Challenge Period Status link on the Application Details page on the Department's website.*

ADMINISTRATIVE USE ONLY

Reviewer's Signature: **Date:** **Time:** WO#:

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May 15, 2017

Rick D. Chandler, P.E., Commissioner
Department of Buildings
280 Broadway
New York, NY 10007

RE: Zoning Challenge 200 Amsterdam
Block 1158, Lot: 133, Job No:
122887224, Doc. 7

Dear Commissioner Chandler:

At the request of the Committee for Environmentally Sound Development, which represents residents of the Lincoln Towers community and the surrounding area, I have reviewed the zoning diagram for the new building to be constructed at 200 Amsterdam Avenue. My firm regularly consults with land owners, architects, community groups and Community Boards on the New York City Zoning Resolution, and I have been a certified planner for the past 20 years.

Summary of findings

The building proposed is a height factor building in an R8 district that requires a substantial amount of Open Space. The required Open Space will be placed on an exceptionally irregular zoning lot. As it is configured in the ZD1, the open space provided does not qualify as Open Space as defined in the Zoning Resolution: residents of the existing building on the zoning lot do not have access to the space, nor does the current and proposed use of that open space qualify as permitted obstructions on Open Space as defined by the Zoning Resolution.

Further, there are obstructions in the proposed rear yard of 200 Amsterdam that are not permitted in rear yards under the Zoning Resolution.

Finally, four floors of mechanical spaces at the top of the building do not meet the definition of a permitted obstruction, as such an interpretation is inconsistent with New York State's Multiple Dwelling Law.

Consequently, the department must rescind their zoning approval, as the proposed building does not comply with the Zoning Resolution.

Project summary

The proposed building is on a superblock that is bounded by Amsterdam Avenue, West 70th Street, West End Avenue and West 66th Street. This block was assembled during Urban Renewal in the 1960s and includes vacated streetbeds of West 67th, 68th and 69th Streets. The Urban Renewal Plan facilitated the

development of Lincoln Towers, five very large height factor buildings also known as 140, 150, 160, 170, and 180 West End Avenue.

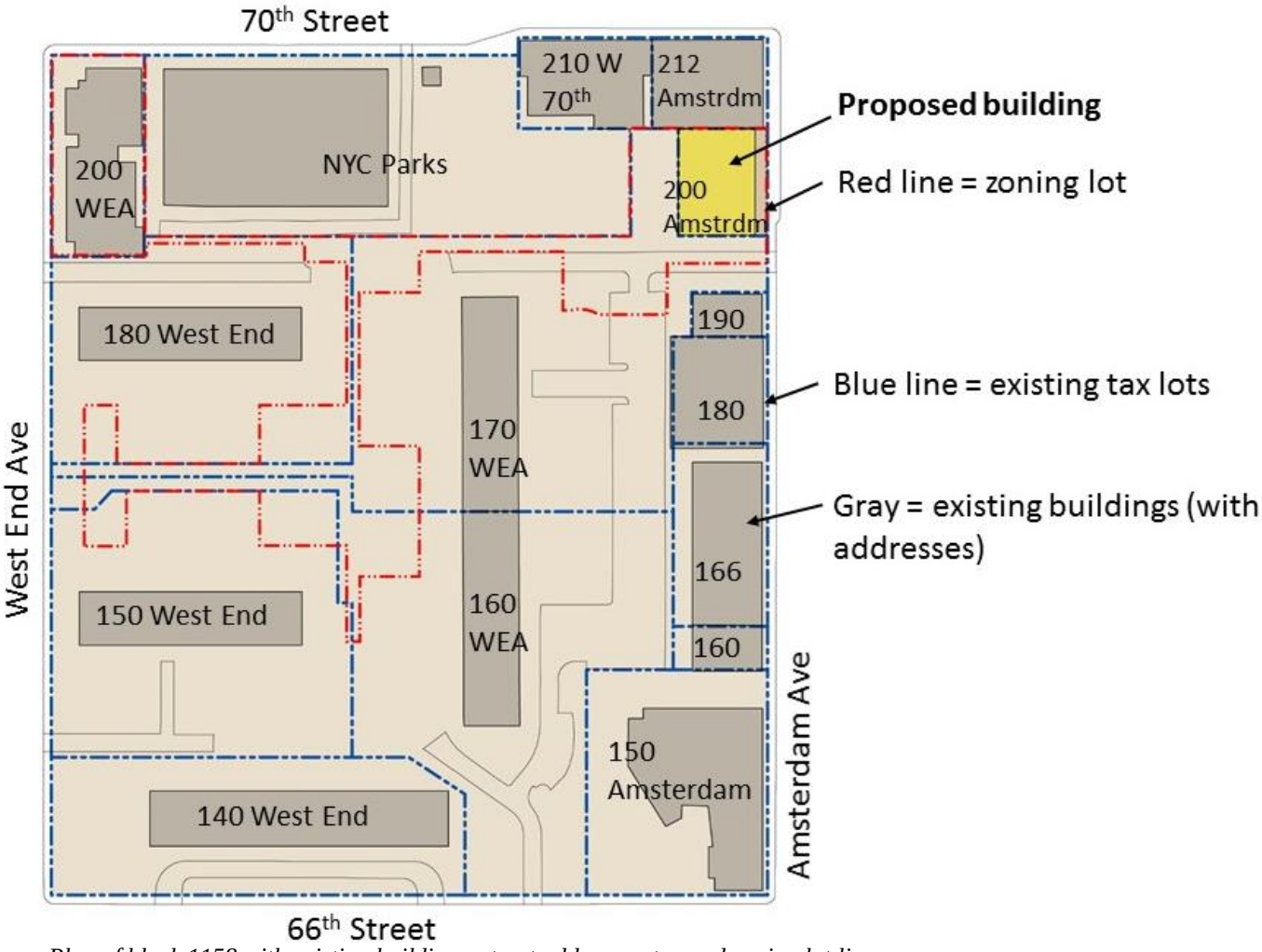
200 Amsterdam is proposed for the northeastern part of superblock 1158 on tax lot 133, which is a 12,042 SF lot, and fronts Amsterdam Avenue. At 55 stories and 668 feet, the building is exceptionally tall for the Upper West Side, and would be the tallest building on the Upper West Side, and the tallest building in New York City north of 61st Street. Despite its height, the building is not a tower according to the Zoning Resolution. Located in an R8 district on a wide street, the height of this building is governed by a sky exposure plane.

It obtains its exceptional height, in part, because ample floor-to-floor heights and large mechanical spaces; building mechanicals are enclosed in the top four floors of the building and are 67 feet tall. Most of its exceptional height, however, results from floor area generated by the enormous size of the irregular zoning lot on which it sits, which is 110,794 SF. The zoning lot is gerrymandered over much of superblock 1158; portions of it front West End Avenue, 70th Street, and Amsterdam Avenue. The zoning lot is partially a corner lot, partially a through lot, and mostly an interior lot.

The oddly shaped zoning lot is not new but was not well-known until recently. An extremely large zoning lot that included most of the superblock was created on the site in 1987. According to my office's research, the first gerrymandered lot was developed in 2007 and amended at least one time in 2016.

The proposed building is just 3.17 FAR. Together with the existing building on the zoning lot (200 West End Avenue, at the corner of West End Avenue and 70th Street) the total FAR proposed on the zoning lot is 5.5.

The following diagram shows the zoning lot with all other buildings on the block, the zoning lot and the tax lots.



Plan of block 1158 with existing buildings, street addresses, tax and zoning lot lines

Proposal compliance

The ZD1 only shows some measures necessary to demonstrate zoning compliance: the building proposed, zoning lot, its size and lot coverage. It does not measure the Open Space or define its use, provide the proposed height factor, proposed Open Space Ratio (OSR), the allowable FAR at the proposed OSR, required street trees, maximum number of units, or even state the proposed zoning floor area and FAR on the zoning lot, both of which must be calculated from the information provided. These are all necessary to demonstrate zoning compliance, and they are all missing.

Content similar to the following should have been a part of the ZD1:

200 Amsterdam Missing Zoning Data & Calculations (in bold)				
	Total	**Source**	**ZR section**	**Complies?**
Lot Area (SF)	110,794	ZD1		
Total Coverage (SF)	23,718	ZD1		
Proposed Gross Floor Area (SF)	**739,325**	Calculated from ZD1 second page		
Proposed Zoning Floor Area (SF)	**608,933**	Calculated from ZD1 second page		
Open Space (SF)	**87,076**	Calculated from ZD1 first page		
Proposed Height Factor	**26.0**	**Calculated (ZFA/Coverage)**	**ZR 12-10**	**NA**
Proposed FAR	**5.50**	**Calculated (ZFA/lot area)**	**ZR 23-151 5.8 Max @ HF 26**	**Complies**
Open Space Ratio	**14.3**	**Calculated Open Space/ZFA*100**	**ZR 23-151 13.4 Min. @ HF 26**	**Complies**

This table tells us that the building complies with the allowable FAR and Open Space ratio if all the unbuilt area counts as Open Space. Most of the open space, however, does not meet the definition of Open Space as defined in the Zoning Resolution. Had the ZD1 been complete and better composed, I expect that this would have been apparent to the Department.

The Open Space is not compliant with 12-10

ZR 21-00(d) describes the legislative intent of open space in residence districts:

> . . . to encourage the provision of additional open space by permitting moderately higher bulk and density with **better standards of open space**, in order to open up residential areas to light and air, to provide open areas for rest and recreation, and to break the monotony of continuous building bulk, and thereby to provide a more desirable environment for urban living in a congested metropolitan area.

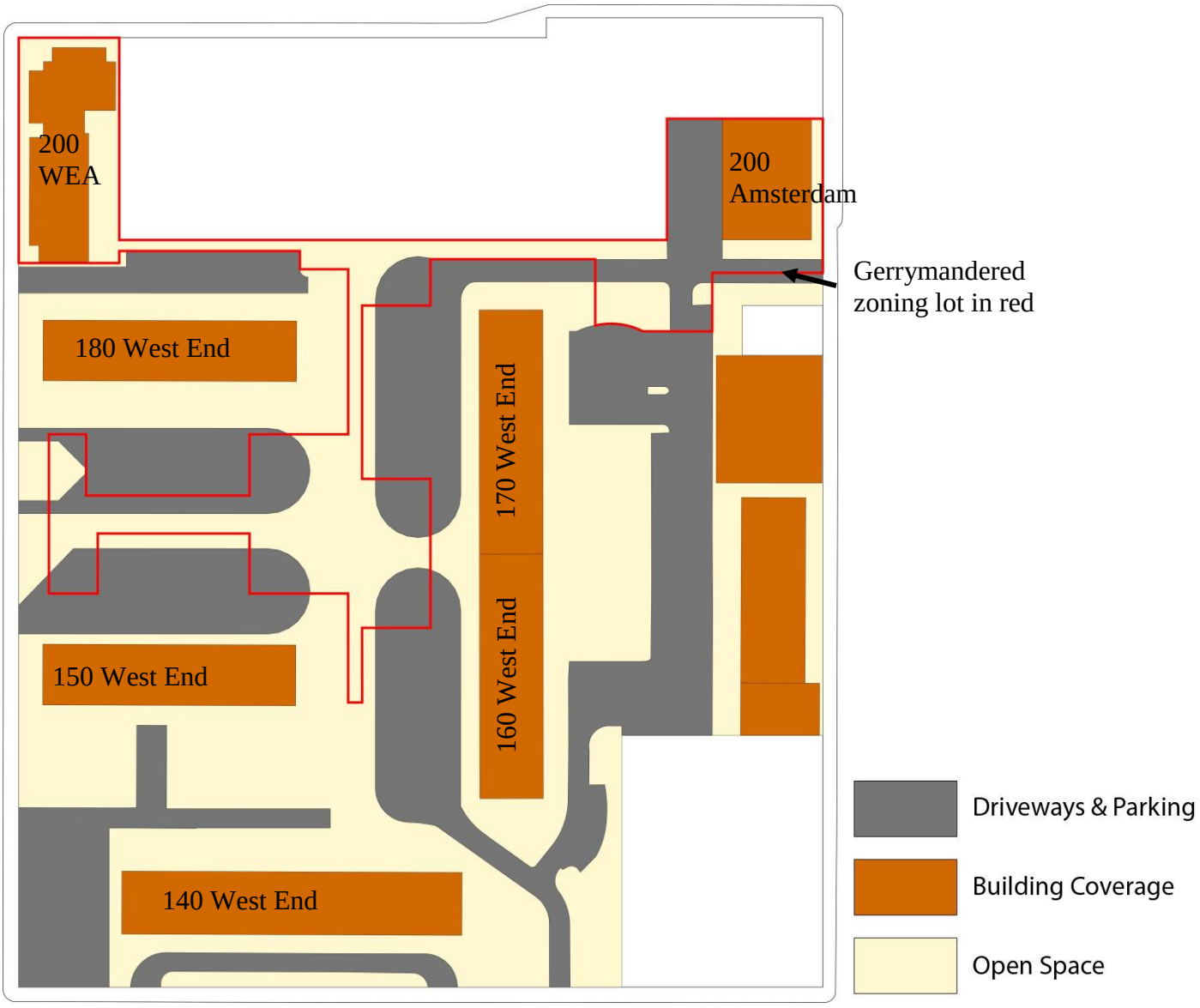
While height factor districts have fallen out of favor in New York City, they still constitute a majority of residential districts and the gerrymandered lot, which is nearly impossible to use, perverts the spirit of the legislative intent of open space. But perhaps more importantly, the legislative intent makes clear that residential districts require "better standards of open space," standards which are included in section 12-10 of the ZR, but which are not followed by the proposed development.

Use of the open space on 200 Amsterdam's zoning lot

According to 12-10 of the Zoning Resolution, there are permitted obstructions that may occur on land being used as Open Space. Of import:

> Driveways, private streets, open #accessory# off-street parking spaces, unenclosed #accessory# bicycle parking spaces or open #accessory# off-street loading berths, provided that the total area occupied by all these items does not exceed [50% of the required open space]

The following diagram shows all land that was in the large 1987 zoning lot with areas classified as building, parking and driveways, and open space that is not parking. The gerrymandered zoning lot on which 200 Amsterdam and 200 West End Avenue are located is shown in red.



Areas covered by the 1987 zoning lot classified by use of land (with 200 Amsterdam shown as constructed). Gerrymandered zoning lot of 200 Amsterdam and 200 West End Avenue shown in red

As stated in the Zoning Resolution, up to 50% of the required open space may be accessory parking, driveways, loading docks and bike parking. These uses are shown in gray above.

By my office's calculations, 33,983 SF of the open space on the gerrymandered lot is used for driveways and parking. According to 12-10, an Accessory use:

. . . is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related.

The parking and driveways are accessory to the uses on the Lincoln Towers zoning lot. They are not accessory to the uses on the gerrymandered lot since there is no parking provided for 200 Amsterdam or 200 West End Avenue. Uses accessory to another zoning lot are not permitted obstructions in Open Space, and thus, the 33,983 SF cannot be counted as open space in 200 Amsterdam's zoning calculations.

When Lincoln Tower's accessory parking and driveways are removed from open space (but still counted as lot area), the zoning calculations for 200 Amsterdam are as follows:

200 Amsterdam zoning calculations exempting uses accessory to Lincoln Towers

	Total	Source	ZR section	Complies?
Lot area (SF)	110,794	ZD1		NA
Total Coverage (SF)	23,718	ZD1		NA
Existing Gross Floor Area (SF)	739,325	Calculated from ZD1 second page		NA
Zoning Floor Area (SF)	608,933	Calculated from ZD1 second page		NA
Qualifying Open Space (SF)	53,093	Calculated by GMJA in CAD		NA
Non-qualifying Open Space (SF)	33,983	Calculated by GMJA in CAD		NA
Proposed Height Factor	26.0	Calculated (ZFA/Coverage)	ZR 12-10	NA
Proposed FAR	5.50	Calculated (ZFA/lot area)	ZR 23-151 5.8 Max @ HF 26	Complies
Open Space Ratio	8.7	Calculated Open Space/ZFA*100	ZR 23-151 13.4 Min. @ HF 26	**Does not comply**

The building still complies according to FAR, but has nowhere near enough open space. At 8.7, the required Open Space ratio is 4.7 points too low, which is an *enormous* amount of open space considering the size of the development. I acknowledge that the measurements and the delineation of the parking areas was done from aerial photographs, and a survey of these areas could result in different measurements. But the amount of difference conceivable from a survey would not change this level of non-compliance: about 80% of the area now used as parking and driveways accessory to Lincoln Towers would have to be reclassified to complying open space for 200 Amsterdam to even approach compliance with the required open space ratio.

Because the use of the Open Space is not delineated on the ZD1, the Department could not have known that a large portion of the proposed Open Space did not

qualify as Open Space according to the Zoning Resolution. Since it is used as accessory parking for another zoning lot, which is not a permitted obstruction, it does not meet the definition of Open Space as defined by the Zoning Resolution, and the omission of this information on the applicant's ZD1 was a serious and consequential omission. As a result, the building proposed at 200 Amsterdam does not comply with the Zoning Resolution and the Department should revoke its zoning approval.

Access to the open space

The maximum FAR of a height factor district is determined by the amount of Open Space on the zoning lot. R8, like other height factor districts, allows an extremely flexible building form, with the maximum allowable FAR adjusting according to the building desired. Short, high coverage buildings are allowed, but at low FARs; while tall, low coverage buildings are allowed at higher FARs. The critical component of the calculation is the amount of Open Space on the zoning lot. As discussed earlier, Open Space is a defined term in the zoning resolution under section 12-10:

"Open space" is that part of a #zoning lot#, including #courts# or #yards#, which is open and unobstructed from its lowest level to the sky and is **accessible to and usable by all persons occupying a #dwelling unit# or a #rooming unit# on the #zoning lot#**

200 Amsterdam's lot has a building on it: 200 West End Avenue. Every resident of 200 West End Avenue should have access to the same Open Space that the residents of 200 Amsterdam will have once it is built, so that it complies with the Zoning Resolution's definition of Open Space, but they have no access. Operationally, the open space that is owned by Lincoln Towers (the buildings also known as 140, 150, 160, 170 and 180 West End) is restricted to the residents of Lincoln Towers and they use it as private open space. If the residents of 200 West End Avenue cannot access and use the space owned by Lincoln Towers, then this space is not Open Space for the purposes of zoning.

If the open space on the zoning lot outside 200 West End Avenue's tax lot (lot 7506) cannot be counted as Open Space, this would mean that the gerrymandered zoning lot currently does not comply with height factor zoning calculations, even without any building proposed at 200 Amsterdam, since its current Open Space Ratio is just 2.3, when it needs to be at least 11.3 (see table below).

200 West End Avenue Zoning Calculations				
	Total	**Source**	**ZR section**	**Complies?**
Lot Area	110,794	ZD1		
Existing Coverage (SF)	13,412	Calculated by GMJA in CAD		NA
Existing Gross Floor Area (SF)	316,372	ZD1		NA
Zoning Floor Area (SF)	258,247	ZD1		NA
Qualifying Open Space (SF)	5,892	Calculated by GMJA in CAD		NA
Non-qualifying open space (SF)	91,490	Calculated by GMJA in CAD		NA
Existing Height Factor	19.0	Calculated (ZFA/Coverage)	ZR 12-10, Calculated	NA
Existing Residential FAR	2.33	Calculated (ZFA/lot area)	ZR 23-151 6.02 Max @ HF 19	Complies
Open Space Ratio	2.3	Calculated Open Space/ZFA*100	ZR 23-151 11.3 Min. @ HF 19	**Does not comply**

Even if Lincoln Towers security did not actively manage the open space they own as private to the residents of Lincoln Towers and Lincoln Towers' accessory parking was removed from the zoning lot, with the required Open Space on the gerrymandered zoning lot located within six different tax lots, extremely irregularly shaped, and with no obvious wayfinding to allow residents their required access, the unbuilt areas as shown on the ZD1 cannot be assumed to qualify as Open Space. The Department needs to be shown evidence that it is, will be, and will be maintained as, Open Space as defined by the Zoning Resolution.

At a minimum, the Department should ask the applicant to:

- Cure the current non-compliance and provide evidence that the residents of 200 West End Avenue are allowed to access the Open Space on the zoning lot and can use the space.
- Provide evidence of access easements with the owners and/or managers of the property where the required open space is located. These access easements should demonstrate that the current residents of 200 West End and the future residents of 200 Amsterdam will have the right to access and use the space owned by Lincoln Towers.
- Provide information on how the Open Space will be usable to the residents of 200 Amsterdam and 200 West End, since even if access were assured, the space as currently delineated is unusable to residents, as it is unmarked and such space could not be known by residents.

Even if it had all of these assurances, however, I believe that the Department should have never approved the gerrymandered zoning lot.

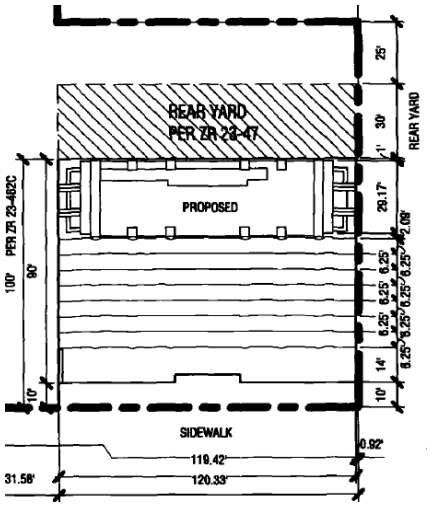
The Department is charged with enforcing the Zoning Resolution. When the Department is presented with a plan that does not assure continued compliance with the Zoning Resolution, the Department can, and must, reject the application. This is not only good practice; it is a matter of law decided by the Court of Appeals of New York in Matter of the 9th and 10 St. LLC v. Board of Standards and Appeals of the City of New York 10 NY 3d 264 (2008).

Further, the Department should start an enforcement action so that the residents of 200 West End Avenue have access to usable open space as required by zoning and their building permit. Please consider this letter a formal complaint and request for inspection.

The Rear Yard of 200 Amsterdam does not comply with 23-44

Section 23-44 of the Zoning Resolution describes permitted obstructions in yards:

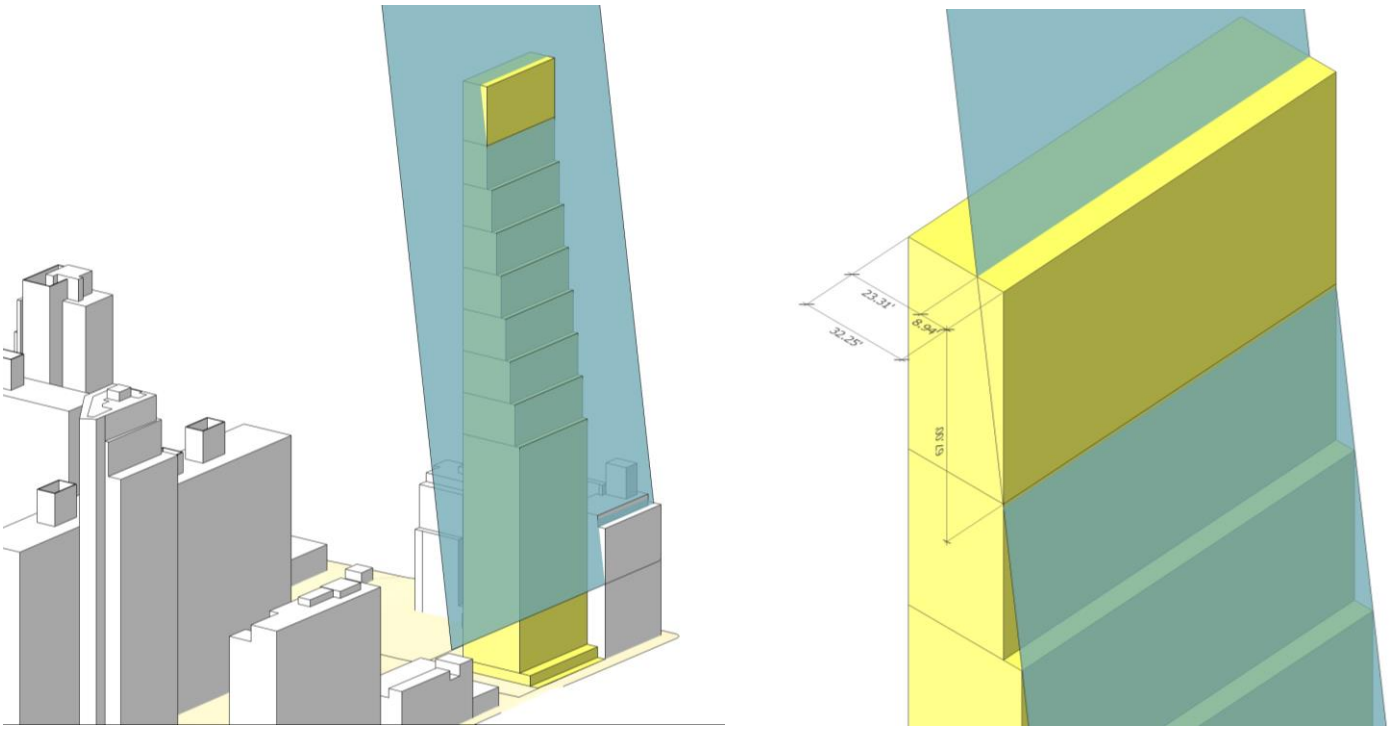
Parking spaces for automobiles or bicycles, off-street, open, **#accessory#**, within a #side# or #rear yard#



The proposed rear yard of 200 Amsterdam from the ZD1 is shown to the right. It is used as parking that is accessory to Lincoln Towers. As was stated earlier in this letter, an accessory use, "is a use conducted on the same zoning lot as the principal use to which it is related." Consequently, the proposed rear yard does not comply with 23-44.

The building pierces the sky exposure plane as defined by 23-642

The top four floors of the building contain building mechanicals. No mechanicals are placed on the roof. The ZD1 shows that these four floors pierce the sky exposure plane, treating them as a permitted obstruction.



The sky exposure plane proposed for 200 Amsterdam. The top four floors break the sky exposure plane.

Section 23-62 (g) details what mechanical equipment may be a permitted obstruction in the height and setback of the building. The allowable permitted obstructions are:

(g) Elevator or stair bulkheads (including shafts; and vestibules not larger than 60 square feet in area providing access to a roof), roof water tanks and **#accessory# mechanical equipment (including enclosures)**

The ZD1 states, in effect, that the mechanical equipment located in floors 51 through 55 are permitted obstructions under 23-62(g). The question as to if the in-building mechanical floors may penetrate the sky exposure plane as a permitted obstruction hangs on the definition of "enclosures." Unfortunately, this is not a defined term in the Zoning Resolution, but the applicant claims, and the Department has agreed, that enclosures may mean exterior building walls. This interpretation is in error, however, as it is not consistent with the New York State Multiple Dwelling Law (MDL).

As you know, the New York City Zoning Resolution must be consistent with the New York State Multiple Dwelling law, except where the MDL states otherwise. Section §4.35(a) of the MDL defines building height as the distance from, "curb level to the level of the highest point of any such

structure." Section §4.35(b) provides exceptions that are not included in the building height:

. . . the following **superstructure** shall not be considered in measuring the height of a dwelling; parapet walls or guard railings, other superstructures twelve feet or less in height and occupying fifteen per centum or less of the area of the roof, elevator enclosures thirty feet or less in height used solely for elevator purposes, **enclosures fifty feet or less in height used solely for tanks, cooling towers or other mechanical equipment;**

While it is not a defined term in the MDL, the expression "superstructure" is used here, and elsewhere in the MDL, to refer to a structure that is on top of a building. The obvious interpretation of the MDL is that building height is measured to the top of the roof, with fairly wide exceptions for rooftop mechanicals, parapet walls and the like. The less obvious--and I would say incorrect interpretation--is that the first 50 feet of mechanicals can be exempted from building height. Either way, at 67 feet, the top four mechanical floors break the prescribed sky exposure and should not be considered permitted obstructions to maintain consistency with the MDL, as required by law.

It should be said that the section of zoning text in question is relatively new, adopted in 2012 with the "Zone Green" text amendments. Prior to those amendments, this portion of the permitted obstructions zoning text read:

Elevators or stair bulkhead, roof water tanks (**including enclosures)**

From 1961 to 2012, this text was consistent with the MDL; these obstructions are superstructures that are often screened by enclosures. In my opinion, the current text is also consistent with the MDL, but it has been interpreted incorrectly. The amendment was intended to explicitly include mechanical equipment on the roof that was enclosed to protect or screen it, which would be consistent with the MDL's provision for "other mechanical equipment." The problem is that the applicant's aggressive interpretation of "enclosure," suddenly means the building itself is not counted in building height if it contains mechanicals, which is clearly contrary to the MDL, and I believe to the intent of this recent text change.

Close
Thank you for your attention to this matter. Should you have any questions or would like to discuss, please feel free to contact me at 917-612-7478 or george@georgejanes.com.

Sincerely,

George M. Janes, AICP, George M. Janes & Associates

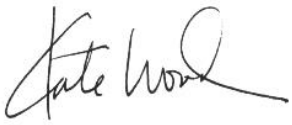
For:

Olive Freud, President, Committee for Environmentally Sound Development

With support from:

Gale Brewer, Manhattan Borough President

Helen Rosenthal, New York City Council Member



Kate Wood, President Landmark West!