

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

RE: Cal. No. 2019-94-A

Address: 36 West 66th Street, Manhattan  
Block 1118; Lot 45

AFFIDAVIT OF GEORGE M. JANES, AICP

State of New York                    )  
                                                  ) ss:  
County of New York                 )

GEORGE M. JANES, AICP duly sworn, deposes and says:

1. I am an urban planner with 25 years of experience and I am President of George M. Janes & Associates, a planning firm with expertise in zoning, simulation and visualization, and quantitative modeling. The firm serves public, private and non-profit clients, mostly in and around New York City. I work with clients as large as the City of New York and as small as individuals concerned about the impact of zoning or new development on their neighborhoods. Most often, I work with local governments, community boards and community groups, trying to help them understand how new plans or regulations will affect their community. In addition, sometimes I help them shape those plans or regulations to better serve their needs. Before founding the firm in 2008, I spent six years as Executive Director of New York City’s Environmental Simulation Center, a

pioneer in visualization and simulation for planning and development. I have been a member of the American Institute of Certified Planners for the past 21 years.

2. I am very familiar with the project at 36 West 66<sup>th</sup> Street, as I was the author of the initial September 9, 2018 Zoning Challenge and have appeared before your Board in previous hearings of this project.

3. While several issues were discussed in the Zoning Challenge and hearings, the issue now before the Board is focused on if the floor space used for mechanical equipment is entirely exempt from Floor Area, as defined in Section 12-10 of the Zoning Resolution and if the standards exempting floor space from Floor Area follow Department of Building (DOB) practice in the accounting of Floor Area. Since the proposed building is very close to its maximum allowable Floor Area, any floor space that was improperly deducted from Floor Area would push the building out of zoning compliance.

4. This affidavit was prepared using the information on the layout of the mechanical floors provided by Michael Ambrosino, PE, in his affidavit on the project.

**Floor Area in ZR 12-10**

5. "Floor Area" is a defined term in Section 12-10 of the Zoning Resolution (ZR). Floor space used for mechanical equipment is explicitly excluded from Floor Area, in relevant part as: "(8) floor space used for mechanical equipment, . . . "

6. Higher density districts, like those found at West 66<sup>th</sup> Street, have no limit as to the amount of floor space used for mechanical equipment that can be exempted from Floor Area, nor does the ZR provide instructions as to what constitutes mechanical equipment, if circulation space around mechanical equipment counts as Floor Area, or if it

is likewise exempt, or how to draw the lines for items like mechanical rooms. For example, do walls surrounding mechanical rooms count as Floor Area, like they do elsewhere, or are they exempt like the mechanical equipment they contain? Or is the line drawn in the centerline of a wall separating mechanical room from Floor Area? Simply, the ZR provides surprisingly little guidance as to how to count "floor space used for mechanical equipment." It does, however, provide other relevant information about floor space that should count as Floor Area.

7. The ZR definition of Floor Area starts broadly: “ ‘Floor area’ is the sum of the gross areas of the several floors of a #building# or #buildings#, measured from the exterior faces of exterior walls or from the center lines of walls separating two #buildings#.” The ZR continues by listing 15 kinds of floor space that explicitly count as Floor Area. I consider these 15 items as spaces that a reasonable person might assume were exempt from Floor Area, like basements, attics, elevator shafts and stairwells, but which actually do count as Floor Area, according to the ZR. Of particular relevance to the exemption of certain floor space in 36 West 66<sup>th</sup> Street, among these 15 items explicitly included as Floor Area are, “(k) floor space that is or becomes unused or inaccessible within a #building#;” and “(o) any other floor space not specifically excluded.”

8. While floor space used for mechanicals is specifically excluded as Floor Area by the ZR, the ZR neither defines what mechanicals are, nor how the floor space used for mechanicals should be defined and exempted. Instead, the Department of Buildings (DOB) prepared a draft Building Bulletin that directly addresses these issues.

## **Floor Area in the 2013 Draft Building Bulletin**

9. A 2013 draft Building Bulletin (BB) prepared by Thomas Fariello, who at the time was the First Deputy Commissioner, details the DOB's interpretation of these spaces. Indeed, the purpose of the BB specifically states: "This document is to clarify the text to which floor space used for mechanical equipment may be excluded from the sum of a building's zoning floor area as defined by the Zoning Resolution (ZR)."<sup>1</sup>

10. BB Part A(1) lists mechanical items that may be exempted from Floor Area. BB Part A(2) identifies as exempt "[f]loor space directly adjacent to mechanical equipment necessary for the purpose of access and servicing of such equipment (except as otherwise noted in Part C.)" The bulletin then goes on to explain that this adjacent space is either equal to the size of the equipment to which it provides access or the manufacturer's recommendation. In addition, the bulletin clarifies that there is no access space for several exempt mechanical items, such as ducts, chutes, flues, and chases, which the DOB had determined not to require circulation or access space.

11. The BB Part C exception to adjacent space referenced in Part A(2) relates to incidental, non-occupied floor space in rooms or floors occupying such equipment and describes a 90% threshold. If at least 90% of the floor space is occupied by mechanical equipment and circulation space, the remaining floor space (up to 10%) may also be deducted.

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<sup>1</sup> This BB is a draft and, to the best of my knowledge, was never formally issued. Nevertheless, it details DOB practice regarding these spaces in a formal manner. I do not know why this BB has been left as a draft and I do not believe there is a different, formally issued BB that addresses these issues. Consequently, since the Zoning Resolution is missing so much information about mechanicals, the information in the BB provides standards against which we can evaluate this building. It is also my understanding that the BB reflects Department practice and the ideas therein are essential to consistent enforcement.

12. Finally, BB Part C allows stairs and elevators that serve floors with floor space that is at least 90% mechanical equipment and circulation/access space to be excluded Floor Area, pursuant to BSA Cal. No. 315-08-A.

**The Building Deducts Floor Space that Counts as Floor Area**

13. As Mr. Ambrosino makes clear in his affidavit, the mechanical floors for 36 West 66<sup>th</sup> Street have much larger than required access and service areas around the planned mechanical equipment. He finds that mechanical equipment and related service areas range between 18% and 28% of the floor space in the mechanical floors, averaging just 23%. His findings show a vast amount of unused floor space on these floors and that the mechanical equipment and service areas are nowhere near the 90% threshold found in the BB.

14. ZR 12-10 expressly states that floor space that is unused (k), and any other floor space not specifically excluded (o), cannot be excluded from Floor Area. Consequently, this excessive floor space must count as Floor Area.

15. Further, I note that these “mechanical” floors include elements that are expressly *not* for mechanical purposes and should also count as Floor Area. These include the FDNY Forward Staging Area Post & Refuge Area on the 19<sup>th</sup> floor (M-222), the FDNY Fire Search and Evacuation Post & Refuge Area on the 18<sup>th</sup> floor (M-221), and the FDNY Refuge Area and a room marked Storage on the 17<sup>th</sup> floor (M-220).

16. Outside of the mechanical floors, the building plans properly show that the FDNY access and refuge areas count as Floor Area. However, they should also count as


Floor Area on mechanical floors as well, since well over 10% of the floor space is “incidental, non-occupied” floor space.

17. With so much floor space on these floors counting as Floor Area, the stairs and the elevators that serve these floors can also no longer be excluded from Floor Area.


**The Building is Too Large for its Zoning District**

18. The building is proposed to be one square foot less than the maximum allowable floor area for the C4-7 portion of zoning lot, which means that just a single improper deduction of virtually any size will push the building out of compliance with the maximum allowable FAR for the zoning district and make the building too large for its district.

19. As has already been shown, the building takes thousands of square feet of improper deductions from Floor Area and is much larger than the maximum of 12 FAR allowed in the C4-7 zoning district, as described in ZR 35-31.

  
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GEORGE M. JANES, AICP

Sworn to before me this November 6, 2019

  
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NOTARY PUBLIC

