



**Board of Standards
and Appeals**

250 Broadway, 29th Floor
New York, NY 10007
212-386-0009 - Phone
646-500-6271 - Fax
www.nyc.gov/bsa

APPEALS (A) CALENDAR

Application Form

RECEIVED
BOARD OF STANDARDS AND APPEALS
BSA APPLICATION NO. _____
2017 OCT 27 17 06 44

Section A

**Applicant/
Owner**

Landmark West!			Amsterdam Avenue Redevelopment Associates		
NAME OF APPLICANT c/o Marcus Rosenberg & Diamond LLP Attn: David Rosenberg, Esq.			OWNER OF RECORD c/o SJP Residential Property LLC		
ADDRESS 488 Madison Avenue			ADDRESS 11 Times Square		
CITY New York, NY	STATE 10022	ZIP	CITY New York, NY	STATE 10036	ZIP
AREA CODE (212) 755-7500		TELEPHONE	LESSEE / CONTRACT VENDEE		
AREA CODE		FAX	ADDRESS		
EMAIL dr@mrdllp.com			CITY STATE ZIP		

Section B

Site Data

200 Amsterdam Avenue				10023	
STREET ADDRESS (INCLUDE ANY A/K/A)				ZIP CODE	
Amsterdam Avenue and West 70th Street					
DESCRIPTION OF PROPERTY BY BOUNDING OR CROSS STREETS					
1158	183	MAN	7		
BLOCK	LOT (S)	BOROUGH	COMMUNITY BOARD NO.	LANDMARK/ HISTORIC DISTRICT	
Helen Rosenthal			10407		
CITY COUNCILMEMBER (include		EXISTING ZONING DISTRICT special zoning district, if any)		ZONING MAP NUMBER	

Section C

**Application
Type**

<input type="checkbox"/> Dept. of Building or other Agency Appeals	<input type="checkbox"/> Variance to Building, MDL or Other Code
<input type="checkbox"/> Certificate of Occupancy Modification	<input type="checkbox"/> Waivers to GCL 35/36 <input type="checkbox"/> Vested Rights
Date of Final Determination _____ Acting on Application No. _____	

Section D

Description

Legalization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> In part
Appeal from September 27, 2017 issuance of New Building permit. Please see attached Statement

Section E

**BSA History
and Related
Actions**

If "YES" to any of the below questions, please explain in the STATEMENT OF FACTS		YES	NO
1. Has the premises been the subject of any previous BSA application(s).....	If yes, Prior BSA No _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Are there any applications concerning the premises pending before any other government agency?.....		<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Is the property the subject of any court action?.....		<input type="checkbox"/>	<input checked="" type="checkbox"/>
*Not to affiant's present knowledge			

Section G

Signature

I HEREBY AFFIRM THAT BASED ON INFORMATION AND BELIEF, THE ABOVE STATEMENTS AND THE STATEMENTS CONTAINED IN THE PAPERS ARE TRUE.	
Signature of Applicant, Corporate Officer or Other Authorized Representative	
David Rosenberg	Partner, Marcus Rosenberg & Diamond, LLP Attorneys for Landmark West!
Print Name	Title
SWORN TO ME THIS 27th DAY OF Oct 2017	
NOTARY PUBLIC	

LUIS LOPEZ
Notary Public, State of New York
No. 01LO6152053
Qualified in New York County
Commission Expires 06/2018

Statement of Landmark West!

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DO STANDARDS AND APPEALS
JUL 27 P 6:44

This appeal is submitted, by Landmark West! (“LW!”), on its own behalf and on behalf of its members and other Upper West Side residents and constituents, pursuant to New York City Charter Section 666.7(a) and Section 1-06 of the Rules of Practice and Procedure of the Board of Standards and Appeals (“BSA”).

By submitting this appeal, LW! does not waive, but expressly reserves, its objections to the failure and refusal of the New York City Department of Buildings (“DOB”) to have:

complied with the requirements of Zoning Challenge procedure promulgated as Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York IRCNYS, 101-15, effective July 13, 2009, including, among other requirements: conducting a full review of the construction plans and the issuing and posting, on line, of a formal determination by the Borough Commissioner, with notice to objectants of the right to file a Community Appeal;

responded to the multiple material Zoning Resolution violations identified in the May 15, 2017 Zoning Challenge (“the Zoning Challenge”) filed on behalf of the Committee for Environmental Social Development (the “Committee”);

provided notice to the elected public officials and organizations which executed the Zoning Challenge, with the opponents (“Opponents”) and a right to participate in the audit allegedly conducted by DOB,

provided copies of all submissions received by DOB from representatives of the project’s developer Amsterdam Avenue Redevelopment Associates LLC, an affiliate of SJP Residential Properties (together, “SJP” or “Developer”) so as to provide a fair and reasonable opportunity for Opponents to challenge and contest the submissions made by, or on behalf of, Developer; and

permit Opponents to submit documents contesting Developer’s submissions.

Appellant's Standing

LW!, a Zoning Challenge signatory, has spearheaded, for more than three decades, efforts of Upper West Side residents and organizations to protect, preserve and enhance the unique historic architecture and fabric of the community bounded by 59th Street, 110th Street, Central Park West and the Hudson River; and the quality of life for the community's residents.

LW! frequently has represented the interests of the Upper West Side community before BSA and in the courts.

Background Facts

A decade ago, a wave of massive inappropriate development was started on the Upper West Side, commencing with the construction of two Extell towers: Ariel East, a 37th floor, 400 foot tall condominium tower at 2628 Broadway; and Ariel West, a 31 floor, 340 foot tall condominium tower at 2633 Broadway ("High Anxiety", The New York Times, June 17, 2007).

Unable to stop these grossly out-of-place luxury condominium towers, the community's continuing protests caused the Department of City Planning ("DCP") to conduct a study of the area bounded by 110th Street, 97th Street, Riverside Drive and Central Park West. (upper_west_side.pdf of WWW.NYC.Gov)

DCP described the impetus for the study as [Id.]:

"While it lacks an abundance of traditional development sites such as vacant parcels or undeveloped lots, recent trends in new construction demonstrate the potential for out-of-scale buildings of excessive height. In particular, two mixed-use buildings [Ariel East and West] have raised community concern about their potential to change the neighborhood's character and create quality of life issues."

Park West Village, a “tower-in-park” residential development constructed at the same time as Lincoln Towers, with the same Federal funding programs, was one of the areas then of concern to DCP.

Lincoln Towers, a development created under the same programs had not yet been “teed up”.

The Lincoln Towers was developed with eight buildings, containing 3,800 apartments, on 20 acres of Urban Renewal cleared land, creating two super blocks (“Super Blocks”)¹ between 66th and 70th Streets from the West Side of Amsterdam Avenue through the West Side of West End Avenue, funded under Title I of the 1949 Federal Housing Act. See, generally, Forest, S.C., The Effect of Title I of the 1949 Federal Housing Act on New York City Cooperative and Condominium Conversion Plans, 13 Fordham Urban Law Journal 723 (1985) (the “Forest Article”).

The original “tower-in-the-park” Lincoln Towers residential development had eight 28 to 29 floor apartment buildings, surrounded by large open areas created for the benefit of residents and neighbors, similar to Park West Village and other projects developed at that time with similar funding. Forest Article, *supra*.

For more than four decades, until 2006, Lincoln Towers’ required open areas consistently were maintained, without interruption, serving their expressly intended purposes. *Id.*

¹ “Super Blocks” were created by eliminating existing cross-streets, here West 67th, 68th and 69th Streets.

**SJP'S Plan Violates The Letter
And Purpose Of The Zoning Resolution**

As the Supreme Court discussed in its landmark decision in Euclid v. Ambler Realty Co., 272 U.S. 365, 385 (1926):

“[T]he question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality. A nuisance may be merely a right thing in the wrong place, like a pig in the parlor instead of the barnyard.”

SJP's proposed Super Tall Mega Tower might fit appropriately among the other supertall towers being constructed between Central Park South and West 57th Street. STP's Super Tall Mega Tower, if constructed, would be an obnoxious “pig in the parlor” on the Upper West Side, particularly in relation to the carefully planned existing Lincoln Towers 28-29 floor tower-in-the-park development.

The Zoning Resolution never was intended to permit the construction of such an inappropriate monstrosity by a developer's overly clever efforts to create and assemble zoning lots unrelated to, and inconsistent with, the Open Space requirements of the Zoning Resolution.

The Zoning Challenge diagrams demonstrate the lack of any practical or logical basis for the arbitrary and illogical Zoning Lot claimed to provide the basis for constructing the SJP's proposed Super Tall Mega Tower.

The Committee's appeal also notes, the Developer, itself, described the artificial Zoning Lot as a “Gerrymander Parcel” in a document recorded in 1987.

Nor would the Gerrymandered Zoning Lot arguably provide the “Open Space” required for such a Mega Tower.

As this Board is well-aware, the Zoning Resolution (ZR§ 12-10) defines Open

Space as:

“[T]hat 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.”

The Zoning Challenge diagrams clearly demonstrate that the Zoning Lot claimed to support the proposed Super Tall Mega Tower ties together irregularly shaped pieces of existing tax lots with long, extremely narrow, corridors, creating a virtual “corn maze” for any residents or others attempting to navigate, much less use and enjoy, Open Space.

More than one-third of the claimed Open Space consists of parking areas and driveways owned by, and exclusively dedicated to serving, the residents of other buildings on the Super Block, not even arguably qualifying as complying with the ZR§ 12-10 definition of Open Space.

Finally, as the Committee’s Appeal ably explains, the Zoning Resolution does not, in express terms or stated intent, permit the creation of a zoning lot from mere “slivers” of various tax lots containing other structures.

**This Is An Opportunity For BSA To Prove That
It Is A Truly Independent, Unbiased Arbiter,
Not A Mere “Rubber Stamp For Overreacting
By Politically-Connected Developers**

Many sitting BSA Commissioners previously provided services to developers and two recent Commissioners now are Executive Vice-Presidents of the well-connected lobbying firm, James F. Capalino & Associates, Inc., d/b/a Capalino + Company (“Capalino”). Within a year of his resignation as BSA Vice Chair, Christopher Collins served on joined Capalino teams lobbying for SJP.

This “revolving door” has created a spectre of potential improper influence and conflict of interest at BSA.

Capalino is reported to already have “bundled” \$44,904 in contributions for Mayor DeBlasio’s current re-election campaign [City Limits, August 24, 2017].

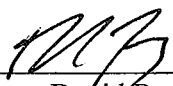
BSA’s Commissioners must have read the highly detailed, expert and well-prepared 2004 report, “Zoning Variances and the New York City Board of Standards and Appeals”, issued by the Municipal Art Society of New York, which found that, over a two year period, 93% of developer variance applications were granted, further supporting the widely-held belief that BSA has a pro-developer bias, often characterized as a “rubber stamp” for developers.

Currently pending, before the Appellate Division First Department is an appeal from a recent BSA decision involving the Park West Village, tower-in-the-park Super Block Park, in which BSA held that terrace space, solely accessible to, and usable by, residents of one of several buildings on a zoning lot, qualified as required “open space” for other buildings.

If, as BSA has claimed, it is an independent body of experts uninfluenced by political or other factors, it must reverse and vacate DOB determination on this appeal or, at the least, remand the matter to DOB to produce a full record supporting its determination in both events directed DOB to issue immediate stop work order.s

Dated: New York, New York
October 27, 2017

Landmark West!
by Marcus Rosenberg & Diamond, LLP

By:  _____
David Rosenberg, Esq.

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