



## Zoning Challenge and Appeal Form (for approved applications)

*Must be typewritten*

<b>1</b>	<b>Property Information</b> <i>Required for all challenges.</i>
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BIS Job Number 121190200

BIS Document Number 18

Borough Manhattan

House No(s) 36

Street Name West 66th Street

<b>2</b>	<b>Challenger Information</b> <i>Optional.</i>
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**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: Landmark West! & 10 West 66th Street Corporation

E-Mail george@georgejanes.com

Contact Number 917-612-7478

<b>3</b>	<b>Description of Challenge</b> <i>Required for all challenges.</i>
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**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: 38    **(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 Floor Area, 82-34, 82-36, 77-02 and 23-851(b)(2)

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.*

<b>ADMINISTRATIVE USE ONLY</b>			
Reviewer's Signature:	Date:	Time:	WO#:

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September 9, 2018

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

RE: Zoning Challenge  
36 West 66<sup>th</sup> Street  
Block 1118, Lot: 45  
Job No: 121190200

Dear Commissioner Chandler:

At the request of the 10 West 66<sup>th</sup> Street Corporation and Landmark West!, a community-based organization that promotes responsible development on the Upper West Side, I have reviewed the zoning diagram and related materials for the new building under construction at 36 West 66<sup>th</sup> Street (AKA 50 West 66<sup>th</sup> Street). 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 member of the American Institute of Certified Planners for the past 21 years.

**Summary of findings**

There are several deficiencies in the drawings and design. Review of issue 2 should be expedited, as it relates to building safety.

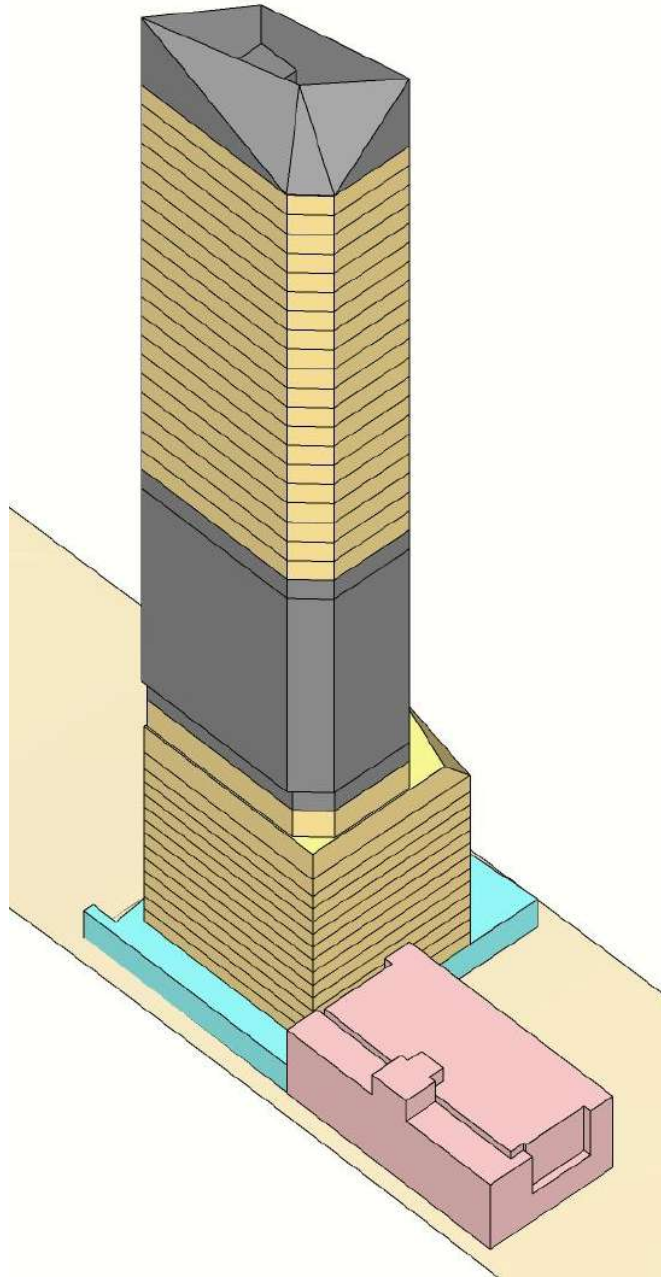
- 1) The ZD1 is not current and has errors. A new ZD1 or ZD1A should be filed.
- 2) The FDNY has unanswered questions regarding the safety of interbuilding voids. The Commissioner should not approve an unsafe building.
- 3) Tower coverage and bulk packing are calculated on different parts of the zoning lot. They must be linked.
- 4) Areas claimed for mechanical exemptions should be proportionate to their mechanical use.
- 5) The small inner court is too small.

**Summary of the July 26, 2018 ZD1**

The building is proposed in the midblock between Central Park West and Columbus Avenue on a zoning lot that is part through and part interior between West 66<sup>th</sup> and West 65<sup>th</sup> Streets. The entire lot is in the Special Lincoln Square District (SLSD). The northern part of the zoning lot is zoned C4-7 (an R10 equivalent) and the southern part is zoned R8. The northern portion contains the Armory, a commercial building (a New York City landmark) that is proposed to stay. The proposed development includes a residential tower with a community

facility in the first floor. The southern portion is developed with an R8 height factor building, also with a community facility in the first floor.

The proposed building has an atypically large mechanical void. The following is a 3D model of the proposed building and the building to stay on the zoning lot, based upon information provided in the ZD1:



*Approximate building massing annotated by use*

The mechanical portions of the proposed building are shown in gray, residential in yellow, commercial in pink, and community facility in blue. A large interbuilding void starts on the 18<sup>th</sup> floor and extends 161 feet to the next story, the use of which is claimed to be accessory building mechanical. While there may be some mechanical equipment placed on the floor of this space, it appears that the primary use of the floor is to increase the height of the tower floors above it. There are also mechanical floors on the 17<sup>th</sup> and 19<sup>th</sup> floors but these have more typical floor-to-floor heights.

The building is also notable for the large size of the base below the tower. At over 20,000 SF with a maximum dimension of 165 by 140 feet, it leaves about 1/3 of the floor area of each residential floor more than 30 feet from any possible window. We engaged an expediter to get more detailed building plans so that we could examine how this space, and the spaces claimed as mechanical are being used. The expediter was informed that no more detailed plans regarding the above grade portion of the building were publicly available. Therefore these comments are limited to that information which is available, the ZD1 and the PW1A.

#### **1. The ZD1 is inconsistent and either incorrect or out of date**

The ZD1 section drawing shows a 42<sup>nd</sup> floor, which appears to be a roof level. There is neither a 42<sup>nd</sup> floor, nor a roof level shown in the Proposed Floor Area table. Further, the Proposed Floor Area table reads that the project proposed is 9.24 FAR. This is an error, as it omits all existing floor area to remain on the zoning lot while counting the lot area of the entire zoning lot. The actual proposed FAR is 10.03 (548,541 ZFA proposed / 54,687 SF of lot area). The difference is not trivial and amounts to over 43,000 ZFA that is missing from the table.

More substantially, however, a PW1A (dated August 28, posted August 30) describes changes to the building that are material to the ZD1 and the zoning approval. These changes include the elimination of the 40<sup>th</sup> and 41<sup>st</sup> floors and changes to the configuration of the synagogue portion of the 1<sup>st</sup> floor mezzanine. The previous PW1 identified this mezzanine as mechanical space accessory to the community facility use and the ZD1 shows this space as having no zoning floor area. This new PW1A identifies it as “vacant” space. As defined by ZR12-10, zoning floor area would include vacant space, while accessory mechanical space is not. Accordingly, the MEZ1 4A line of the Proposed Floor Area table in the ZD1 is incorrect and the ZD1 understates the amount of zoning floor area being proposed.<sup>1</sup> Considering the proposal is using all the floor area generated by the zoning lot, any exempt gross floor area reclassified as zoning floor area will cause the building to no longer comply with FAR and be out of compliance.

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<sup>1</sup> The PW1A also shows the area described as “Synagogue Mezzanine” (page 4) has six dwelling units, which appears to be an error, but if this is true, then the zoning floor area reported in the ZD1 is vastly incorrect.

At minimum, a new ZD1 (or a ZD1A) that demonstrates FAR compliance with this additional zoning floor area, corrects the mezzanine in the table, removes the 40<sup>th</sup> and 41<sup>st</sup> floors, adjusts floor area sums in the Proposed Floor Area table, includes existing floor area to remain in the Proposed Floor Area table, updates the section, plan and elevation to describe the building being proposed, and incorporates any other changes not detailed herein, is required. Alternatively, if the DOB agrees that the floor area in the synagogue mezzanine should be classified as zoning floor area, then it should issue an intent to revoke the zoning approval.

**2. The FDNY has unanswered questions regarding the safety of interbuilding voids. The Commissioner should not approve any unsafe building.**

The proposed building has an “interbuilding void,”<sup>2</sup> which is a large empty area that may be nominally used for accessory building mechanical purposes, but which is mostly empty space not intended for habitation. In the past, both the Department and the BSA have approved such spaces, which according to those interpretations may be of unlimited size.

Interbuilding voids are still a novel construction technique and at 161 feet floor-to-floor this one is the largest ever proposed. When the Special Lincoln Square District was adopted in 1993, such a concept was never considered because it was inconceivable. There is a substantial record regarding the design and adoption of the Special Lincoln Square District, which tells us that the district regulations were adopted, in part, to “control height” “in response to the issues raised by the height and form of recent developments.”<sup>3</sup> The tallest of these “recent developments” was 545 feet,<sup>4</sup> which is over 200 feet shorter than the current proposal. New York City codes do not directly address interbuilding voids or their use, and developers, the DOB and the BSA have interpreted them just as they would any other mechanical floor.

But interbuilding voids are not just another mechanical floor. They are a new building technique that are not well addressed in any of our regulations. Just because they contain a nominal amount of mechanical equipment does not mean that they should be treated as any other mechanical floor. This is especially true since the Fire Department of the City of New York (FDNY) has expressed questions regarding the safety of this new construction technique. Once those concerns were expressed, all approvals of buildings using the technique should have been suspended until the FDNY questions were answered and stop work orders for buildings under construction should have been issued.

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<sup>2</sup> “Intra-building void” would likely be the more accurate term, but the phrase “interbuilding void” now appears to be commonly used and this challenge continues its use.

<sup>3</sup> N 940127 (A) ZRM, December 20, 1993.

<sup>4</sup> The Millennium Tower at 101 West 67<sup>th</sup> Street.

It does not matter that the technique may be legal under zoning. The New York City Building Code clearly grants the Commissioner the powers to override an approval if there is an issue of “safety or health”:

Any matter or requirement essential for the fire or structural safety of a new or existing building or essential for the safety or health of the occupants or users thereof or the public, **and which is not covered by the provisions of this code or other applicable laws and regulations, shall be subject to determination and requirements by the commissioner in specific cases.**<sup>5</sup>  
 [Emphasis added]

### ***The FDNY’s concerns***

In 2017, I brought the concept of interbuilding voids to the attention of the FDNY. At that time, the Bureau of Operations - Office of City Planning was unfamiliar with this new building technique. I provided drawings in the hope that these drawings could be examined with a consideration for both fire safety and fire operations. Later, on May 3, 2018, the FDNY expressed the following concerns about a building with a large interbuilding void on East 62<sup>nd</sup> Street:

The Bureau of Operations has the following concerns in regards to the proposed construction @ 249 East 62 street (“dumbbell tower”):

- Access for FDNY to blind elevator shafts... will there be access doors from the fire stairs.
- Ability of FDNY personnel and occupants to cross over from one egress stair to another within the shaft in the event that one of the stairs becomes untenable.
- Will the void space be protected by a sprinkler as a “concealed space.”
- Will there be provisions for smoke control/smoke exhaust within the void space.
- Void space that contain mechanical equipment... how would FDNY access those areas for operations.

These concerns and questions appear informal because they were sent out as an email by the FDNY Office of Community Affairs rather than a formal memorandum from the FDNY. I contacted the Bureau of Operations to confirm their accuracy, which that office did.

On August 31, 2018, I called Captain Simon Ressler, the person who put the FDNY’s safety concerns in writing, asking him the status of the FDNY’s concerns regarding interbuilding voids. He informed me that the FDNY has had no communication with the DOB since the DOB was informed of the FDNY’s safety concerns. He also said that the FDNY had some communication with the Department of City Planning, where the FDNY’s concerns were acknowledged, but no answers were provided.

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<sup>5</sup> §28-103.8

Further, Captain Ressler told me that the FDNY had not been asked to comment on the West 66<sup>th</sup> Street building, and, indeed, only knew of its existence because I sent the ZD1 to him. When asked about the parts of the ZD1 for West 66<sup>th</sup> Street labeled “FDNY access,” he informed me that he could not make a determination as to the adequacy of these spaces based upon so little information. He would need to see full building plans, which, according to our expediter, are not available to the public.

As a citizen of the City of New York, I have to say that this lack of communication or concern over FDNY’s questions is shocking. All New Yorkers expect our City agencies to be working together and sharing information, but in this case it appears that the following is true:

1. A new building technique (the void) is introduced;
2. No one from the DOB informs the FDNY;
3. A private citizen brings this to the FDNY’s attention;
4. FDNY expresses concern and asks several questions, in writing, regarding the safety of fire operations within the void;
5. Those questions are met with silence from the DOB;
6. DOB continues to approve buildings with the same technique, which are even larger and more extreme.

Most issues involving zoning challenges are technical and esoteric, impacting an element of form or use. While these issues are important, they almost never involve possible physical harm. The FDNY’s questions rise to a completely different level. This is a question of building safety, a fundamental role of government, which has been left unanswered. The DOB should have never granted an approval to a building where the FDNY has expressed questions regarding fire safety and operations.

Building code §28-103.8 anticipates situations that are not well addressed in the Zoning Resolution, Building Code, and/or Construction Code and provides the Commissioner of Buildings the ability, indeed the obligation, to make a determination on this construction technique as an issue of public safety. Simply, safety trumps zoning, as it should.

Other agencies are also recognizing that interbuilding voids are a problem but not for the same reasons the FDNY has expressed. In a January 2018 town hall event, the Mayor and Chair of CPC Marissa Lago stated that interbuilding voids were a problem and that DCP was working with the Department of Buildings to find a solution. In May and September of 2018, I met with the head of the Manhattan office of DCP and her staff to discuss voids, what they are, and where they become problematic from an urban design and bulk perspective, and I understand that City Council land use staff have had similar meetings and concerns. All agree that vast, oversized voids like West 66<sup>th</sup> Street are a problem and that they undermine the intent of the bulk regulations in the Zoning Resolution, while not

providing any public benefit. Council Member Rosenthal and Manhattan Borough President Brewer have both repeatedly and publicly voiced their concern about this technique as a loophole around zoning's bulk regulations that does nothing to improve the quality or amount of housing in the City.

But most importantly, this novel technique may not be safe. Our codes give Commissioner Chandler the authority to act to protect safety, and act he must.

**3. Tower coverage and bulk packing are calculated on different parts of the zoning lot. They must be linked.**

While the tower portion of a building constructed under the tower-on-base regulations has no height limit, height is *effectively* regulated by linking tower coverage to the "bulk packing" rule. We know this because the City Planning Commission (CPC) stated as much in their approval of the tower-on-base regulations:

"The height of the tower would be effectively regulated by using a defined range of tower coverage (30 to 40%) together with a required percentage of floor area under 150 feet (55 to 60%)."<sup>6</sup>

The Special Lincoln Square District has its own flavor of the tower-on-base regulations but it is clear that the intent of the regulations is the same:

"Furthermore, in order to control the massing and height of development, envelope and floor area distribution regulations should be introduced throughout the district. These proposed regulations would introduce tower coverage controls for the base and tower portions of new development and require a minimum of 60 percent of a development's total floor area to be located below an elevation of 150 feet. This would produce building heights ranging from the mid-20 to the low-30 stories (including penthouse floors) on the remaining development sites.

In response to the Community Board's concern that a height limit of 275 feet should be applied throughout the district, the Commission believes that specific limits are not generally necessary in an area characterized by towers of various heights, and that the proposed mandated envelope and coverage controls should predictably regulate the heights of new development. The Commission also believes that these controls would sufficiently regulate the resultant building form and scale even in the case of development involving zoning lot mergers."<sup>7</sup>

The key components of the tower-on-base regulations (tower coverage and floor area under 150 feet (the so-called bulk packing rule)) only function as intended when they are applied over the same lot area. Because this zoning lot is split by a zoning district boundary, the applicant, relying upon ZR 77-02, decided that tower coverage is calculated on the C4-7 portion of the zoning lot (35,105 SF), while the area under 150 feet is calculated on the entire zoning lot (54,687 SF), regardless of zoning district.

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<sup>6</sup> N 940013 ZRM

<sup>7</sup> N 940127 (A) ZRM



The applicant's reading of 77-02 is in error. While ZR 82-34 instructs that floor area under 150 feet should be calculated on the entire zoning lot, it does not also follow that tower coverage (82-36) should be calculated on a different portion of the zoning lot, as such a reading is contrary to the purpose of the tower-on-base regulations and leads to absurd results.

A basic principle of statutory construction is that the same phrase or term should be given a consistent meaning when interpreting a statute. In the applicant's interpretation, the term "zoning lot" means a large area (54,687 SF) under 82-34 (bulk packing) and a small area (35,105 SF) under 82-36 (tower coverage). Not only does this interpretation violate this basic principle that the same words should have the same meaning, it is also in conflict with the intent of the statute as detailed in the CPC findings.

Another bedrock principle of legislative construction, going back over 100 years,<sup>8</sup> is that legislatures do not intentionally act irrationally or promote absurd results.

"The Legislature is presumed to have intended that good will result from its laws, and a bad result suggests a wrong interpretation. . . . Where possible a statute will not be construed so as to lead to . . . absurd consequences or to self-contradiction."  
(McKinney's Statutes § 141); City of Buffalo v. Roadway Transit Co., 303 N.Y. 453, 460-461 (1952); Flynn v. Prudential Ins. Co., 207 N.Y. 315 (1913).

It bears repeating: "A bad result suggests a wrong interpretation." In the context of the tower-on-base building form, the interpretation the applicant has proposed produces a bad result which goes against the intent of the regulations. Perhaps the best evidence for the bad result is the current application, which produces a building over 200 feet taller than the Millennium Tower, the 545-foot tower that created the impetus to adopt the amendments to the Special District. These amendments were, in part, intended to control building height and to prevent additional buildings like Millennium Tower. But more than that, if the applicant's interpretation was actually correct, and all floor area under 150 feet on the zoning lot counts as area under 150 feet, while tower coverage only counts in the R10 equivalent portion of the zoning lot, then this building could have easily been more absurd and more contrary to the intent of the special district regulations; the applicant appears to be showing restraint by not fully exploiting the loophole their interpretation creates.

For example, directly to the west and south of the subject zoning lot, there are lots 9 and 10, which contain existing buildings that are both entirely below 150 feet

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<sup>8</sup> This concept has been repeatedly affirmed in more recent years in both land use and other contexts. For example, in *Matter of Jamie J.*, 30 N.Y.3d 275 (2017), decided less than one year ago, the Court of Appeals wrote, "courts should not adopt 'vacuum-like' readings of statutes in 'isolation with absolute literalness' if such interpretation is 'contrary to the purpose and intent of the underlying statutory scheme and would conflict with other operative features of the statute's core overview procedures.'"

and are in the R8 zoning district. Using the applicant's logic and interpretation of the SLSD and 77-02, the applicant could have expanded their zoning lot to include these sites,<sup>9</sup> which would have added approximately 45,000 SF of existing floor area under 150 feet.<sup>10</sup> This zoning lot merger would have required no transfer of floor area, or "air rights," and would not change anything about these existing buildings or materially impair their development potential, other than keeping any future development to less than 150 feet. Their existing floor area would just be used in the tower-on-base calculations, which would have allowed the applicant to construct an even taller building.

Such a paper transaction would have allowed the 45,000 SF floor area in these existing buildings to be counted as being below 150 feet in the bulk packing calculations. The net effect of such an action would be to allow the tower to increase by two stories or 32 feet.<sup>11</sup>

Using the applicant's interpretation, the larger the zoning lot with existing buildings under 150 feet, the taller the tower can go, as long as those existing buildings are in a non-tower zoning district (not R9 or R10, or their commercial equivalents). Yet the CPC wrote in their findings about the impact of zoning lot mergers on the tower-on-base form in Lincoln Square:

"The Commission also believes that these controls would sufficiently regulate the resultant building form and scale *even in the case of development involving zoning lot mergers.*" [Emphasis added.]

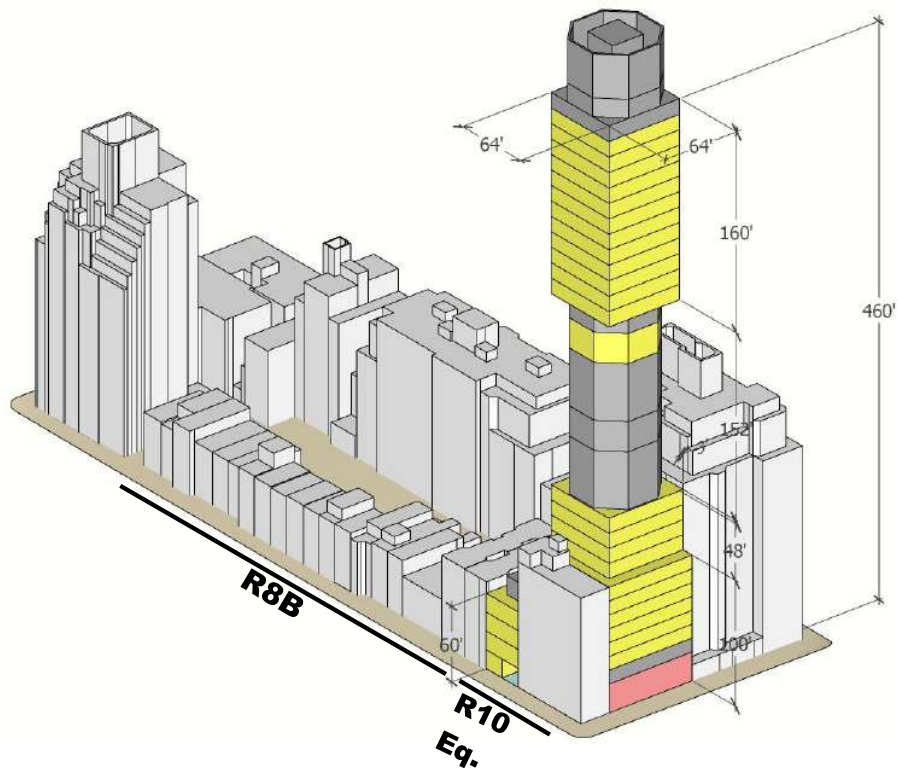
If the applicant's interpretation were correct, then there is no way that this CPC belief could be accurate. To demonstrate an even more absurd example of the applicant's interpretation, consider the following tower-on-base building proposed at 249 East 62<sup>nd</sup> Street.

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<sup>9</sup> With the consent of the owners of lots 9 and 10.

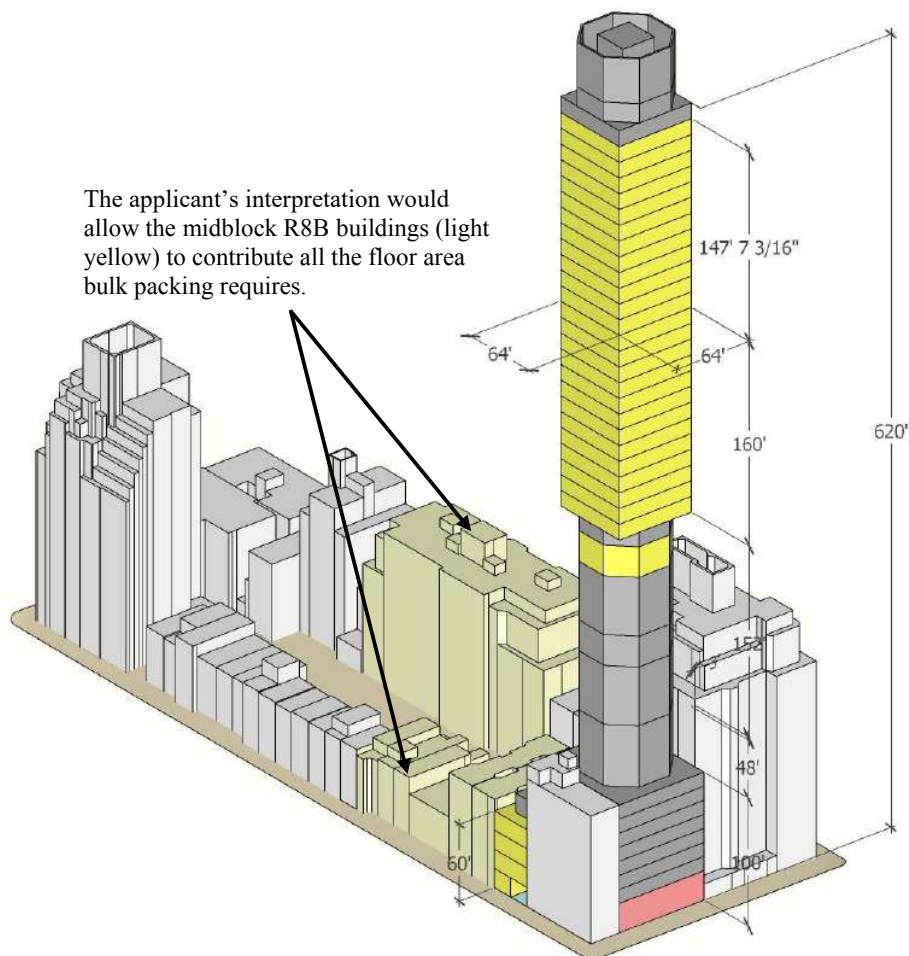
<sup>10</sup> The ZD1 interprets the 60% rule as 60% of the maximum allowable floor area on the lot, not the floor area permitted. The text of 82-34, however, instructs "60 percent of the total #floor area# permitted," which is not necessarily the maximum floor area allowed, and less floor area may be permitted than the maximum allowed. In the case of this building, the applicant's interpretation, while in error, is not material since the building is proposed at the maximum floor area allowed. In this hypothetical scenario, however, floor area permitted would require a literal interpretation of the text: the total floor area for which a permit is, or will be, granted.

<sup>11</sup> A 45,000 SF increase in area under 150 feet would mean that 40% of that area, or 18,000 SF, could be moved from the base of the proposed building into the tower over 150 feet, effectively allowing the tower to increase another two floors or 32 feet using 16 feet FTF heights. The height of the base can be maintained by shrinking the floor plate of the base, which would result in a better floor plate for residential use or by keeping the same floor plate and raising floor-to-floor heights by less than one foot per floor in the base.



*Actual tower-on-base proposal at 249 E. 62<sup>nd</sup> Street*

This is another R10 equivalent tower-on-base building with a massive void. Here, the R10 equivalent portion of the lot extends only 100 feet from the wide street the tower faces. If all floor area on the zoning lot under 150 feet can be counted for bulk packing outside the R10 equivalent portion of the lot, and the tower is only counted on the R10 equivalent portion of the zoning lot, then the zoning lot can be expanded to cover much of the block. If that is done, then *all* floor area under 150 feet, with the exception of the ground floor of the new building will be in buildings to stay on the lot. This zoning lot would require no transfer of development rights and would not impair the future development potential of the existing developments in the height limited mid-blocks. The following shows how such a building might be massed out:



*Possible tower on base massing if the area for tower coverage is divorced from the area for bulk packing*

The existing buildings added to the zoning lot are shown in light yellow in the midblock. They contribute substantially all the floor area under 150 feet that this new building needs so that the floor area generated on its own lot can be placed at levels higher than 150 feet. In the prior example there were 13 residential floors over 150 feet. With this interpretation and large zoning lot, 26 residential floors in the main portion of the building are over 150 feet. This example shows expanded mechanical floors acting as a platform to raise the building to 150 feet so that the height can be maintained. It could have just as easily been a single floor designed to be 150 feet floor-to-floor, which while sounding absurdly unrealistic, is actually 11 feet shorter than what the applicant is actually proposing on the 18<sup>th</sup> floor of their building.

While the absurdity of the results of this interpretation is self-evident, it must also be said that there is no reasonable planning or design rationale for zoning text to be read as such. The 30% minimum tower coverage standard came out of DCP

studies from 30 years ago<sup>12</sup> that found that older towers from the 1960s and 70s were largely at or near the 40% maximum coverage. Towers from the 1980s were smaller, averaging just 27% with some extreme cases as low as 20%. The record shows the 30% minimum on tower coverage, linked with “bulk packing,” was intended to act as a control on tower height. At its largest (11,580 SF), the tower proposed on West 66<sup>th</sup> Street has a coverage of 21% on its zoning lot. At its smallest, it covers just 19%. It must cover between 30% and 40% of the zoning lot, which means it should be between 16,406 SF and 21,875 SF. The tower coverage is too small; the approval should be revoked.

**4. Areas claimed for mechanical exemptions should be proportionate to their mechanical use.**

The DOB has the responsibility to determine that spaces claimed as exempt from zoning floor area because they are used for mechanicals are, in fact, used for accessory building mechanicals and are reasonably proportionate to their use. If they are not, then the DOB must ask the applicant to redesign these spaces. Considering the size of the 18<sup>th</sup> floor, at 161 feet floor-to-floor, it seems unlikely that any such review took place.

We know that, in the past, the DOB required applicants to justify their mechanical exemptions and questioned the validity of these spaces. I am attaching a ZRD1 dated 3/12/2010 that was reviewed by then Manhattan Deputy Borough Commissioner Raymond Plumney. This document is the result of a DOB Notice of Objections dated 1/12/2010<sup>13</sup> where the DOB questioned the applicant’s use of the mechanical exemption. This ZRD1 is notable because the building in question is what would become known as One Fifty Seven, the tallest residential building in Manhattan at the time.

The original Notice of Objections, as reported in the ZRD1, documents the DOB questioning mechanical spaces, requiring the applicant to justify the spaces they were claiming as exempt. It is evidence that the DOB at one time policed the exemption, to ensure that the spaces claimed as exempt from zoning floor area actually should be exempt and that mechanical spaces were sized proportionately to their mechanical purpose. This was a vital function that the DOB served in the past and there has been no statute that required a change in policy. As this building demonstrates, the DOB needs to police spaces that applicants are claiming are exempt to ensure that they are appropriate to the exemption. If it does not, the exemption is abused, which undermines the Zoning Resolution’s bulk regulations. The DOB should reexamine the spaces claimed as exempt and require that they be proportionally sized for their mechanical purpose; if they are not, the DOB should revoke the approval.

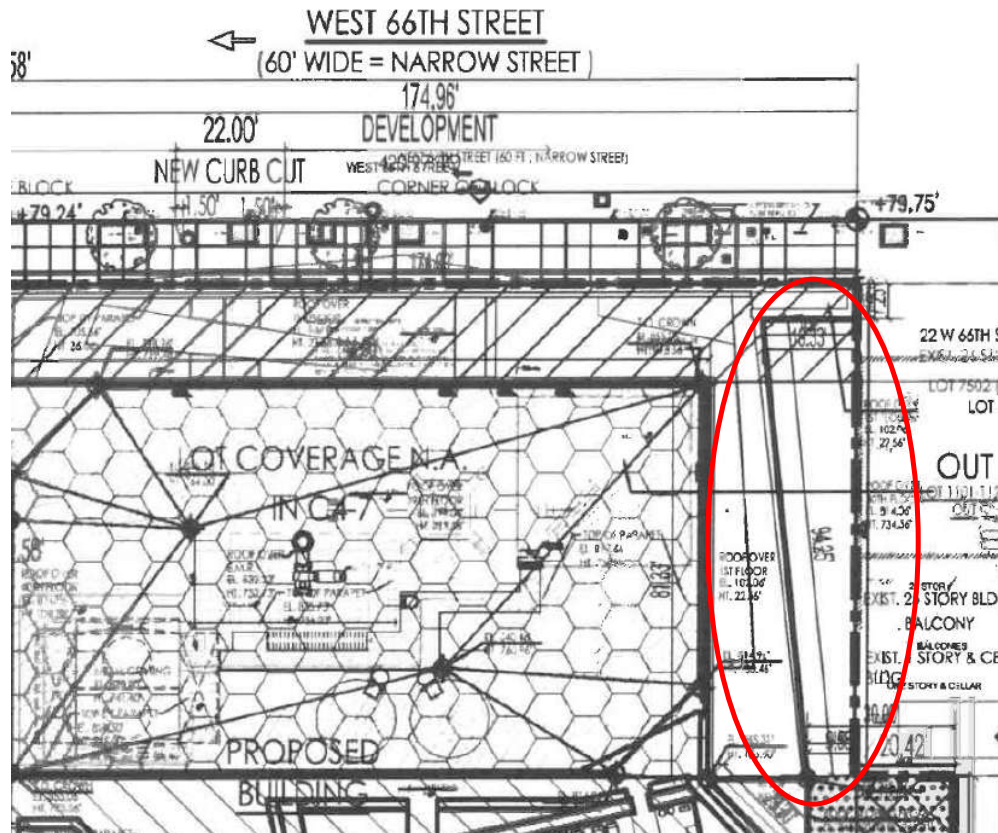
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<sup>12</sup> Regulating Residential Towers and Plazas: Issues and Options, 1989; and Special Lincoln Square District Zoning Review, 1993.

<sup>13</sup>The original Notice of Objections was requested under the Freedom of Information Law in October 2017. It has not yet been provided.

**5. The small inner court is too small.**

The ground level open space shown below is not a side yard because it does not extend to the front yard line. It is surrounded by building walls and a lot line, so therefore, it must be an inner court. While the numbers are hard to read on the ZD1, it appears that the plan shows the narrowest dimension for this small inner court to be just over nine feet.



*Detail of plan showing the small inner court*



*Detail of plan with dimension circled*

The number shown appears to be 9.58 feet but that dimension is not taken at the narrowest location. ZR 23-851(b)(2) requires that this inner court be at least 10 feet wide. The zoning approval should be revoked.

**Final thought: a self-imposed hardship**

On October 24, 2016, the DOB gave this applicant an approval for a different building on the C4-7 portion of the zoning lot, which allowed the applicant to proceed with demolition and excavation. More than four months *prior* to DOB's 2016 approval, the Attorney General of the State of New York approved the sale of the Jewish Guild for the Blind (which is the former owner of the R8 portion of the zoning lot along West 65<sup>th</sup> Street) to the owner of this development. In November of 2017, a new design for the current zoning lot was announced to the public and shown to elected officials and neighbors. At this time, zoning approval was still not sought. During the 18 months between the initial zoning approval and the July 26, 2018 zoning approval, demolition, excavation and construction of the foundation continued, all based on an approval for a building no one intended to build. This clever exercise at obfuscation has allowed construction to progress far beyond what would be typical at this point in the approval process.

While not directly applicable to the Zoning Resolution, this issue matters because courts, the Board of Standards and Appeals, and perhaps the DOB, all care to varying degrees about the hardship their decisions can create, especially for developers who have already invested significant financial resources. If a building is substantially constructed and an error in the approval is found, the more likely the error and the building will be allowed to stand, especially if a court is involved. In this case, however, the substantial progress the applicant made on construction is entirely due to the 18 months of construction activity between the DOB's initial approval of a building that was never intended to be



built, and its approval of this current proposal. Had the applicant filed for zoning approval in 2016 when the NYS Attorney General approved their acquisition, or even when the proposal was shown to the public in November 2017, this challenge would have been filed much earlier in the construction process. Any hardship created because of a correction of an error in the approval is entirely self-imposed and should not be a consideration for any administrative or legal entity.

**Close**

Thank you for consideration of these issues and your efforts to make New York City a better place. If you have any questions, please contact me directly at [george@georgejanes.com](mailto:george@georgejanes.com).

Sincerely,



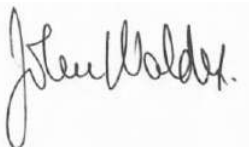
George M. Janes, AICP, George M. Janes & Associates

For



Sean Khorsandi, Executive Director, Landmark West!

And



John Waldes, President, 10 West 66<sup>th</sup> Street Corporation

With support from:



Gale Brewer, Manhattan Borough President



Helen Rosenthal, New York City Council Member





Brad Hoylman, New York State Senator



Richard N. Gottfried, Member of New York State Assembly

Attachments: ZD1, PW1A for 36 West 66<sup>th</sup> Street, ZRD1 9631

CC: Bill de Blasio, New York City Mayor  
Corey Johnson, New York City Council Speaker  
Edith Hsu-Chen, Director, Manhattan DCP  
Erik Botsford, Deputy Director, Manhattan, DCP  
Beth Lebowitz, Director, Zoning Division, DCP  
Captain Simon Ressler, Fire Department, City of New York  
Raju Mann, Director, Land Use, New York City Council  
Roberta Semer, Chair, Community Board 7