

December 18, 2017

Email from David Karnovsky to Council Land Use, Office of Council Member Helen Rosenthal Staff

All:

Thank you for meeting last week to discuss the Extell development on West 66th Street. Below is the additional information you requested, as well as a response to the issue raised why minimum and maximum tower lot coverage has been calculated on the basis of the lot area of the C4-7 portion of the zoning lot only.

A. Addresses of Off-Site Affordable Housing Units

33 West End Avenue

40 Riverside Boulevard

B. BSA Appeal Re Mechanical Spaces

Interpretive Appeal No. 2016-4327-A,
15 East 30th Street, Manhattan
Block 860, Lot 12, 63, 67, and 69

C. Mechanical Deductions on Occupied Tower Floors

The tower floor plates vary slightly in size. Some illustrations:

10th Floor: ZFA 11,035/ Deductions 544.41

20th Floor: ZFA 10,844.45/ Deductions 364.12

38th Floor: ZFA 10,800.41/ Deductions 296.30

D. ZR 82-34 Bulk Distribution

Total Permitted Floor Area: 548,539

Minimum Required Floor Area Below 150 Feet: 329,124

Provided Below 150 Feet: 329,200

E. Calculation of Tower Lot Coverage/ZR 77-02

Raju and Dylan suggested at our meeting on Thursday that the calculation of tower lot coverage under ZR 82-36 should be based on the entire zoning lot, inclusive of the R8 portion, citing to the language of ZR 82-36 (a) (1) and (2) which refers to the 'lot area of the zoning lot.' For the reasons discussed below, this approach would be inconsistent with the clear and consistent application of the split lot rules under the Zoning Resolution.

To begin with, it is important to note that the language of ZR 82-36 is no different from many other provisions of the Zoning Resolution which use the phrase “of the zoning lot” to specify requirements of, or limitations upon, development. In addition to tower regulations, these include, for example, street wall regulations and lot coverage regulations. As used throughout the Zoning Resolution, the phrase “of the zoning lot” *always* refers only to that portion of the zoning lot located within the zoning district to which the regulation applies. For example, street wall requirements in contextual districts frequently specify that street walls are required along the “full wide street frontage of the zoning lot.” This does not mean that street walls are required for a portion of the wide street frontage of a zoning lot located in a non-contextual district, but rather only in the portion of the zoning lot governed by the contextual district.

Like ZR 82-36, all other provisions of the Zoning Resolution governing tower lot coverage base the calculation on the lot area “of the zoning lot” (see e.g., ZR 23-65, 23-651, 33-45, 33-454, 33-455,35-63) , and tower lot coverage under those provisions is always measured only over the portion of the zoning lot to which the tower regulations apply.

This is not merely a matter of informal administrative practice or a matter of convenience; it is a result mandated by ZR 77-02, which states in relevant part that “[w]henver a zoning lot is divided by a boundary between two or more districts and such zoning lot did not exist on December 15, 1961, or any applicable subsequent amendment thereto, *each portion of such zoning lot shall be regulated by all the provisions applicable to the district in which such portion of the zoning lot is located...*” (emphasis added). Here, the zoning lot was only recently established, and the provisions of ZR 77-02 therefore apply.

As interpreted and applied by DOB and BSA (and as upheld by the courts in the Beekman Hill Assoc. v Trump litigation) the split-lot provisions of ZR 77-02 quoted above are applied on a regulation by regulation basis; in other words, a zoning lot may be viewed as a split lot for purposes of applying one set of zoning regulations and as a single zoning lot for other purposes. The distinction depends on whether the regulations in question apply in both portions of the zoning lot or in one portion only.

Here, the tower regulations applicable to the Extell site (ZR 33-45 and ZR 35-64, as modified by ZR 82-36) apply only to the portion of the zoning lot located in a C4-7 district. There is no ability to construct a tower in the portion of the Extell zoning lot mapped R8 (development of a tower in the R8 portion of a split lot is only possible under the conditions set forth in ZR 77-29, which plainly do not apply). Accordingly, the calculation of tower lot coverage is measured on the basis of the portion of the zoning lot governed by the tower regulations, i.e., the C4-7 portion.

It is important to note that this is not an issue of ‘first impression’. The split lot condition found at the Extell site, with only one portion of the zoning lot located in a tower zone, exists in many locations on the Upper East Side, Upper West Side and elsewhere, where the zoning lot is divided between a Tower zone and an R8-B, R8 or R7-2 district. In these situations, tower lot coverage has consistently been calculated based on the lot area of the tower zone portion of the zoning lot only.

At the meeting, it was pointed out that the calculation of bulk distribution under ZR 82-34 is based on the floor area of the entire zoning lot and an argument was made that the same should therefore apply to the calculation of tower lot coverage. However, unlike the tower regulations of ZR 82-36, which apply only in the C4-7 portion of the zoning lot, ZR 82-34 applies to all zoning lots in the Lincoln Square Special

District, irrespective of their zoning district designation. This is clear both under the language of ZR 82-34 as well as in the CPC Report approving the 1993 amendments to the Lincoln Square Special District regulations which added ZR 82-34. See CPC Report N 940127 (A), dated December, 20 1993, describing proposed ZR 82-34 as an urban design change that would apply "... throughout the District... to govern the massing and height of new buildings.." Unlike in the case of ZR 82-36, the split lot rules therefore do not apply to the calculation of bulk distribution on the Extell site under ZR 82-34 because the regulations of that section apply to both the R8 and C4-7 portions of the zoning lot.

In short, calculating the tower lot coverage of the Extell building under ZR 82-36 on the basis of a 'denominator' which includes the R8 portion of the zoning lot would be wholly inconsistent with the split lot rules of Article 7, Chapter 7 and contrary to years of precedent under which tower coverage has been determined based solely on the portion of a split lot governed by the tower regulations. Accordingly, the calculation of minimum and maximum permitted tower lot coverage on the Extell site is a lawful and proper application of the Zoning Resolution.

The above reflects an understanding of the Zoning Resolution that is shared by the agencies and our colleagues in the land use bar. Since this is a somewhat informal overview of the points we wish to make in more detail, we would welcome the opportunity to discuss this further with you, as well as provide examples of tower developments built consistent the methodology we describe. Michael Parley, Ivan Schonfeld and I are available to meet early this week to have a technical discussion among the land use professionals. Once we have gathered documentation concerning precedent buildings, we would be glad to meet again and review further after the holidays.

We understand the importance you attach to determining whether the building is as of right, and think it important for us to fully vet this issue with you so that your conclusions are based on full information. We hope you agree and will take us up on the offer to meet again and continue our dialogue.

Best

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