



Melanie E. La Rocca
Commissioner

Michael J. Zoltan
Assistant General Counsel
mzoltan@buildings.nyc.gov

280 Broadway, 7th Fl.
New York, NY 10007
www.nyc.gov/buildings

+1 212 393 2642 tel
+1 212 566 3843 fax

October 16, 2019

Honorable Members of the Board
Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

RE: Cal. No. 2019-94-A
Premises: 36 West 66th Street, Manhattan
Block: 1118; Lot: 45

Dear Honorable Members of the Board:

The Department of Buildings (the “Department”) respectfully submits this fourth statement in response to the referenced appeal by Klein Slowick, PLLC on behalf of Landmark West! (“Landmark West Appellants”), challenging the Department’s April 4, 2019 approval of a post-approval amendment application (the “PAA”) which changed the scope of permit 121190200-01-NB (the “Permit”) authorizing construction of a new building located at 36 West 66th Street New York, New York (the “Proposed Building”). Landmark West Appellants allege that the Department’s approval of the PAA is inconsistent with the New York City Zoning Resolution (the “ZR”).

On September 17, 2019, after entertaining a new argument proffered by Landmark West Appellants and bifurcating the instant appeal with its’ sister case (Cal. No. 2019-89-A), the Board requested that the Department review the proposed mechanical equipment in the Proposed Building.

I. THE MECHANICAL EQUIPMENT IN THE PROPOSED BUILDING WAS PROPERLY DEDUCTED FROM THE FLOOR AREA CALCULATIONS

During the September 17th, 2019 hearing, the Board requested that the Department review the Proposed Building’s mechanical equipment “in the same way that the Sky House¹ mechanical drawings were reviewed.” Specifically, the Board asked for the Department to provide the Board with approved sets of mechanical plans depicting the

¹ During the September 17, 2019 hearing, the Board and Landmark West Appellants referred to the “Sky House case.” This is a reference to *15 East 30th Street, Manhattan* (BSA Cal. No. 2016-4327-A). A copy of that BSA decision was attached to the Department’s July 23, 2019 submission as Exhibit A.

Cal. No. 2019-94-A
Premises: 36 West 66th Street, Manhattan
October 16, 2019
Page 2 of 5

mechanical equipment in the Proposed Building and a description of the mechanical equipment housed in the floors dedicated to mechanical equipment and thereby deducted from the Proposed Building's floor area pursuant to Exception 8 of the ZR § 12-10 definition of "floor area."

In *15 East 30th*, after a similar request from the Board, the Department provided the Board with a brief description of the proposed mechanical equipment in that building. The Board described that submission as:

...WHEREAS, DOB states that, based upon its review, the architectural and mechanical plans for the Proposed Building show mechanical space sufficient to justify its exemption from floor area as follows: the second floor contains an emergency generator and switchboard, cooling towers, primary cold-water pumps, secondary condenser water-loop pumps, an expansion tank, heat exchangers and an air separator; the third floor has a cogeneration power plan, a precipitator, boilers, hot-water pumps, an air separator, an expansion tank, heat exchangers, part of the indoor cooling towers from the second floor and other equipment; and the fourth floor includes domestic hot water pumps, domestic-water heat-exchanger units, air handler units, fan units and other equipment...²

With that description and analysis as a model, the Department submits this description and analysis of the mechanical equipment in the Proposed Building to verify that the mechanical equipment was properly deducted from floor area and that the Permit was properly issued.

A. The Total Number of Floors Devoted to Mechanical Equipment Deducted from Floor Area for the Proposed Building, Is Appropriate

As can be seen on the 2019 Zoning Diagram (the "2019 ZD1"),³ the only stories devoted exclusively to mechanical equipment are the first floor mezzanine, the 15th floor, the 17th floor, the 18th floor, the 19th floor, and the roof.⁴ The Board asked the Department to review whether

² *15 East 30th Street*, at 4.

³ A copy of the 2019 ZD1 was attached to Landmark West Appellants' May 14, 2019 submission to the Board as Exhibit C.

⁴ During the September 16, 2019 Executive Session and during the September 17, 2019 public hearing there was discussion concerning additional floors of mechanical equipment introduced to satisfy Department objections concerning the height of mechanical floors. To set the record straight, no new floors devoted to mechanical equipment were added to satisfy the Department's objections. The Zoning Diagram dated July 26, 2018 (the "2018 ZD1") depicts the same number of mechanical floors as the subsequent 2019 ZD1. The pertinent difference between the two ZD1s is the floor-to-ceiling height distributed between the 17th, 18th, and 19th floors. Before the amendment, the three floors were wholly devoted to mechanical equipment and after the amendment they were devoted to the same amount of mechanical equipment. The amount of floors containing mechanical equipment did not change—just their respective floor-to-ceiling heights. A copy of the 2018 ZD1 is hereby attached for comparison as Exhibit A.



Cal. No. 2019-94-A
Premises: 36 West 66th Street, Manhattan
October 16, 2019
Page 3 of 5

the number of floors devoted exclusively to mechanical equipment was typical for buildings of a similar nature.

The Department has reviewed the mechanical drawings for the Proposed Building and has concluded that the floor space on such floors is devoted to housing the mechanical equipment of the Proposed Building and those floors cannot be occupied for purposes other than the housing of such equipment. As such, the floor space devoted to mechanical equipment is properly exempt from the zoning floor area.

With regard to the Board's request to compare the amount of floors deducted with similarly situated buildings, this is not an analysis that the Department typically makes since each building is reviewed individually based on its unique characteristics and needs. For instance, similarly sized buildings may have different amounts of mechanical equipment based on the design of the building and different energy efficiency goals of different applicants.

In any event, the Department submits that the amount of stories devoted entirely to mechanical equipment in the Proposed Building is consistent with similarly sized buildings.

B. The Stories Devoted Entirely to Mechanical Equipment Do Contain Sufficient Mechanical Equipment to be Deducted

Using the *15 East 30th Street* case as a blueprint, a description of the mechanical equipment included in the Proposed Building includes:

- **First Floor Mezzanine:** Expansion tanks, hot water heat exchangers, cold water heat exchangers, air separators, electric cabinet unit heaters, a pipe fan coil unit, an electric unit heater, water source heat pumps, and exhaust louvers;
- **The 15th Floor:** A storm water detention tank, electrical switchboard, electric unit heaters, water source heat pumps, fan units, a duct heater, an electric humidifier, energy recovery unit (water source heat pump), an emergency generator, an exterior lighting dimmer rack, intake sound attenuators, and a sheet metal plenum behind louver;
- **The 17th Floor:** Boilers, electric unit heaters, water source heat pumps, fan units, a 2-pipe fan coil unit, hot water expansion tanks, air separators, hot water pumps, hot water heat exchangers, an air handler unit, an air intake louver, an exhaust louver, and pipe chase containing the elevator smoke vent and the elevator shaft supply duct passing through the floor;
- **The 18th Floor:** A water-cooled direct expansion air conditioning (DX) unit, cold water pumps; cold and hot water pumps, expansion tanks, air separators, water source heat pumps, electric unit heaters, electric panels, water cooled chillers, fan units, heat exchangers, an exhaust louver, and an intake louver;

Cal. No. 2019-94-A
Premises: 36 West 66th Street, Manhattan
October 16, 2019
Page 4 of 5

- **The 19th Floor:** A fire reserve storage tank, water source heat pumps, energy recovery units (water source heat pumps), fan units, an electric humidifier, electric unit heaters, an intake louver, and an exhaust louver.⁵

Furthermore, in an effort to clarify the extent of all of the mechanical equipment in the Proposed Building to the Board, the Department requested that the Owner condense all of the submitted and approved plans overlaid on one set of plans. The compilation of approved plans and equipment merged into a single drawing is attached as Exhibit C.⁶

The Board also asked the Department to state what type of mechanical equipment is located on other floors of the building—floors containing principle uses where only a portion of the floor was deducted for mechanical equipment. These floors primarily contain principle residential use and the floor space containing mechanical equipment deducted is used for plumbing and gas pipe risers and chases including their enclosures. On the 16th floor, in addition to these omnipresent plumbing and gas pipe risers and chases, are a low-rise EMR, HVAC ducts and associated equipment, air-handler units, fan units, and an A/V control system room.⁷

Landmark West Appellants assert that the Proposed Building does not contain sufficient mechanical equipment to justify whole floor deductions from floor area. However, the above description of proposed mechanical equipment, coupled with the approved plans detailing the meticulous layout of such equipment, tell an entirely different story. Accordingly, the Department acted appropriately in deducting the floors containing mechanical equipment from the Proposed Building's floor area and the Permit was properly issued.

⁵ A copy of the approved plans displaying the sprinkler, plumbing, and mechanical equipment for the referenced floors is attached as Exhibit B.

⁶ It should be noted that this version, submitted by the Owner on October 11, 2019, was not submitted to the Department in the context of plan approval, but rather to help clarify the configuration of mechanical equipment on the relevant floors in the context of this appeal. It should be noted that although the second page contains a DOB plan examination stamp, this is because the Owner used the previously approved plans as a baseline and turned on further CAD layers so that multiple sets of approved drawings all appeared within the same set of drawings. While the Department never approved a single drawing depicting all of the levels of mechanical equipment (mechanical, plumbing, sprinkler, electrical) the Department did review and approve all of the individual components (see Exhibit B).

⁷ A breakdown of each individual floor's mechanical space floor area deduction can be gleaned from the 2019 ZD1 by comparing the "Building Code Gross Floor Area" with the "Residential Zoning Floor Area." The difference between these numbers is indicative of the zoning floor area deductions taken per floor.



Buildings

Cal. No. 2019-94-A

Premises: 36 West 66th Street, Manhattan

October 16, 2019

Page 5 of 5

II. CONCLUSION

Based on the foregoing, the Department respectfully requests that the Board affirm the determination to issue the Permit.

Respectfully submitted,

Michael J. Zoltan

cc: Constadino (Gus) Sirakis, P.E., First Deputy Commissioner
Martin Rebholz, R.A., Borough Commissioner, Manhattan
Scott Pavan, R.A., Borough Commissioner, Development HUB
Mona Sehgal, General Counsel
Felicia R. Miller, Deputy General Counsel
Susan Amron, General Counsel, Department of City Planning
Stuart Klein
(On behalf of Landmark West Appellants)
David Karnovsky, Fried, Frank, Harris, Shriver & Jacobson LLP
(On behalf of West 66th Street Sponsor LLC)