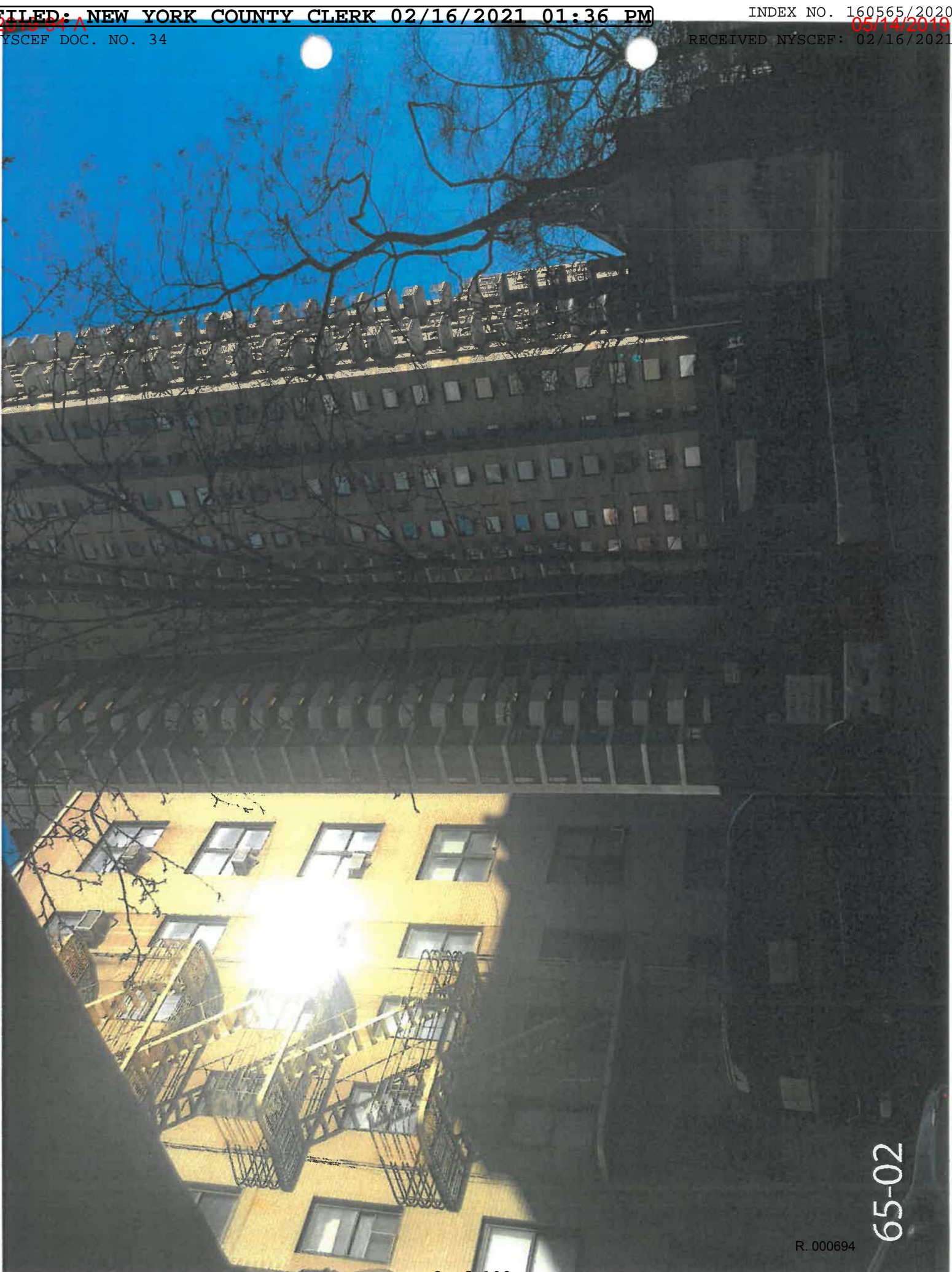


## 8 - Photographs

# Views - West 65th Street

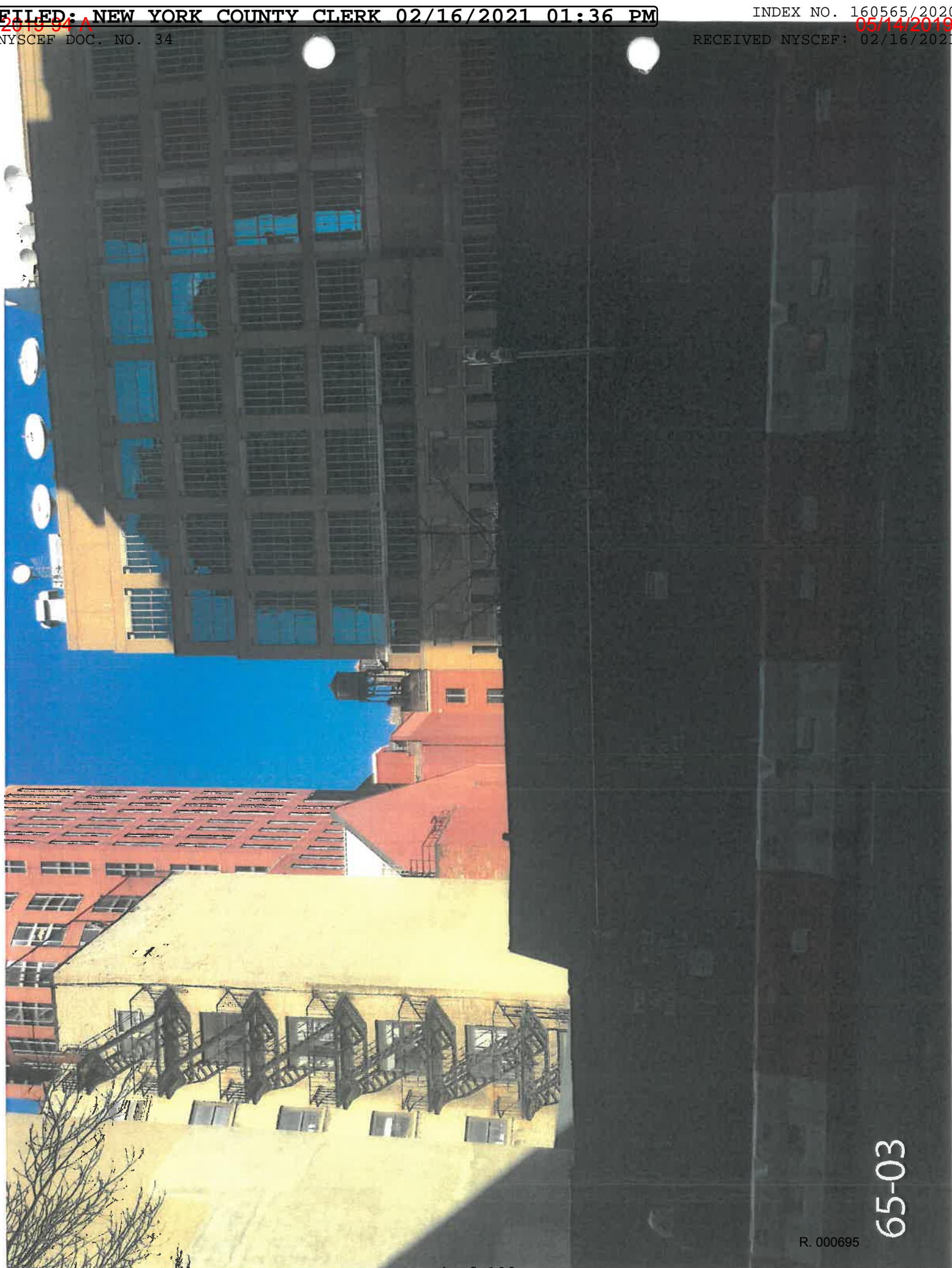
05/14/2019



65-02

R.000694





R. 000695

65-03



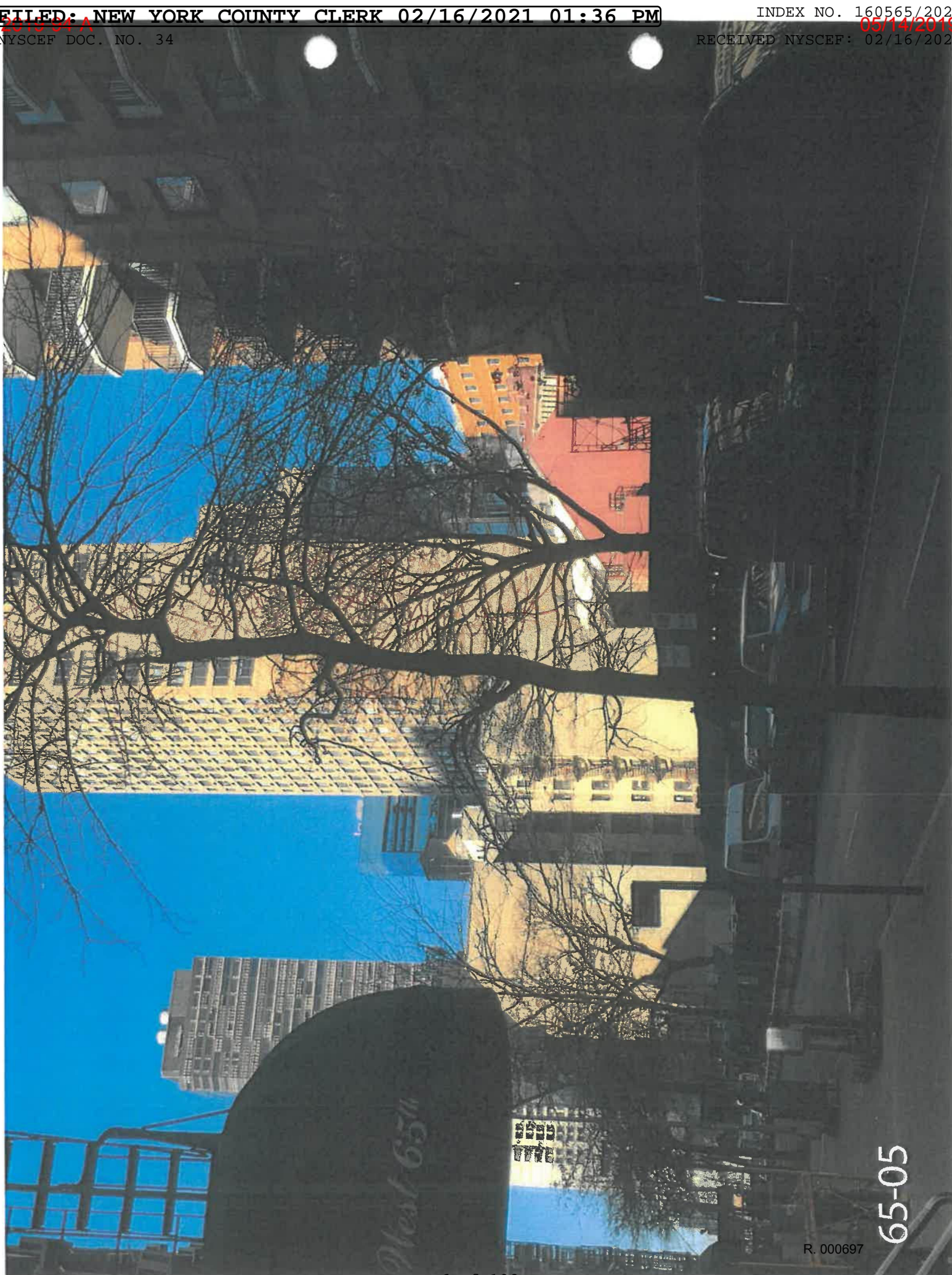


65-04

R. 000696



05/14/2019



R. 000697

65-05

**Copy of CAPTION**

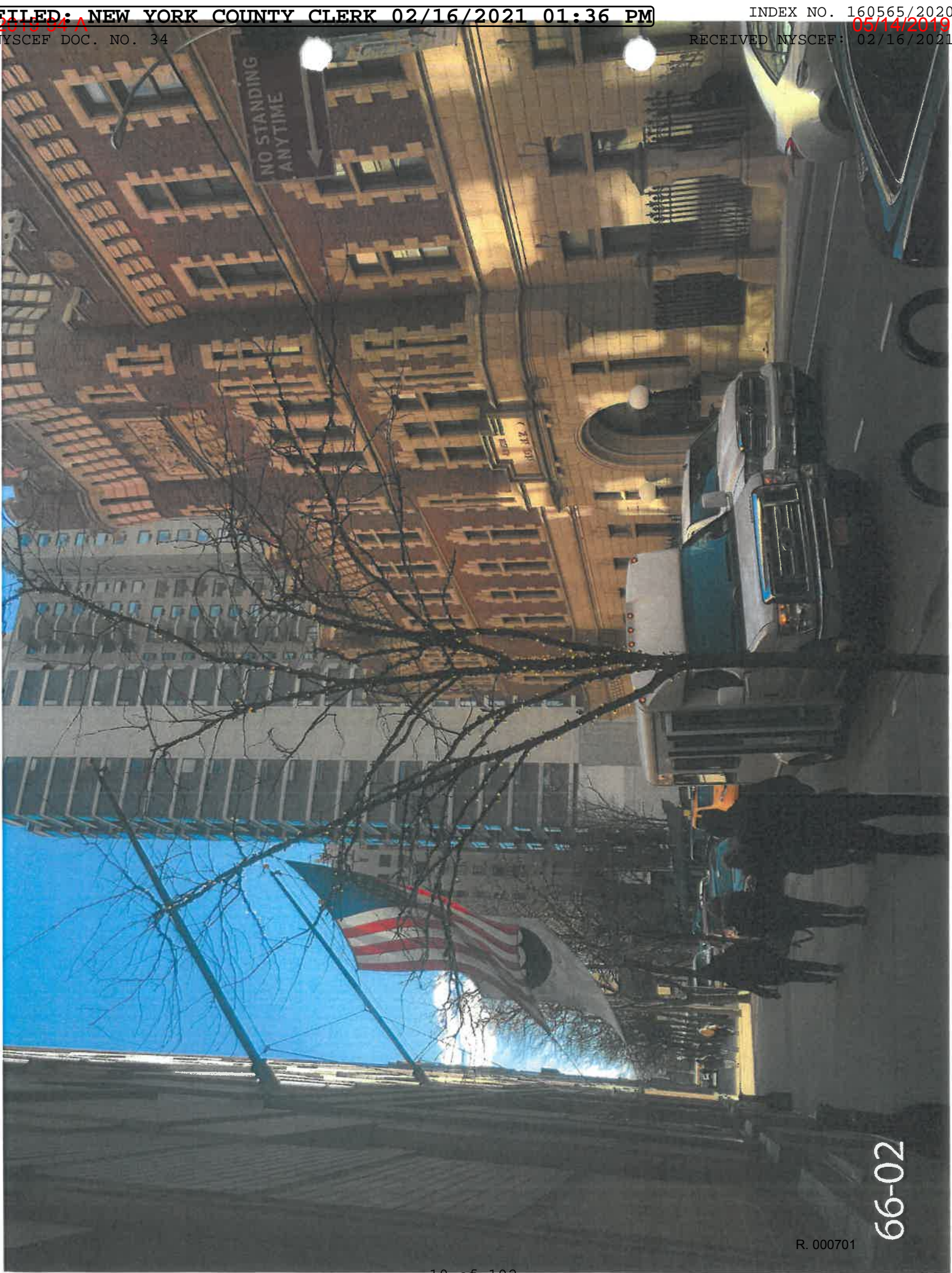


Image by Sean Khorsandi  
for **LANDMARK WEST!**  
**45 West 67th Street**  
**New York NY 10023**

Image taken 12/18/2018  
ref: 36 West 66th Street aka  
50 West 66th Street

# Views - West 66th Street

05/14/2019

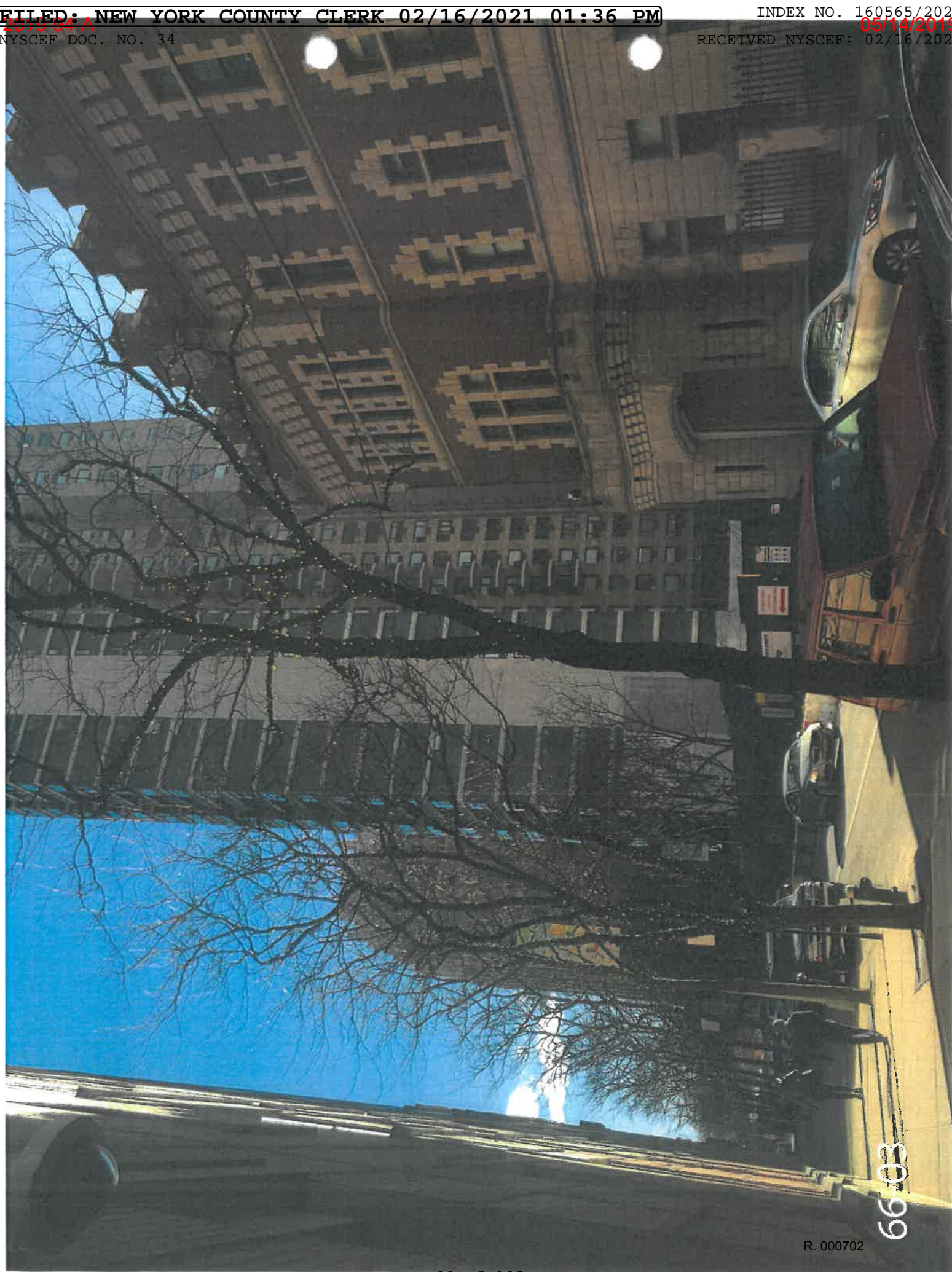


66-02

R. 000701



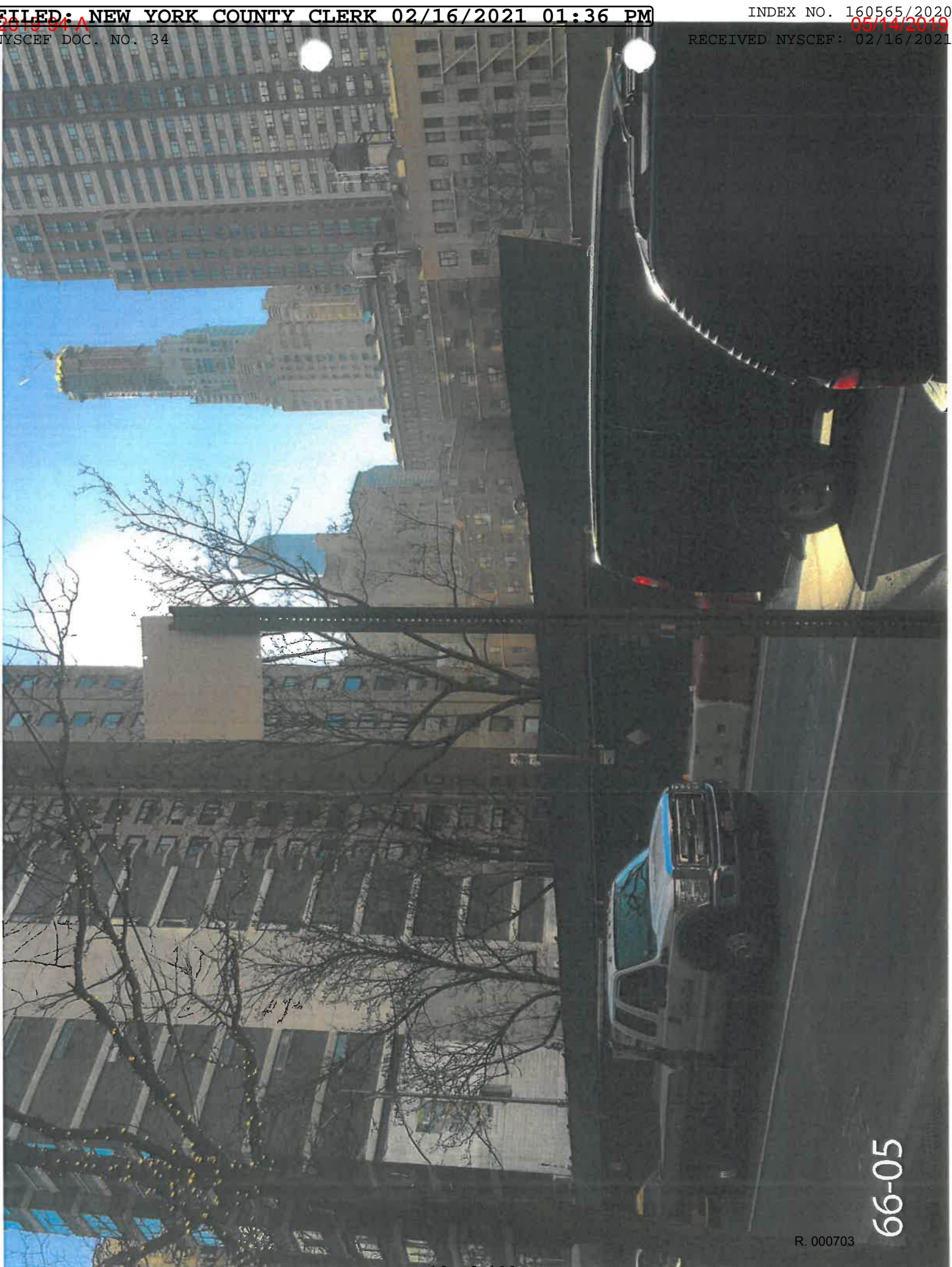
05/14/2019



6603

R. 000702

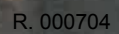




66-05

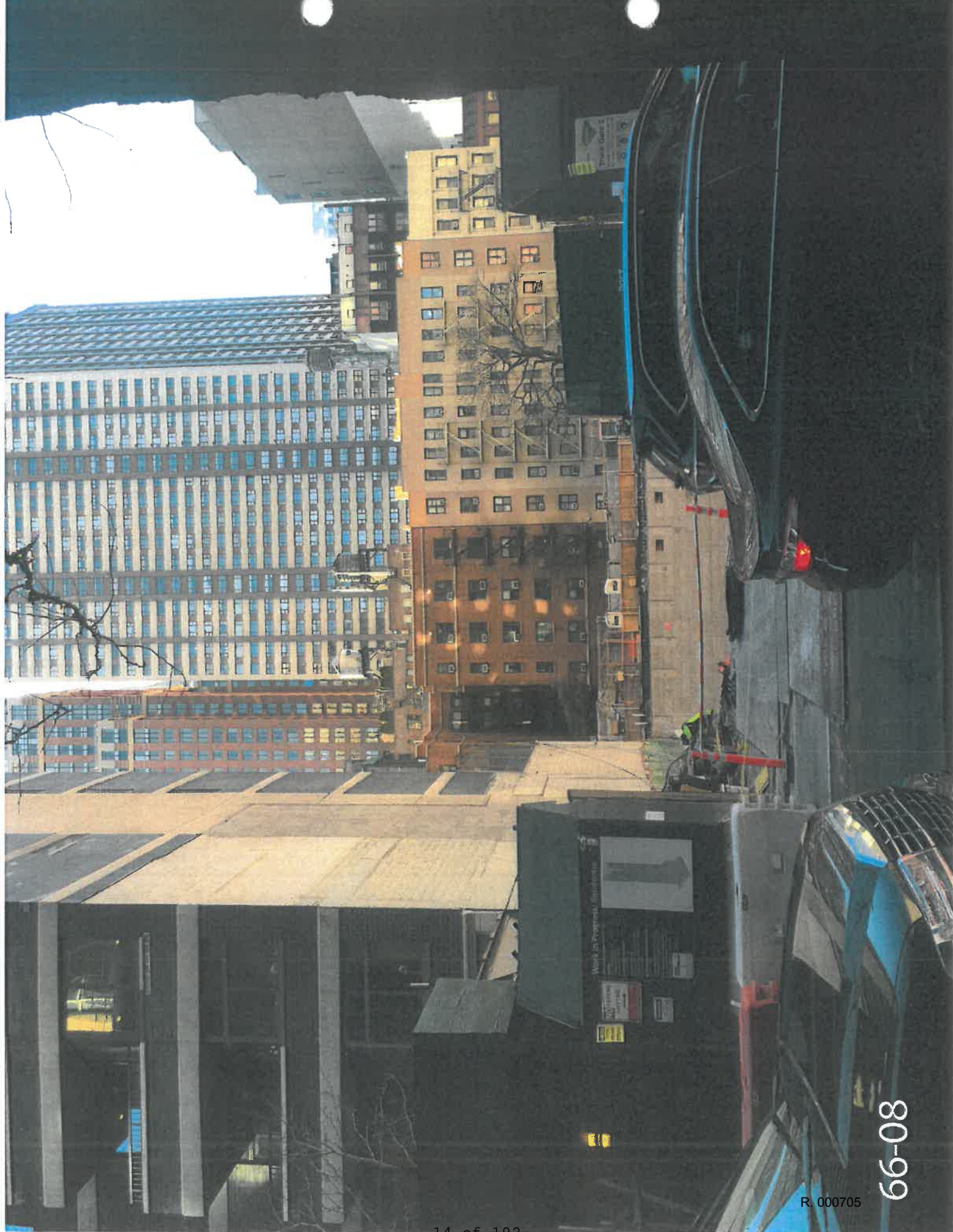
R. 000703





90-99

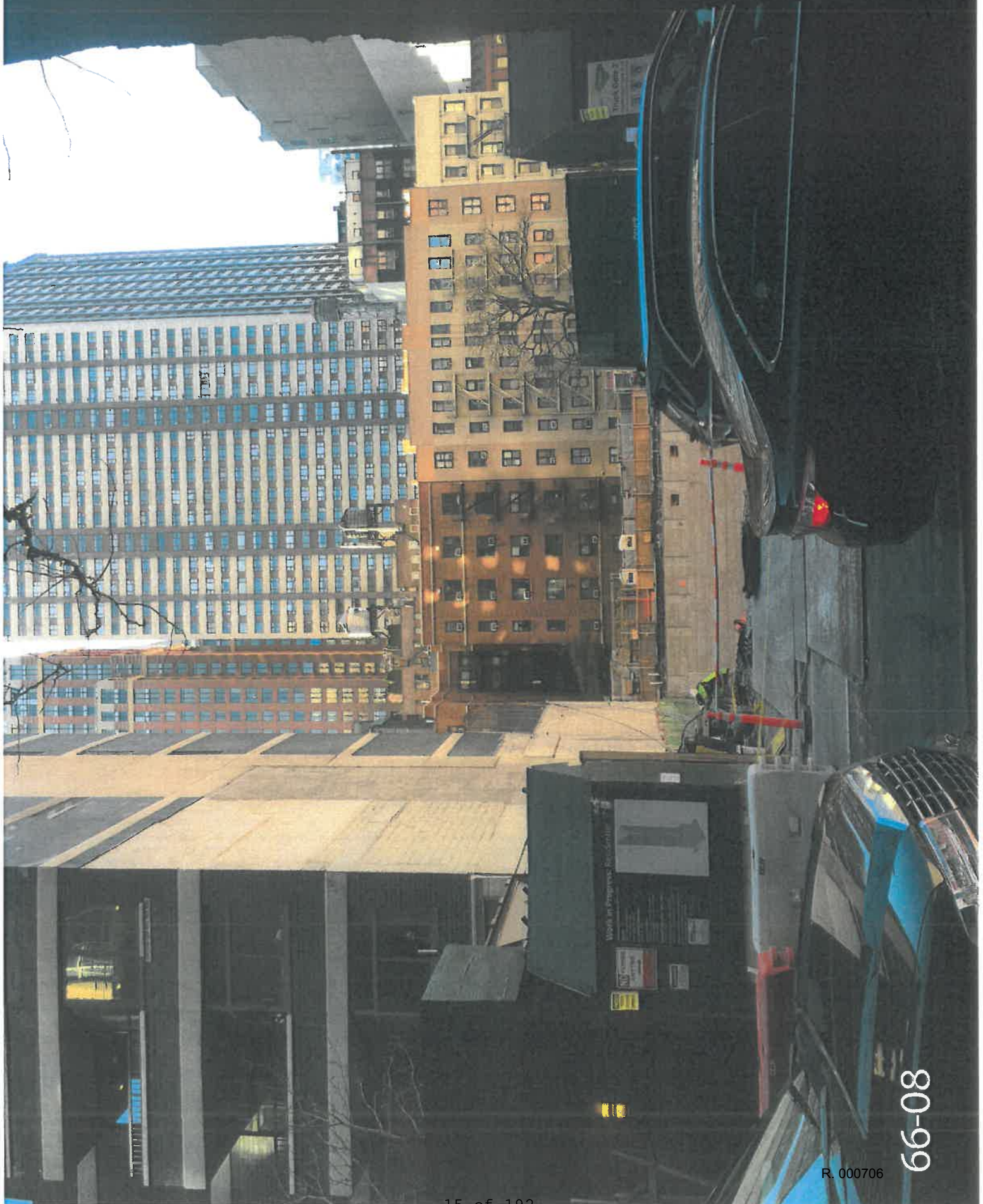




66-08

R.000705

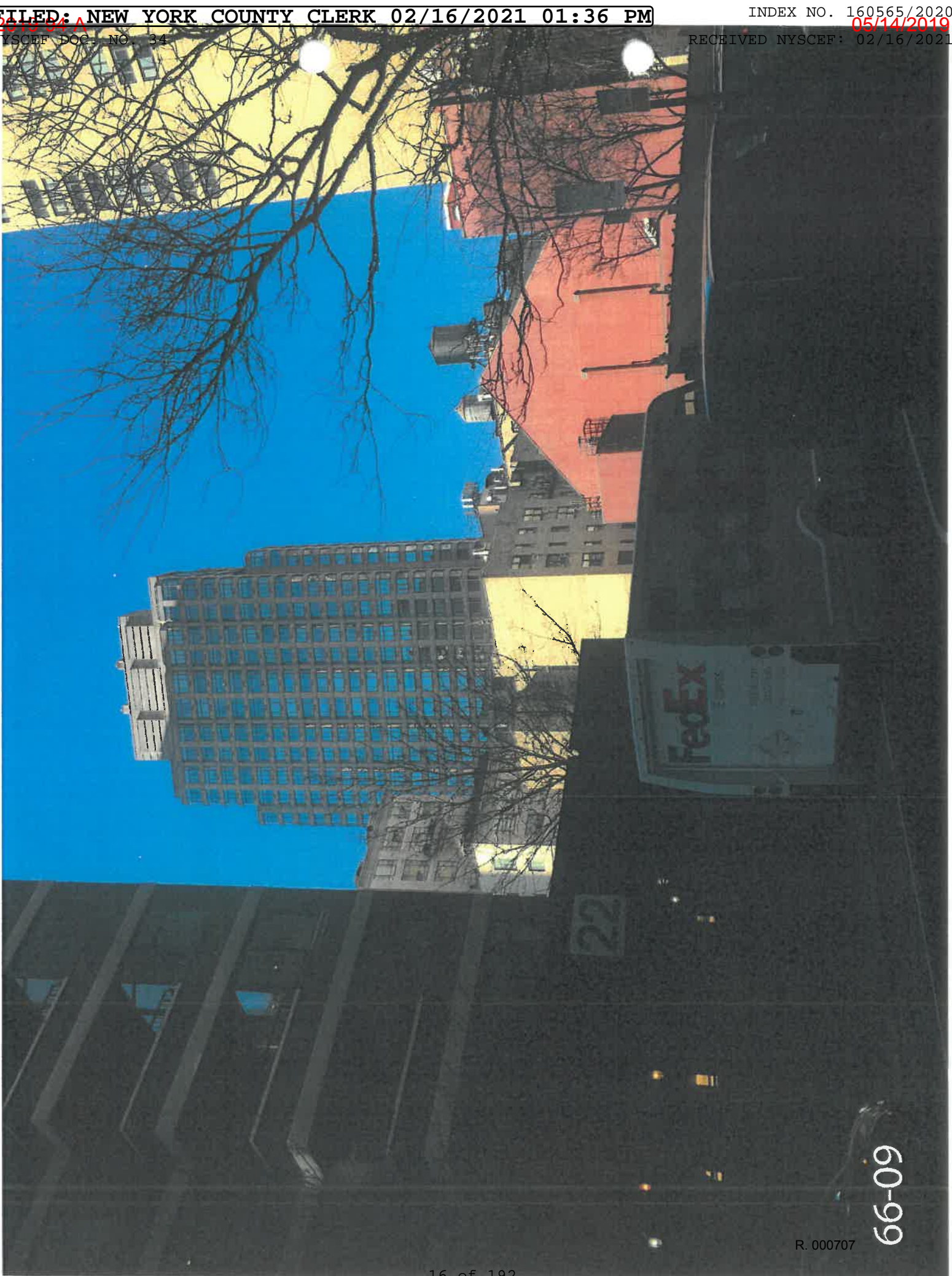




66-08

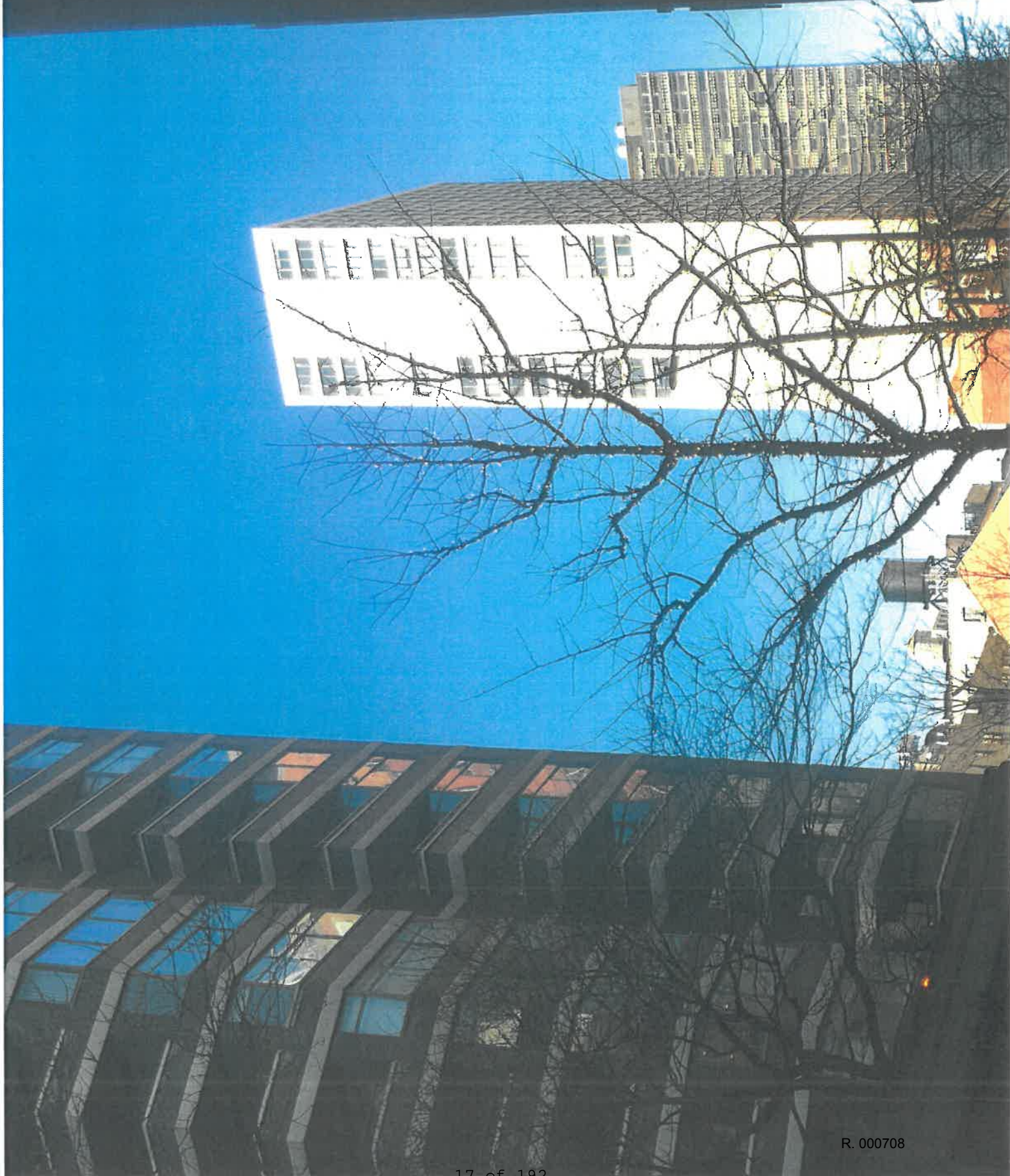
R. 000706







05/14/2019



R. 000708



05/14/2019

01-99



R. 000709

Image by Sean Khorsandi  
for **LANDMARK WEST!**  
**45 West 67th Street**  
**New York NY 10023**

Image taken 12/18/2018  
ref: 36 West 66th Street aka  
50 West 66th Street



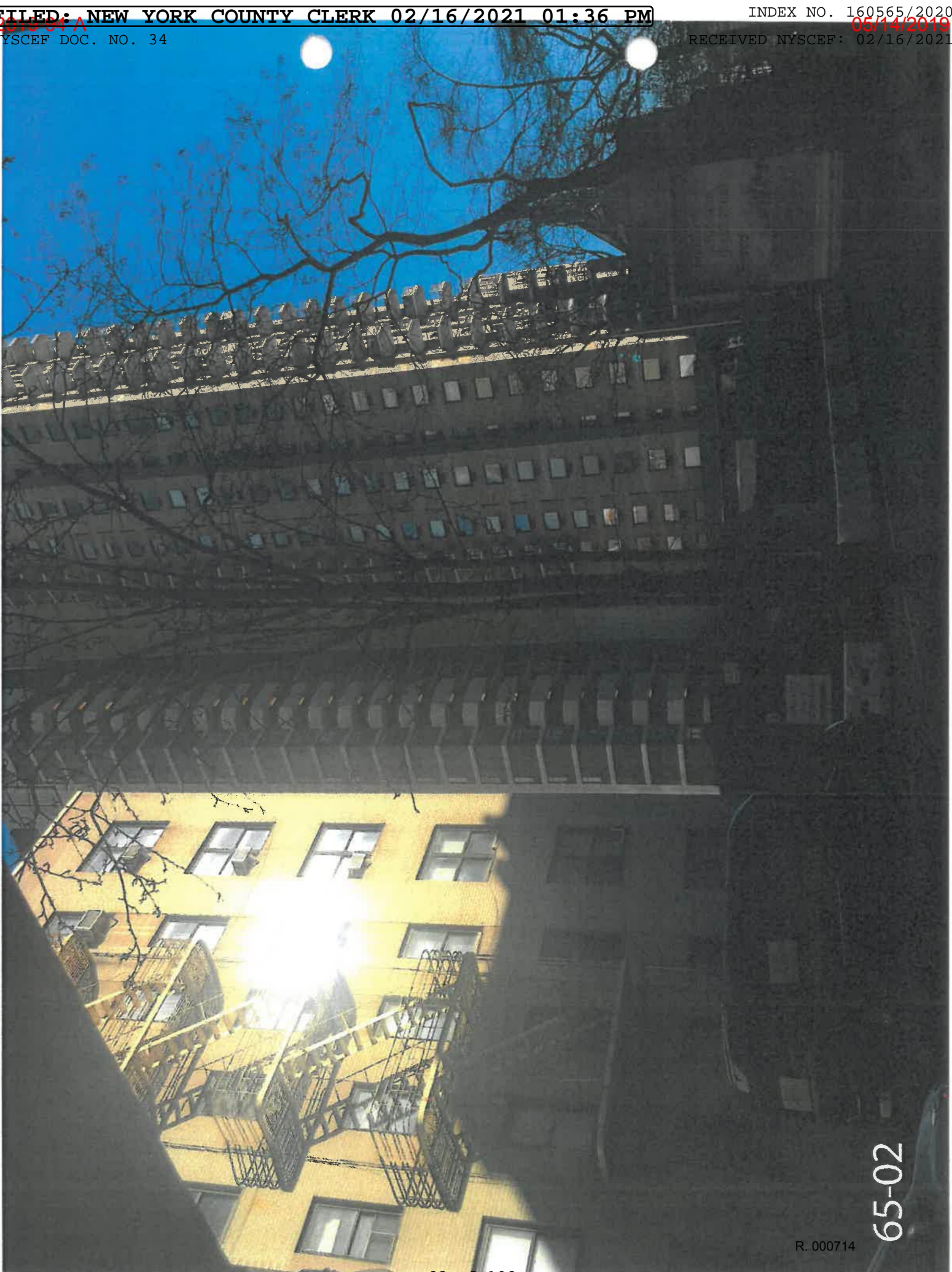


## 8 - Photographs



# Views - West 65th Street

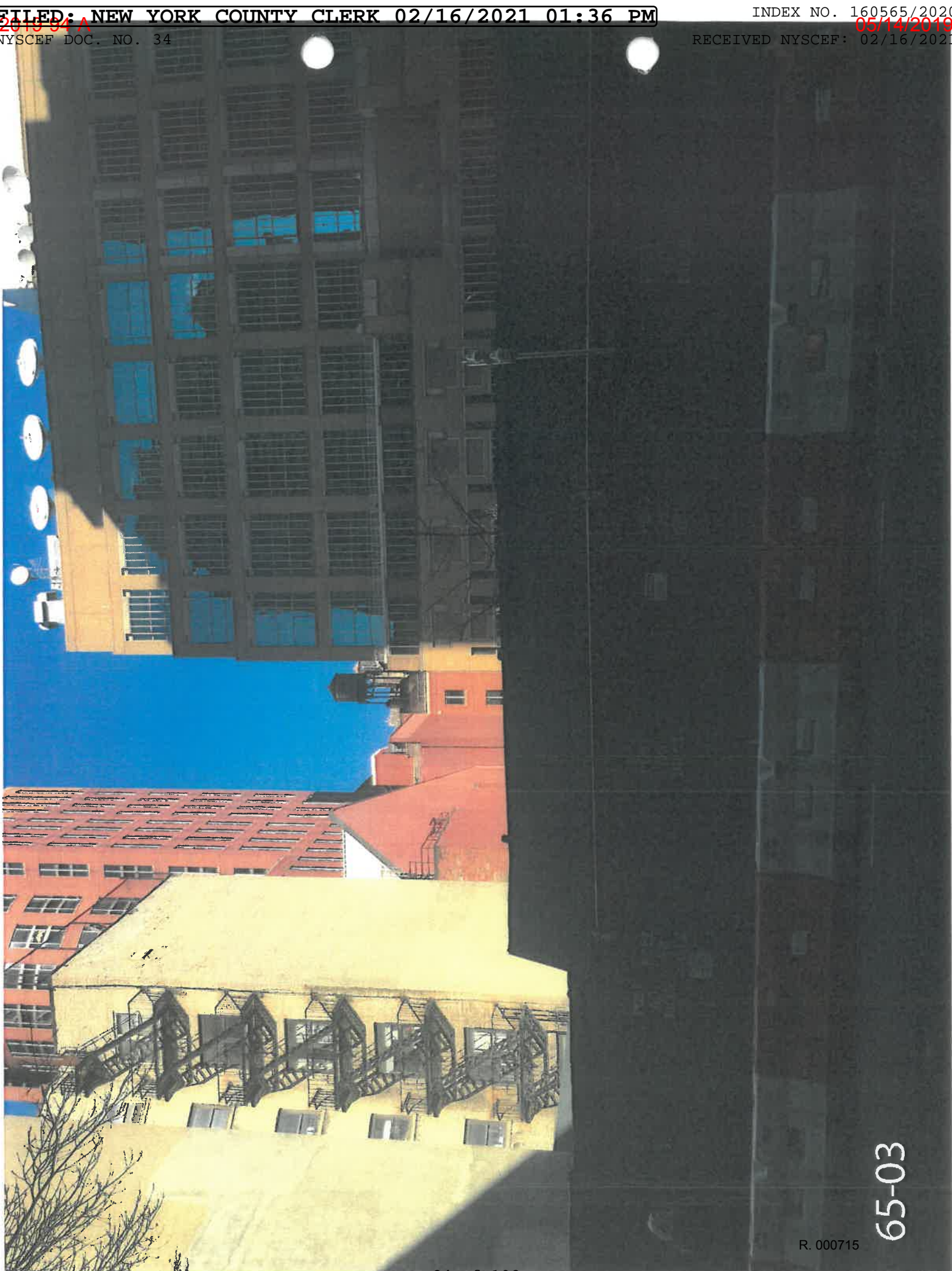
05/14/2019



65-02

R.000714

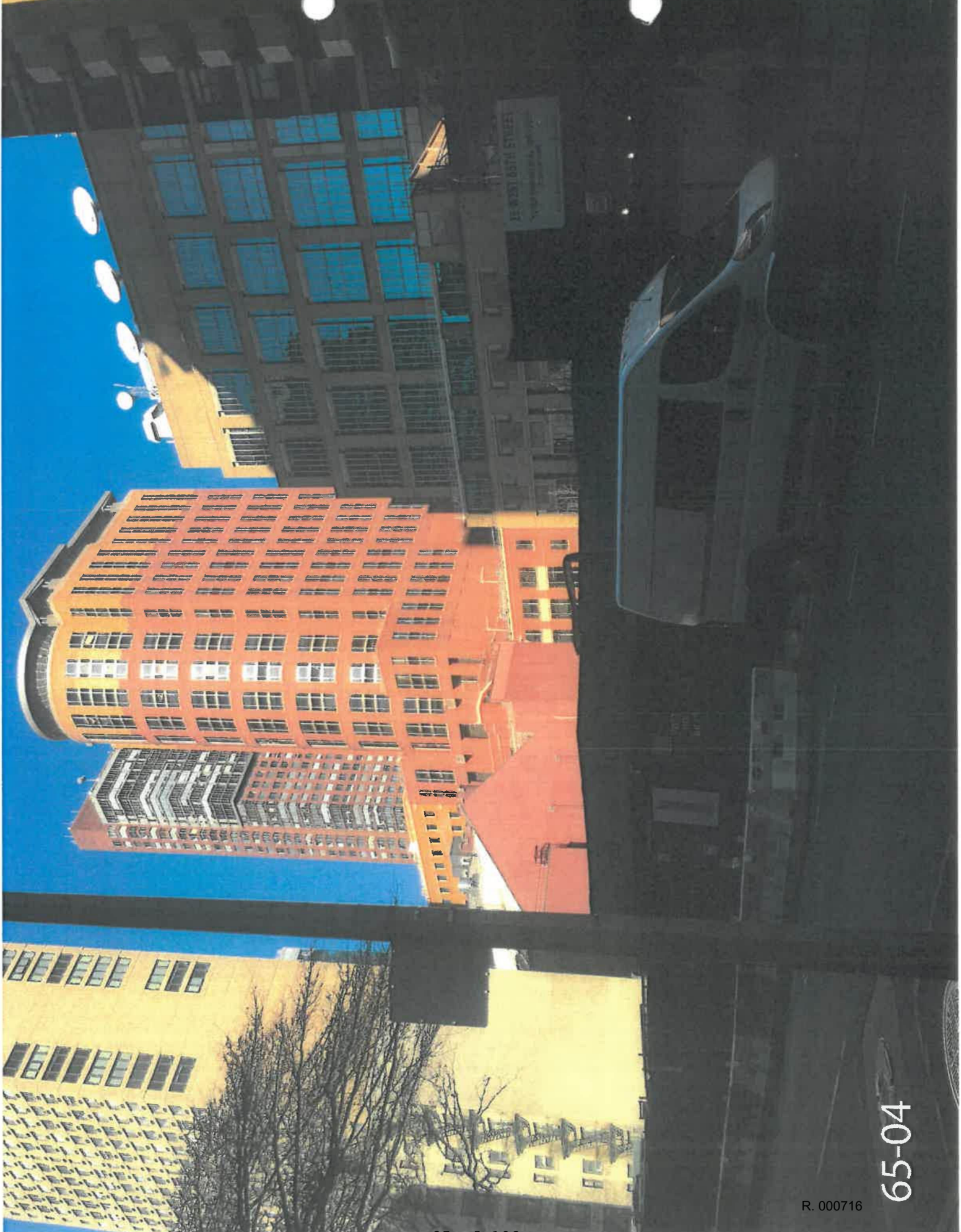




65-03

R. 000715



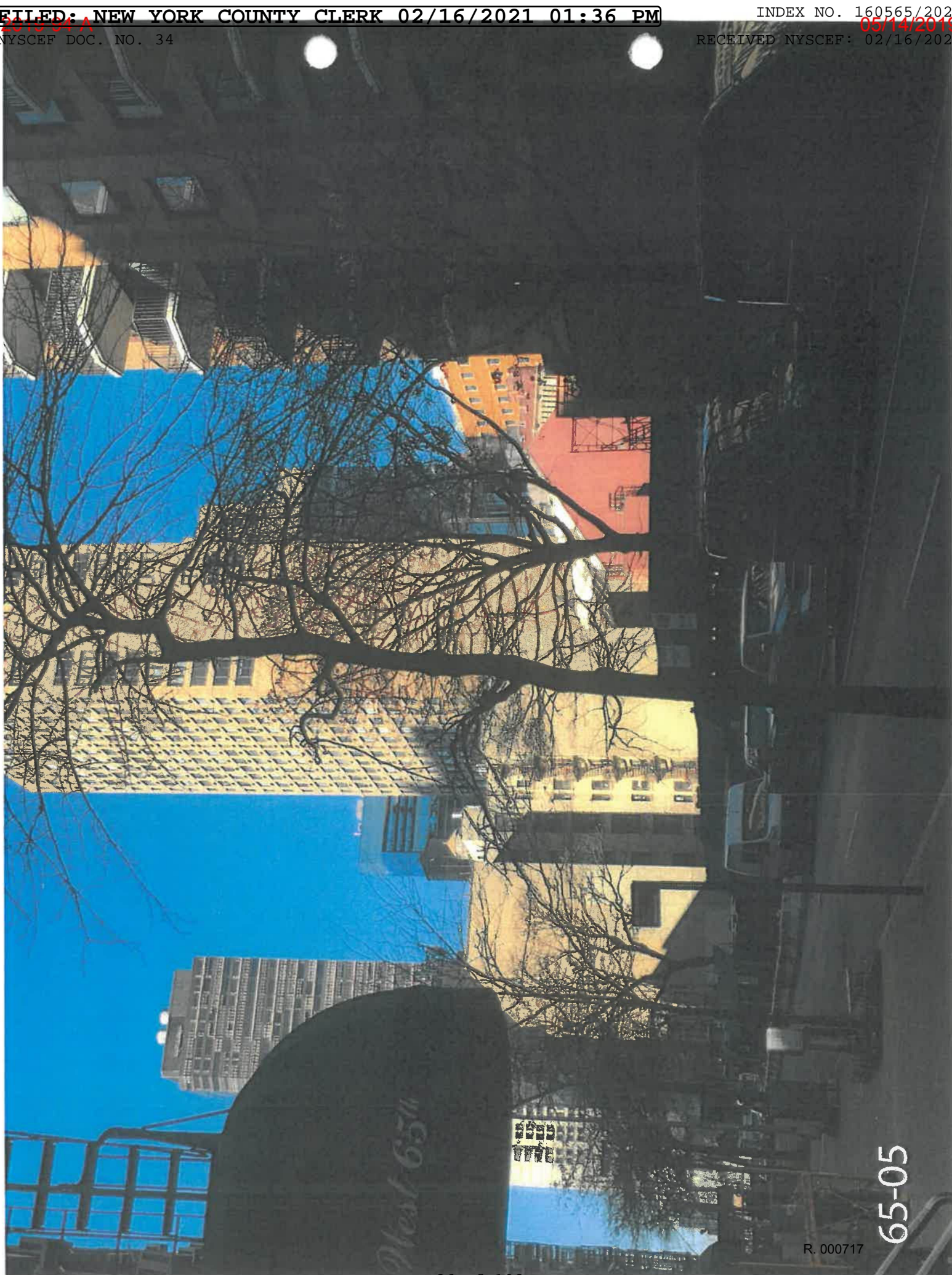


65-04

R. 000716



05/14/2019



R. 000717

65-05

**Copy of CAPTION**

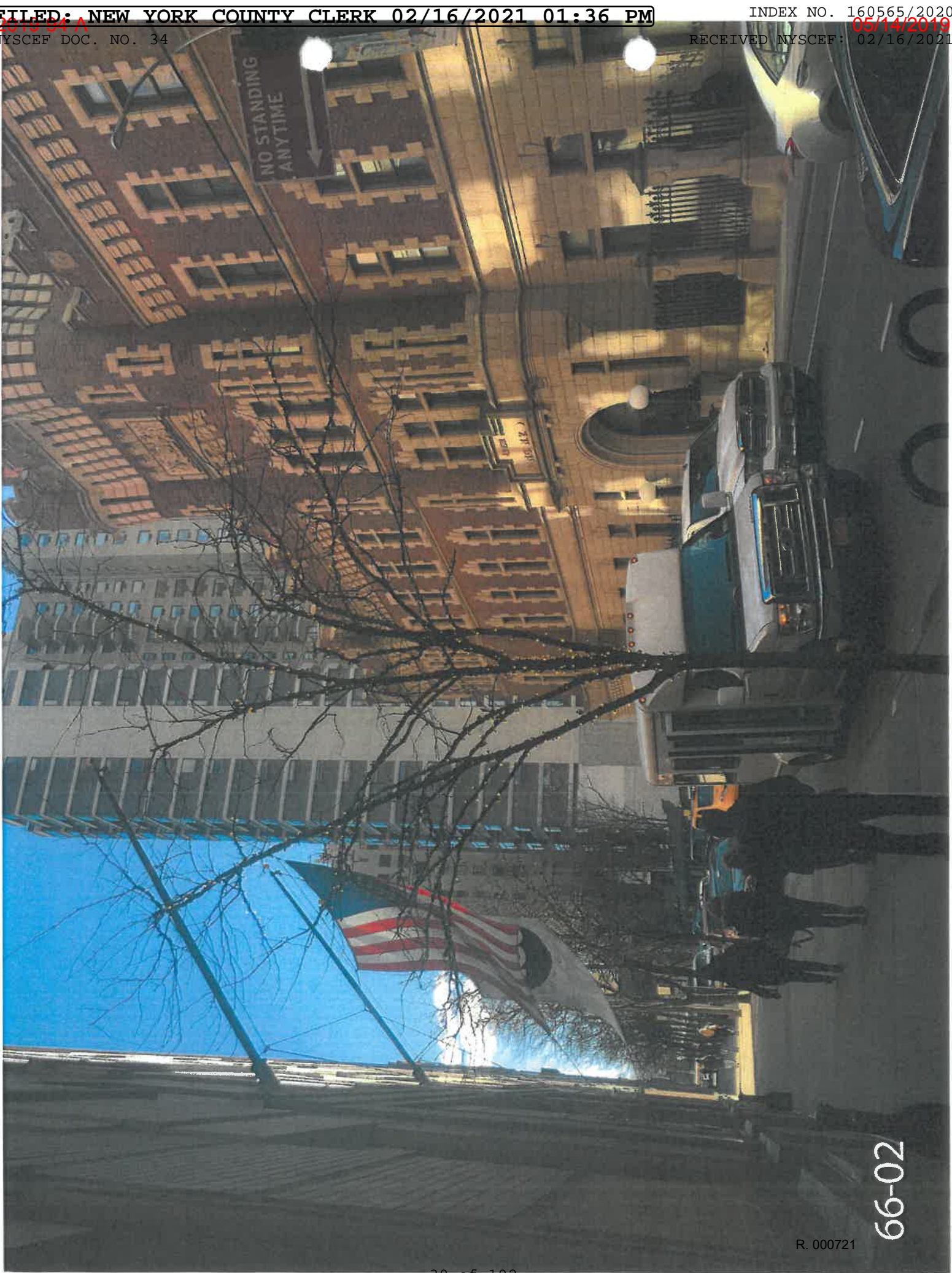


Image by Sean Khorsandi  
for **LANDMARK WEST!**  
**45 West 67th Street**  
**New York NY 10023**

Image taken 12/18/2018  
ref: 36 West 66th Street aka  
50 West 66th Street

# Views - West 66th Street



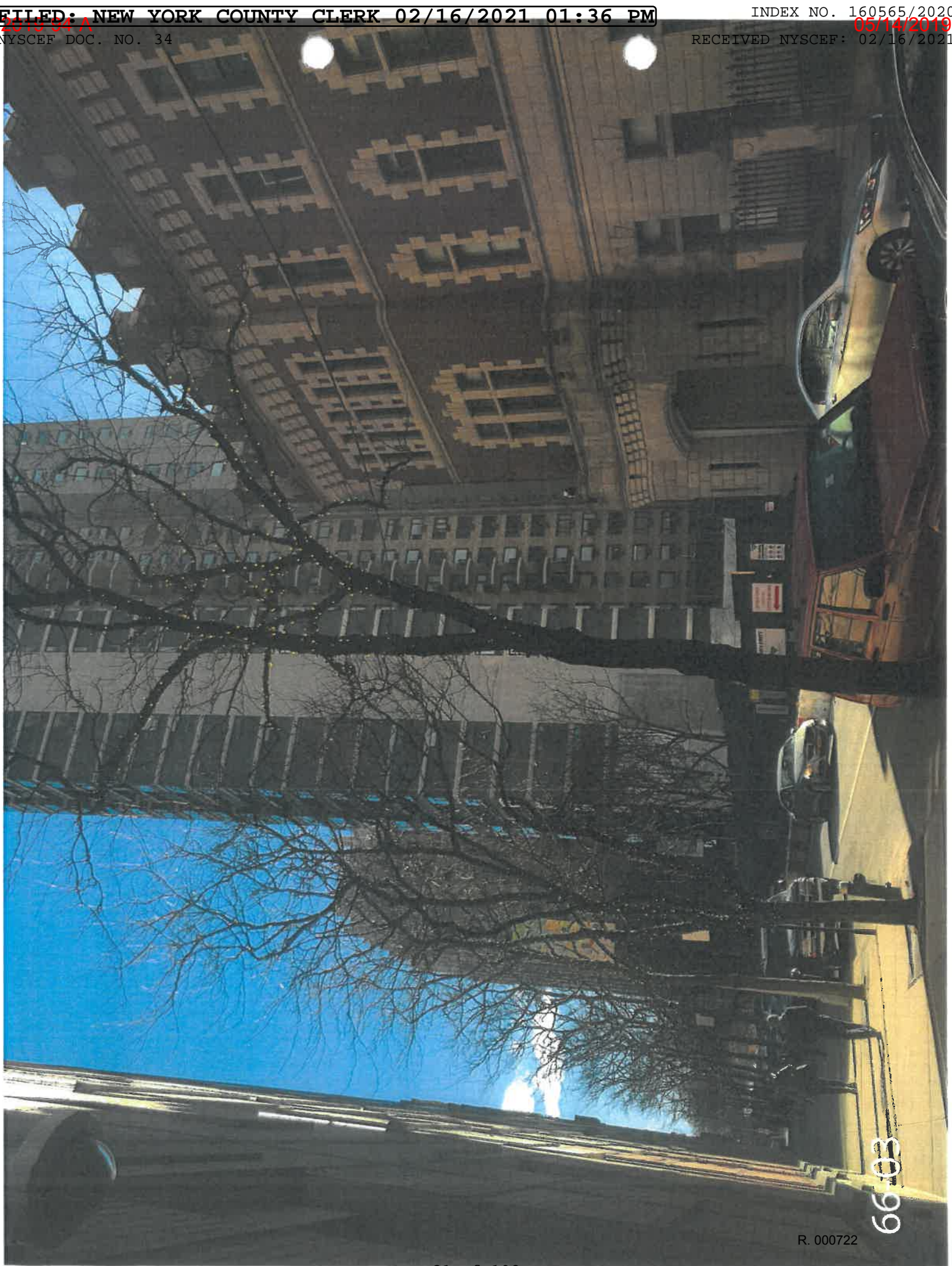


66-02

R. 000721



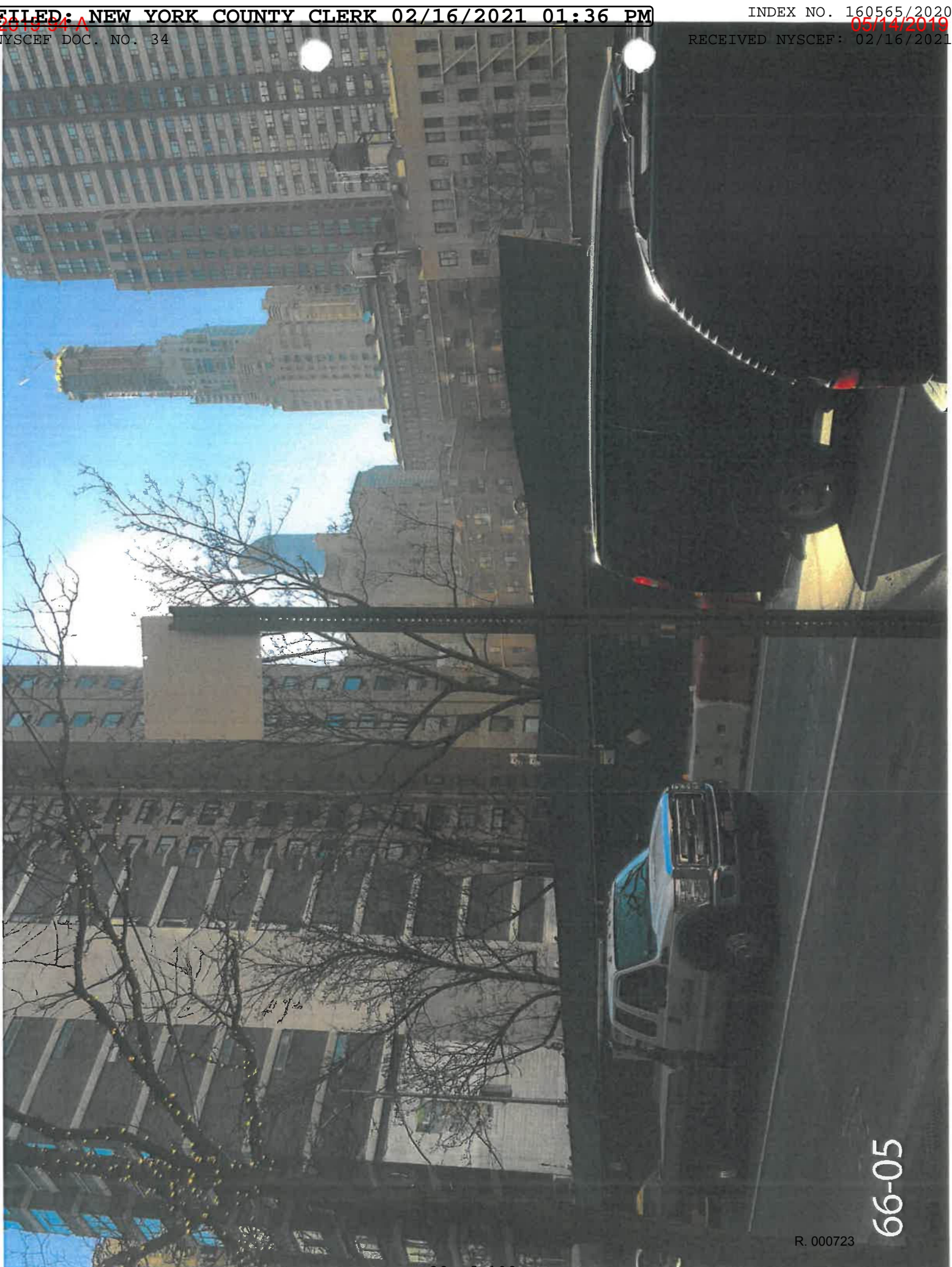
05/14/2019



6603

R. 000722

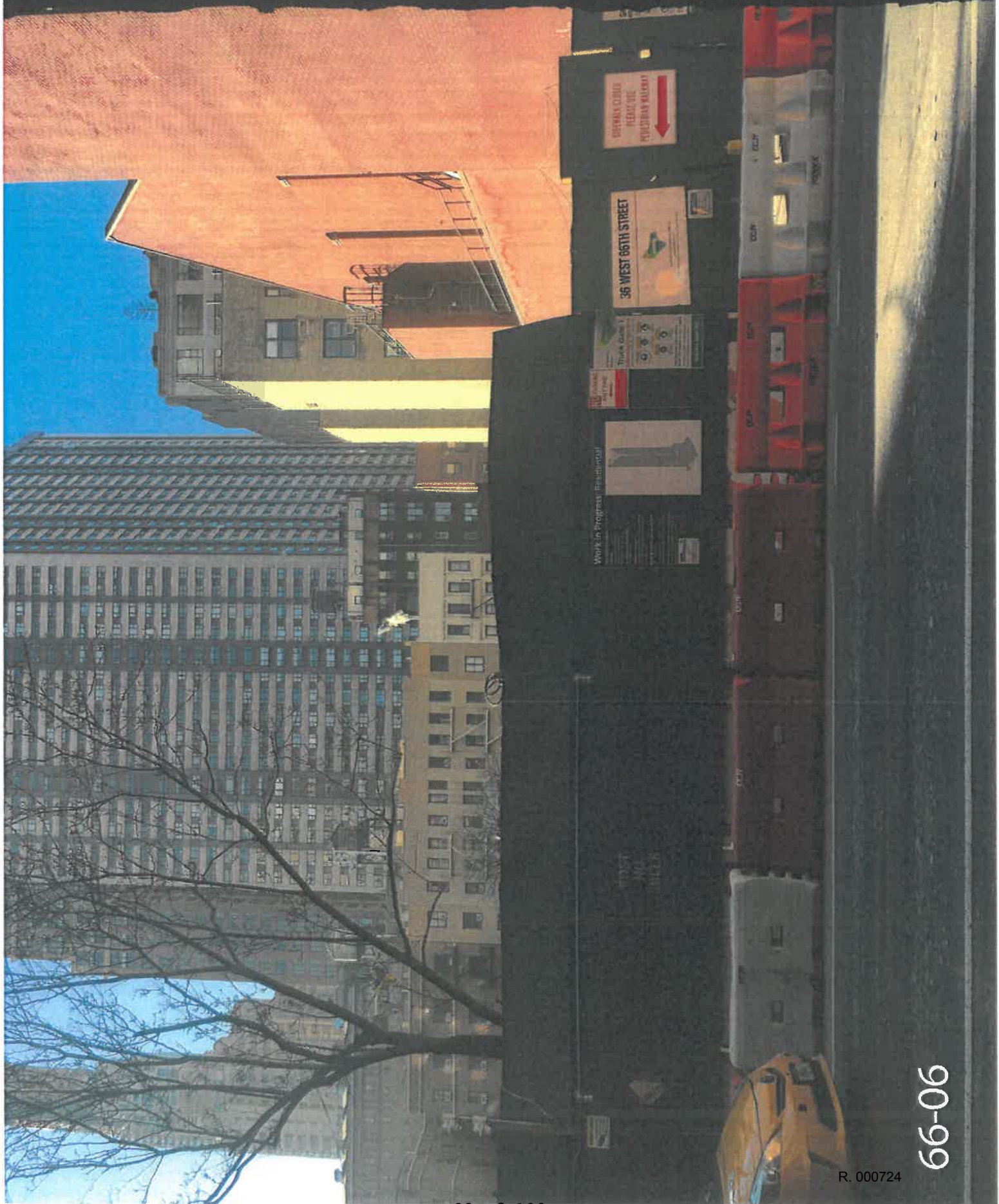




66-05

R. 000723

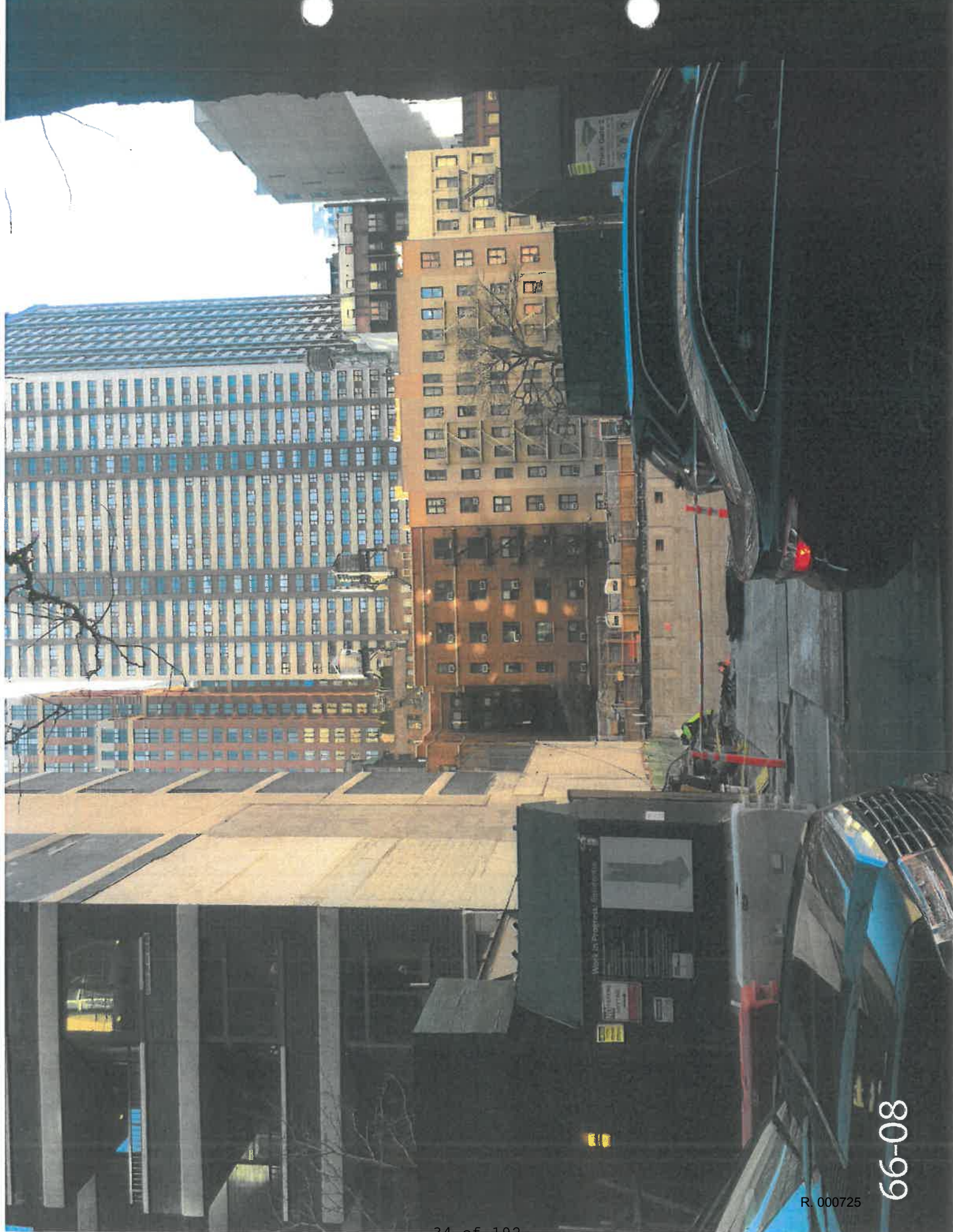




66-06

R. 000724

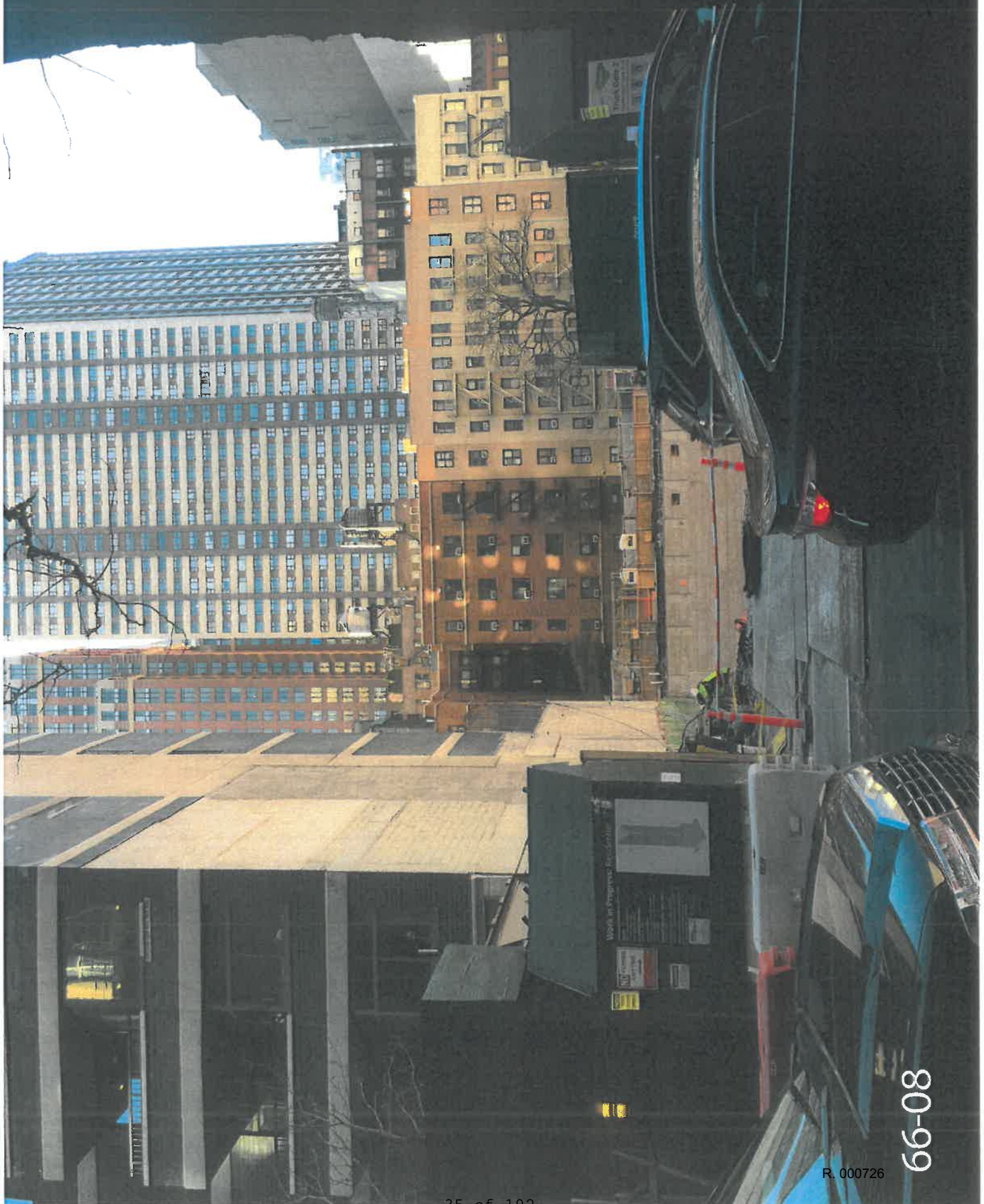




66-08

R. 000725

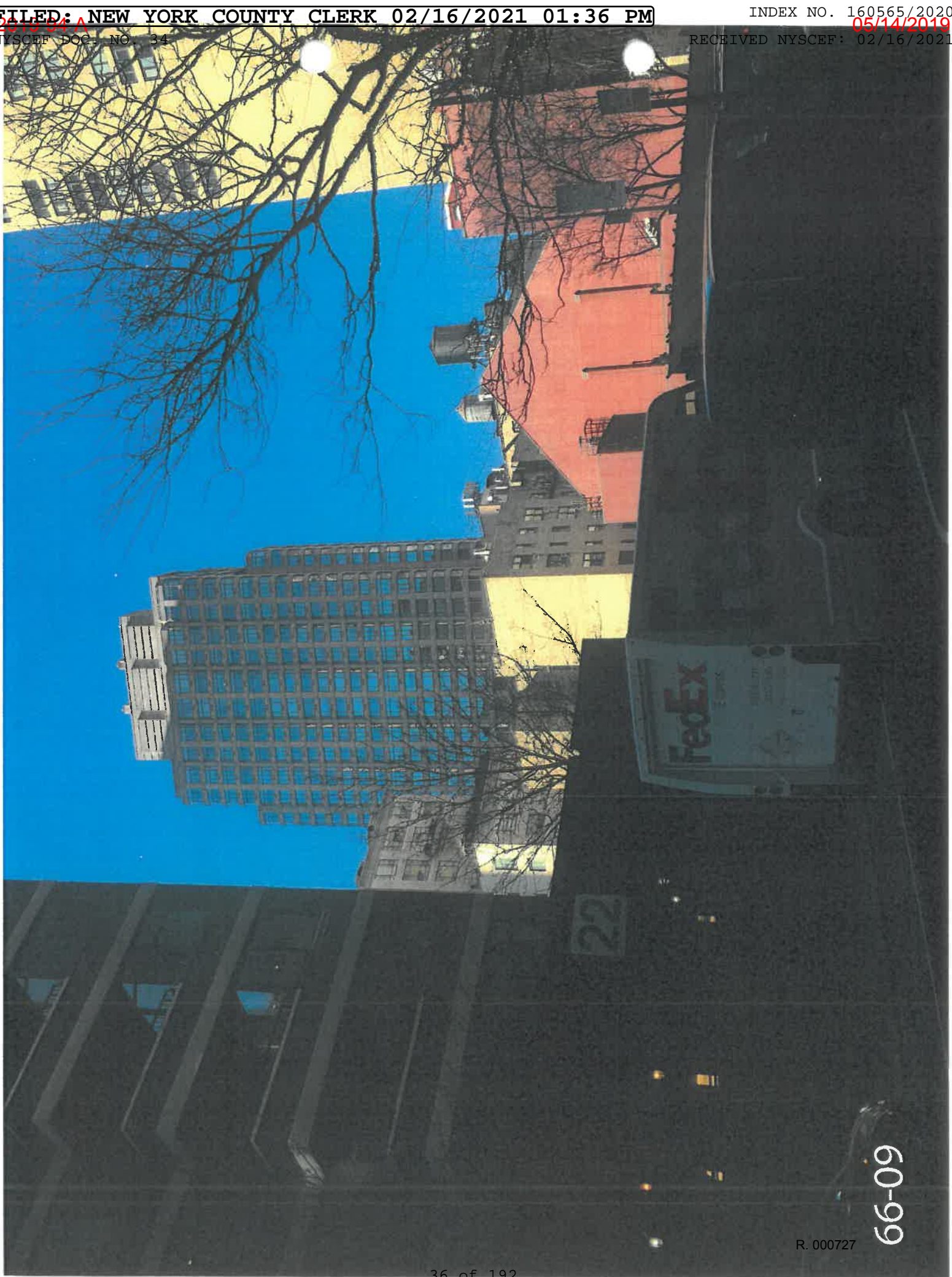




66-08

R. 000726



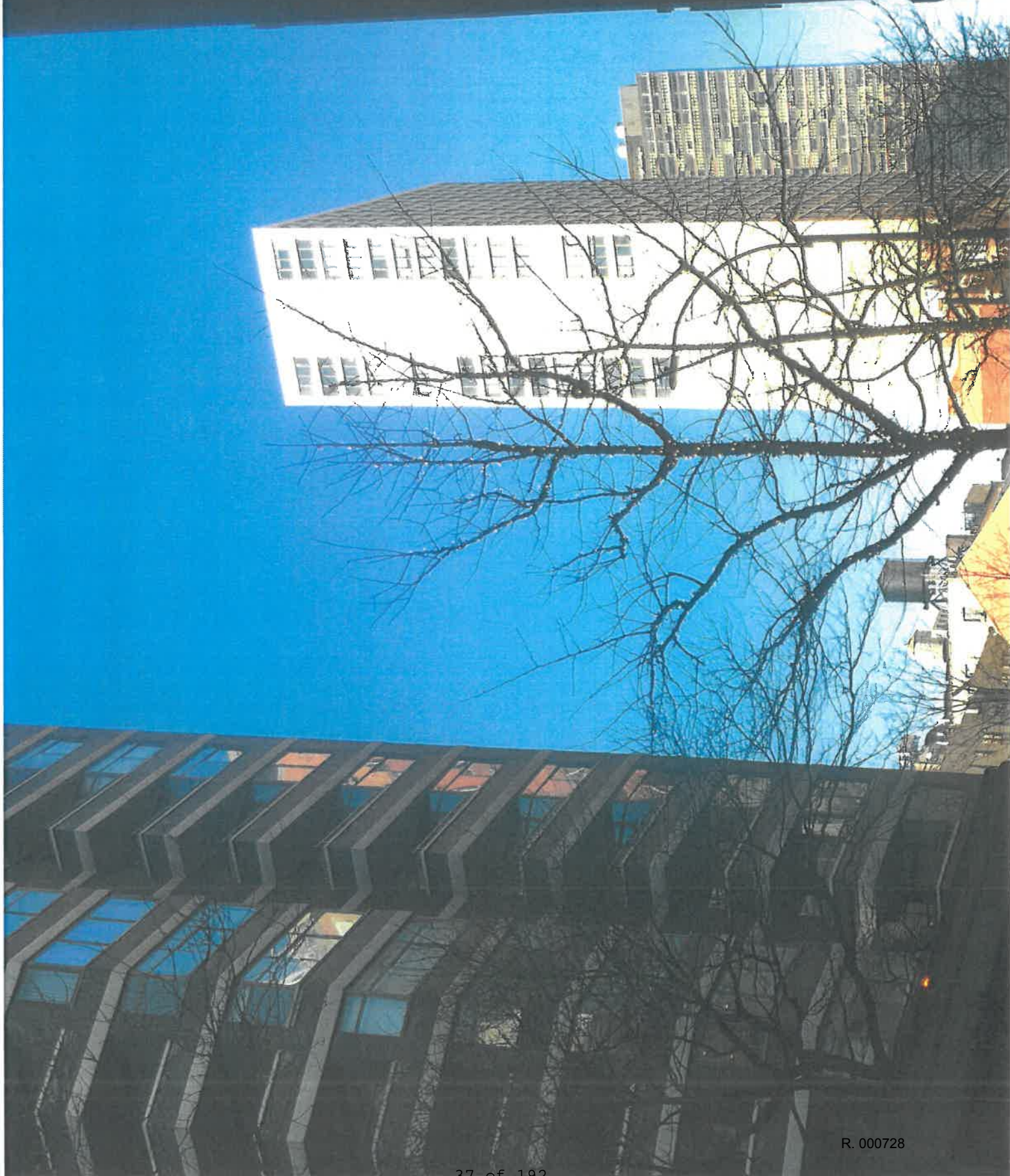


66-09

R. 000727



05/14/2019



R. 000728



01-99



Image by Sean Khorsandi  
for **LANDMARK WEST!**  
**45 West 67th Street**  
**New York NY 10023**

Image taken 12/18/2018  
ref: 36 West 66th Street aka  
50 West 66th Street







Rick D. Chandler, P.E.  
Commissioner

January 14, 2019

Martin Rebholz  
Borough Commissioner  
Manhattan Office

280 Broadway, 3<sup>rd</sup> Fl.  
New York, NY 10007  
x@buildings.nyc.gov

+1 212 393 2615 tel  
+1 646 500 6170 fax

Luigi Russo (Applicant)  
SLCE Architects, LLP  
1359 Broadway  
New York, NY 10018

David Rothstein (Owner)  
West 66<sup>th</sup> Sponsor LLC  
805 Third Avenue  
New York, NY 10022

**Re: INTENT TO REVOKE APPROVAL  
36 West 66<sup>th</sup> Street, New York, NY 10023  
Block: 1118, Lot 45  
NB Job Application Number: 121190200 (the "Proposed Building")**

To Whom It May Concern,

The Department of Buildings (the "Department") intends to revoke the approval of construction documents in connection with the NB job application referenced above, pursuant to Section 28-104.2.10 of the Administrative Code of the City of New York ("AC"), within fifteen calendar days of the posting of this letter by mail unless sufficient information is presented to the Department to demonstrate that the approval should not be revoked. Specifically, the Department intends to revoke the approval of the Zoning Diagram ("ZD1") approved and posted on the Department's website on July 26, 2018 (the "Subject ZD1"). The Subject ZD1 is in connection with Post Approval Amendments ("PAA") 15 through 18 for the Proposed Building which have not been approved.

Pursuant to AC § 28-104.2.10, the Department may revoke approval of construction documents for failure to comply with the provisions of the AC, other applicable laws or rules, or whenever a false statement or misrepresentation of material fact in the submittal documents upon the basis of which the approval was issued, or whenever any approval or permit has been issued in error.

The Department intends to revoke the approval of the Subject ZD1 for the following reasons set forth in the attached objections. The proposed mechanical space on the 18th floor of the Proposed Building does not meet the definition of "accessory use" of § 12-10 of the New York City Zoning Resolution. Specifically, the mechanical space with a floor-to-floor height of approximately 160 feet is not customarily found in connection with residential uses.





Accordingly, the ZRD2 issued on November 19, 2018, in response to a public challenge pursuant to 1 RCNY § 101-15, of the Subject ZD1, is hereby rescinded. An approved ZD1 shall be posted at the time of the approval of the associated PAA.

In order to prevent revocation of the approval upon the expiration of the fifteen-day notice period, you must contact the Development HUB office immediately to schedule an appointment to present information to the Department demonstrating that the ZD1 approval should not be revoked. Your response may be deemed unresponsive if the architect or engineer of record fails to attend the appointment.

Sincerely,

Martin Rebholz, R.A.  
Borough Commissioner

Martin Rebholz, R.A.  
Borough Commissioner

MR/po

Cc: John Raine, Deputy Borough Commissioner  
Calvin Warner, Chief Construction Inspector

Rodney Gittens, Deputy Borough Commissioner  
Premises File



**NYC Development Hub**  
Department of Buildings  
80 Centre Street  
Third Floor  
New York, New York 10013  
nycdevelopmenthub@buildings.nyc.gov

## Notice of Comments

**Owner:** David Rothstein  
West 66th Sponsor LLC  
805 Third Ave. NY, NY 10022

**Date:** 01/14/19  
**Job Application #:** 121190200  
**Application Type:** NB  
**Premises Address:** 36 West 66 St.

**Applicant:** Luigi Russo  
SLCE Architects, LLP  
1359 Broadway NY, NY 10018

**Zoning District:** C4-7  
**Block:** 1118 **Lot:** 45 **Doc(s):**

Examiner's Signature: Marguerite Baril

Job Description: NB

Obj. #	Doc #	Section of Code	Comments	Date Resolved	Comments
1	16	ZR 12-10	The proposed mechanical space on the 18 <sup>th</sup> floor does not meet the definition of "accessory use" as per ZR 12-10 (b). Specifically, mechanical space with a floor-to-floor height of approximately 160 feet is not customarily found in connection with residential uses.		



05/14/2019



# Work Permit Department of Buildings

Permit Number: 121190200-01-NB

Issued: 04/11/2019

Expires: 04/10/2020

Address: MANHATTAN 36 WEST 66TH STREET

Issued to: SCOTT HAMBURG

Business: LENDLEASE(US)CONSTRUCTION

Contractor No: GC-16836

Description of Work:

NEW BUILDING - NEW BUILDING

Number of dwelling units occupied during construction: 0  
Review is requested under Building Code: 2014

SITE FILL: ON-SITE

To see a Zoning Diagram (ZD1) or to challenge a zoning approval filed as part of a New Building application or Alteration application filed after 7/13/2009, please use "My Community" on the Buildings Department web site at [www.nyc.gov/buildings](http://www.nyc.gov/buildings).

Emergency Telephone Day or Night: 311 SITE SAFETY PHONE : 212 669-7043

Borough Commissioner:

Commissioner of Buildings:

Acting Commissioner of Buildings

*This permit copy created on 05/13/2019 reflects the Commissioner(s) as of such date.*

Tampering with or knowingly making a false entry in or falsely altering this permit is a crime that is punishable by a fine, imprisonment or both.

06 05/13/2019

OP-35A (5/10)

2019-94-A

**FILED: NEW YORK COUNTY CLERK 04/24/2019 04:01 PM**

NYSCEF DOC. NO. 13

INDEX NO. 154205/2019

RECEIVED NYSCEF: 04/24/2019

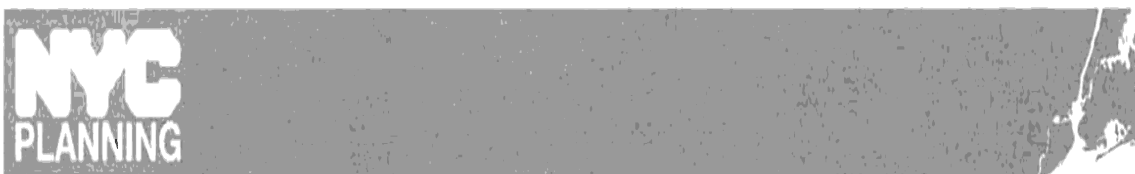
# RESIDENTIAL MECHANICAL VOIDS FINDINGS

Building Permits Issued b/w 2007 and 2017

R6 through R10 Districts

April 2018

(Updated: February 2019)





## R6/R7/R8 Study

- Between 2007 and 2017, 718 new building permits were issued within the study area

### SUMMARY OF DETAILED STUDY FINDINGS

- 49 out of the 718 buildings exceeded the optimum *height factor* heights of 21 stories in R8, 15 stories in R7, or 13 stories in R6
- None exhibited large mechanical voids

District/ Bulk	# of Buildings Surveyed	Large voids
R8/HF	10	0
R7/HF	17	0
R6/HF	22	0

# R9/R10 Study

- Taller buildings in these districts are called *towers* whose bulk is controlled by setbacks, lot coverage, etc.

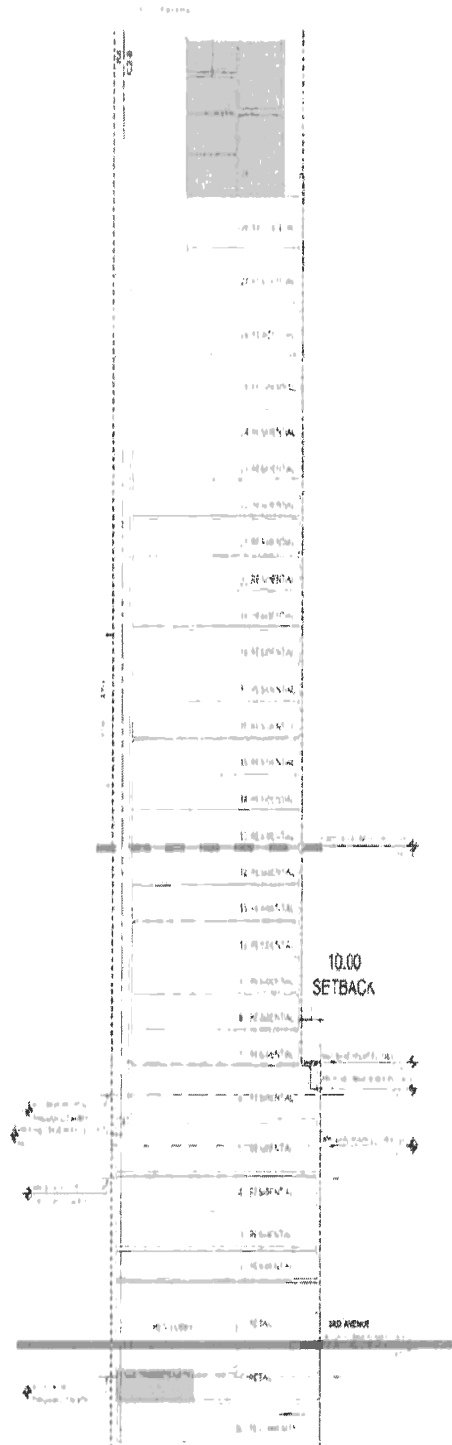
## SUMMARY OF DETAILED STUDY FINDINGS

- Between 2007 and 2017, 78 new building permits were issued
- 46 buildings exceeded the contextual Quality Housing heights of 21 stories in R10, or 14 stories in R9
- 10 of those buildings were NYC sponsored or special permit projects
- The remaining 36 building permits were carefully reviewed
- One 2018 building permit with visible mechanical voids issue was added to the study

District/ Bulk	# of Buildings Surveyed	Large Voids
R10/TOB	12	1
R10/ST	24	6
R9/ST	1	0
Overall	37	7



# Typical Residential Tower C2-8(R10)/TOB: 1681 Third Avenue

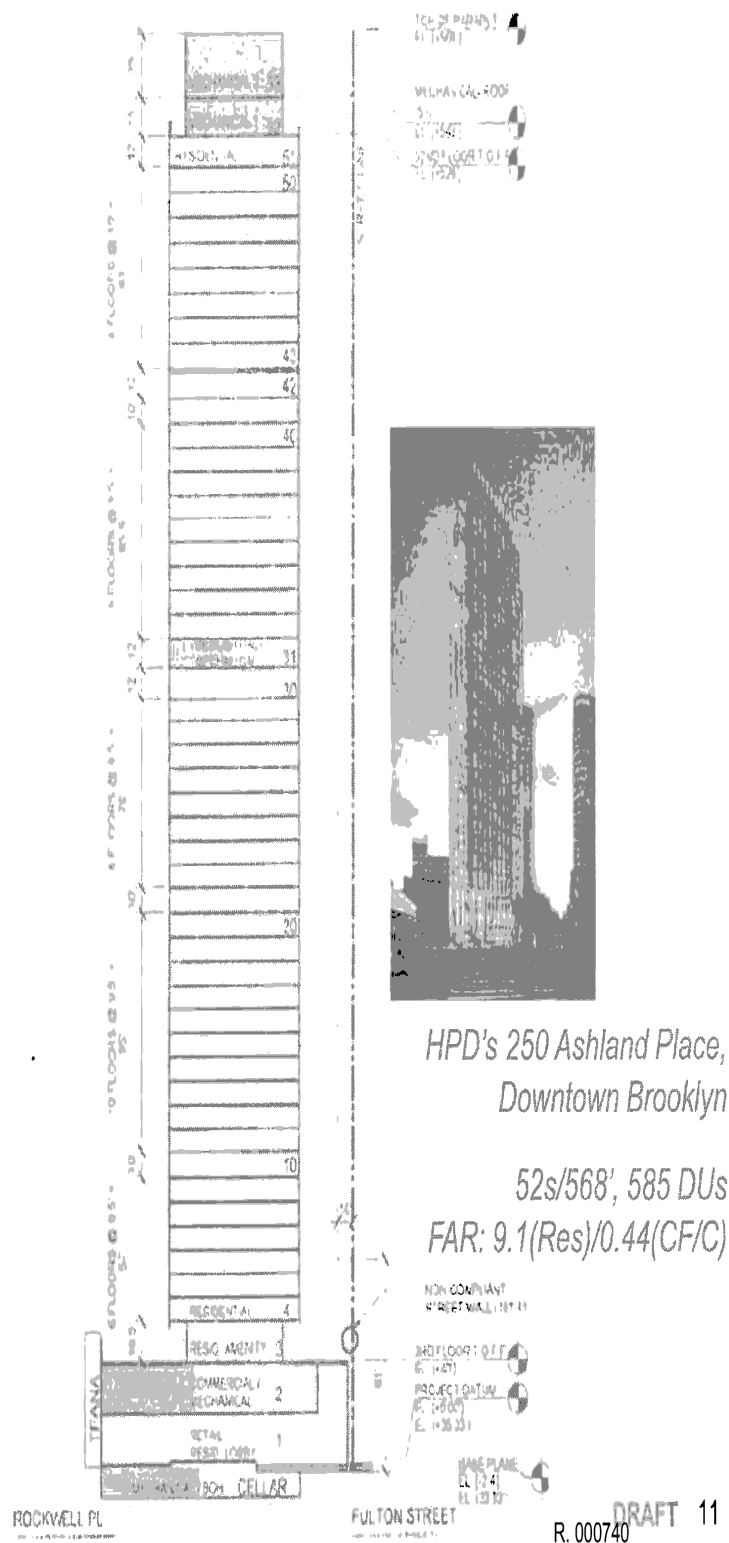


A typical *tower-on-a-base* (TOB) building has:

- Limited commercial mechanical space on a lower floor
- Most, if not all, residential mechanical spaces are located in the cellar and in a mechanical penthouse

# Typical Residential Tower Typical Mechanical Floors

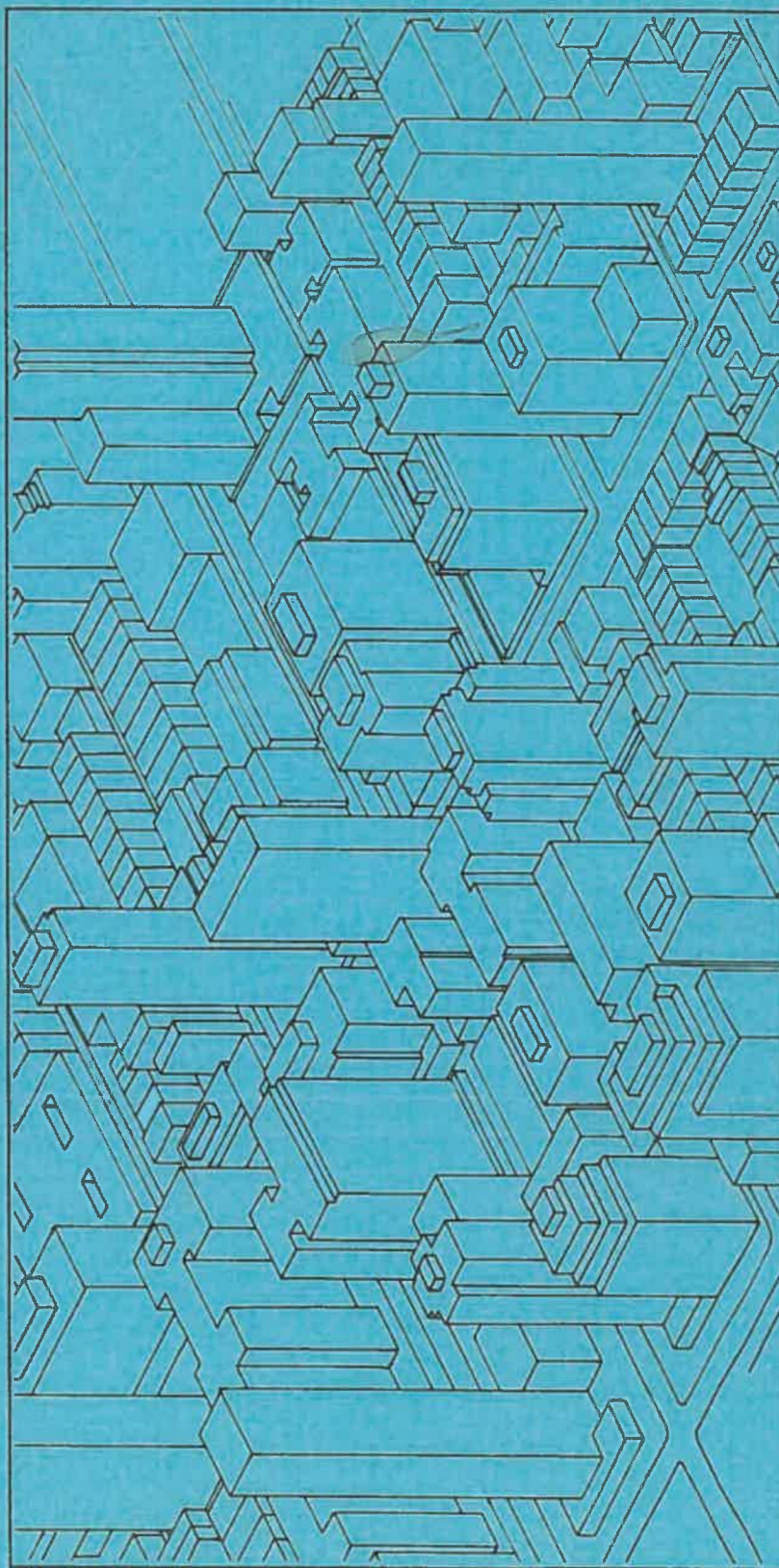
- Only a few TOB buildings had a mechanical floor below the highest residential floor (exclusive of cellars)
- Many non-TOB towers had one or more mechanical floors below the highest residential floor. Their typical height was 12-15 feet, but some exceeded 20 feet.





# Regulating Residential Towers and Plazas: Issues and Options

A Discussion Document



Department of City Planning/New York City

# **Regulating Residential Towers and Plazas: Issues and Options**

## **A Discussion Document**



Edward I. Koch, Mayor  
City of New York

New York Department of City Planning  
Sylvia Deutsch, Director  
Con Howe, Executive Director

November 1989  
NYC DCP #89-46

R. 000742



## TABLE OF CONTENTS

---

I.	Introduction .....	1
	Purpose .....	1
	Objectives .....	2
	Background .....	4
II.	Current Regulations and Existing Conditions .....	7
	Tower Regulations .....	7
	Zoning Lot Mergers .....	8
	Bonused Residential Plazas .....	11
III.	Residential Development in CD8: 1978-1988 .....	13
	Building Form .....	13
	Residential Plazas .....	17
IV.	Alternatives .....	19
	Alternatives Considered .....	19
V.	Proposals for Discussion .....	25
	Building Form .....	26
	Residential Plazas .....	27
	Appendix A .....	A1
	Appendix B .....	A5
	Appendix C .....	A7
	Appendix D .....	A9

## LIST OF FIGURES

---

Figure 1	Photo of Avenue Streetscape .....	4
Figure 2	Photo of Changes to Streetwall .....	7
Figure 3	Illustration of Zoning Lot Merger .....	8
Figure 4	Photo of Tower Resulting from a Zoning Lot Merger .....	9
Figure 5	Photo of a 1961 Plaza .....	11
Figure 6	Photo of a 1977 Residential Plaza .....	11
Figure 7	Use of Zoning Lot Mergers and Plazas in 77 Buildings .....	14
Figure 8	Use of Zoning Lot Mergers and Plazas in 23 Towers .....	16
Figure 9	Public Open Space in CD8 .....	17
Figure 10	Photo of a Successful Residential Plaza .....	18
Figure 11	Illustration of "Packing-the-Bulk" .....	25
Figure 12	Illustration of "Packing-the-Bulk" and Plaza .....	26



# Introduction

---

## Purpose

This publication presents various options for public discussion and further analysis to address a series of interrelated problems affecting the quality and character of residential development in high density areas, such as the Upper East Side of Manhattan. The issues discussed herein--tower regulations for high density residential districts, zoning lot mergers, and the residential plaza bonus--involve complex policy and technical questions, especially in the areas of urban design and economics. As such, members of the civic, professional and development communities may have different experiences and perspectives involving design and economic aspects of residential development which must be explored and discussed before a specific plan of action is undertaken.

These proposals evolved through several years of planning and urban design study by the Department of City Planning (DCP). The department's aim is to resolve these problems in an integrated manner and to offer a comprehensive planning framework for guiding future development. This document is intended to serve as the basis for public discussion with all interested groups prior to the drafting of specific zoning text amendments for subsequent review.

## Objectives

The objectives of this study are as follows:

### Building Form

1. To examine the regulations that govern residential towers within the context of established neighborhoods in order to determine whether the existing tower regulations should be modified or if supplemental bulk regulations should be proposed.
2. To develop zoning regulations that achieve the urban design objective of relating new residential buildings to established neighborhood character and effectively controlling the impact of new buildings on access to light and air to the streets, sidewalks and public spaces.
3. To encourage attractive and economic buildings as-of-right, while accommodating freedom of architectural design within established limits.
4. To reinforce the historic pattern in Manhattan of relatively low building bulk on narrow streets and bulkier buildings on the avenues and wide crosstown streets.
5. To analyze the relationship between the existing tower regulations and the use of zoning lot mergers and to evaluate their effect on building height and built form.



### Residential Plaza Bonus

1. To review the plaza bonus to determine its history and effectiveness.
2. To review the number of plazas and related square footage of open space generated by the bonus.
3. To encourage an equitable relationship between new residential plazas and bonus floor area.
4. To equate the plaza bonus with the inclusionary housing bonus so that the two bonuses offer similar incentives for their use.
5. To upgrade the design standards of residential plazas and improve their appearance and their use.
6. To restrict the location of new plazas in order to maximize visibility and promote their public use.
7. To analyze the effect of the plaza bonus on building height and built form.

### Background of Study

Certain planning problems examined in this report occur throughout the city. However, impacts associated with the superimposition of the three sets of regulations--those governing residential towers, zoning lot mergers and bonused residential plazas--occur primarily in R10, C1-9 and C2-8 zoning districts. The majority of these districts are found in Manhattan, with the greatest concentration on the Upper East Side in Community District 8 (CD8). CD8 also has the greatest number of bonused plazas developed under the 1977 residential plaza guidelines: 22 of the 46 existing residential plazas. CD8 was therefore selected as a case study for analysis.

The zoning controls that regulate new development on the Upper East Side have been significantly revised during the last eight years. In 1982, the Special Park Improvement District and the Special Madison Avenue Preservation District were revised at the time of the creation of the Upper East Side Historic District by the Landmarks Preservation Commission. In early 1983, the sliver building zoning regulations were enacted which limited the height of residential buildings with a frontage of 45 feet or less. An associated zoning map action changed the zoning regulations for Lexington Avenue from R10 to R9X in 1984 and reduced the R10 district along Park Avenue to a uniform depth of 100 feet.

Another significant change occurred in 1984, when new "contextual" zoning designations (R10A, R9A, R9X, R8A, R8B) and commercial equivalent zones (C1-8A, C2-7A, C4-6A) were adopted by the City Planning Commission and the Board of Estimate. These contextual zones embody regulations that have broad applicability to many traditional New York City neighborhoods. In September 1985 and March 1986, the low-rise midblocks on the Upper East Side were



*Figure 1 - The avenue streetscape of the Upper East Side consists of a mixture of building types--residential towers, high streetwall apartment buildings, and low streetwall tenements.*



rezoned to R8B to ensure that new development would be compatible with the existing physical scale and character of the midblocks.

In the most recent rezoning action, the Special Yorkville - East 86th Street District was eliminated and replaced by contextual zoning regulations for East 86th Street between Park and First avenues. This rezoning, which was developed by City Planning working with the 86th Street Task Force, was adopted by the Board of Estimate in June 1989.

Buildings on the avenues of the Upper East Side are a mix of pre-1961 streetwall buildings, towers, towers-on-a-base, rowhouses and tenements. In the midblocks, rowhouses and tenements predominate. The grid of blocks is rarely interrupted, except east of York Avenue and at the approaches to the Queensboro Bridge. Figure 1 indicates the mixed character of buildings in CD8.

Dramatic changes have occurred on the Upper East Side in the past dozen years. A total of 119 new buildings or major alterations were constructed from 1978 to 1988. All of the new R10 towers are more than 20 stories (eight new buildings are 40 stories or higher) and have replaced structures of a substantially smaller scale. The public perception of the streetwall character of the neighborhood has been altered by these new buildings.

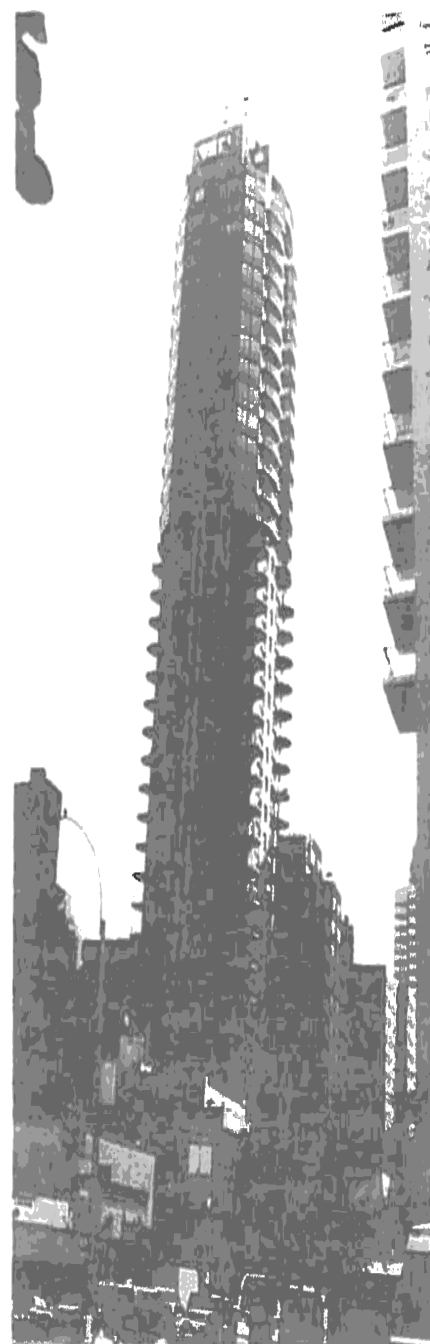
The information presented in this report documents development trends in Community District 8, and analyzes various approaches that could provide a balance between the dual goals of preservation and growth.

## Current Regulations and Existing Conditions

### Tower Regulations

Several regulations exist which guide the design of R10 and R10-equivalent buildings. Tower, height and setback or alternate front setback regulations may be used in these districts; these regulations are summarized in Appendix A. Even though there is a range of permissible building forms, most of the recently constructed buildings follow the tower regulations. However, concern has been raised that the current tower regulations do not ensure that new buildings are as compatible with the established neighborhood character as they could be.

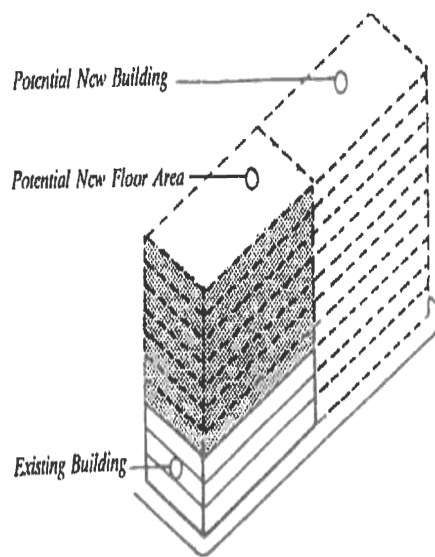
One objection has centered around the erosion of streetwall character caused by buildings which are set back from the streetline as a result of the tower regulations. Additional objections to towers have centered around their height. Many new residential towers on the Upper East Side exceed forty stories; the tallest completed in the last decade is fifty stories, and taller buildings could be constructed (and are currently underway) as-of-right. Buyers and renters pay a premium for space at the upper floors of buildings: condominiums and apartments on the 30th floor typically are priced 30 percent more than identical units on the 10th floor.<sup>1</sup> The trend of constructing large buildings on relatively small "footprints" has also contributed to the construction of taller buildings, as contrasted with residential towers constructed during the 1960's, which tended to be constructed with tower coverage closer to 40 percent.



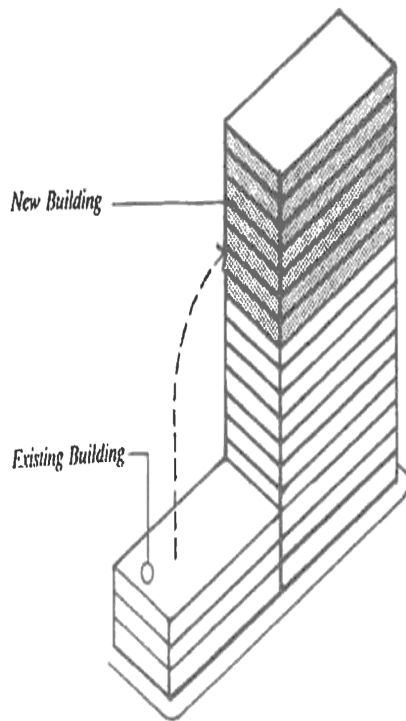
*Figure 2 - New tower buildings have altered the traditional streetwall character of certain areas of the east side. The tower in the center is set back from adjacent buildings.*

<sup>1</sup> Residential Construction in Manhattan, January 1989.





Two Separate Zoning Lots



One Merged Lot

Figure 3 - A possible zoning lot merger.

### Zoning Lot Mergers

The Zoning Resolution permits property owners to combine the development potential of adjacent lots regardless of ownership. This is accomplished by merging the lots into one zoning lot through a financial arrangement between property owners. Since many existing buildings have less bulk than permitted by current zoning, a developer can increase the size of a new building by utilizing the unused development potential of one or more adjacent buildings. (See Figure 3.) Use of this mechanism can help accelerate the process of lot assemblage, as developers are not required to legally transfer ownership of land, but to simply record such an agreement when they file their applications to construct their projects with the Department of Buildings.

Zoning lot mergers create the perception that a building appears to have been constructed with a far greater density than its neighbors. The viewer is unaware that adjacent properties may have permanently retained their relatively low scale as a result. Although the overall density of the zoning lot is unchanged, the use of this process can result in buildings of greater height which may alter the character of the neighborhood. Thus, an exceptionally bulky building may be constructed on a lot and may be viewed by passersby as having gained its height through a bonus mechanism, rather than through a zoning lot merger. In one extreme case, for example, a building in an R10 district (10 FAR) has theoretically achieved 21 FAR on its "footprint" simply by merging adjacent tax lots. Historically, the New York City zoning resolution has not distinguished between a building "footprint," a zoning lot, or portions of a zoning lot that may be owned by different parties. Use of the zoning lot merger process is common and widespread. Approximately one-half of the new higher-density buildings built on the Upper East Side during the last decade have received at least part of their

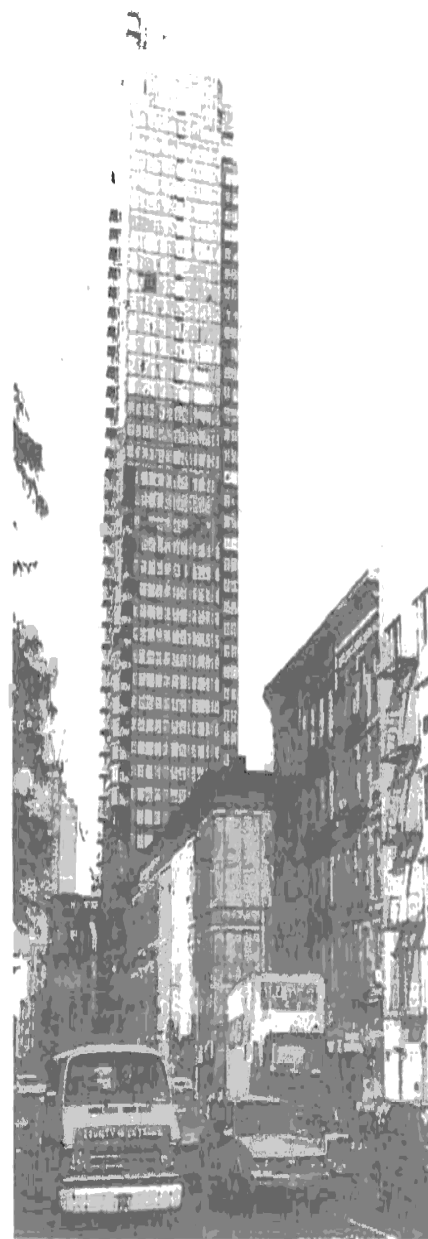
least part of their bulk through this process.

Limiting or eliminating this movement of floor area has been considered and studied by DCP staff periodically during the last decade. In 1987, DCP began a review of the regulations governing existing residential plazas. Towards the end of 1988, an in-house working group was assembled and the scope of the effort was expanded to study the complex interrelationships among the tower regulations, zoning lot mergers and plazas. After an initial exploration of these issues, the working group determined that a coordinated approach was necessary to determine a set of responses to these interrelated issues.

The data gathered on recent residential zoning lot mergers and building size indicated that there has been an unforeseen relationship between the effect of zoning lot mergers and the existing tower regulations. The most significant discovery was that nearly two-thirds of the additional bulk above the base floor area of the building "footprint" was generated through zoning lot mergers.

Legally, zoning lot mergers are not readily controlled or defined: it is difficult to define the new building "footprint" within the building lot, especially when portions of the zoning lot may be under different ownership. Thus, suggestions to cap the transfer of rights would be extremely difficult to delineate with precision, and in some instances could be subject to legal challenge. Further, to enforce such regulations, the Department of Buildings might need to review in detail the history of ownership transfers and development associated with every merger.

The working group concluded that an enforceable, loophole-free definition of zoning lot mergers could not be devised, and that certain efforts to regulate zoning lot mergers through a cap could have unintended consequences, such as hastening the demolition of low-rise structures (including those with institutional



*Figure 4 - Approximately one-third of the new floor area of this tower resulted from zoning lot merger with adjacent low-rise buildings.*

uses that would not require relocation).

DCP undertook an extensive analysis of the 38 new buildings involving zoning lot mergers that have been completed on the Upper East Side since 1978, in order to investigate whether establishing new supplemental tower regulations could effectively address the perceived problem. The analysis is presented later in this report.

### Bonused Residential Plazas

The regulation that permits floor area bonuses for the provision of urban plazas was a part of the "incentive zoning" approach introduced in the 1961 Zoning Resolution. The emphasis at the time was not on creating new public spaces, but on assuring the availability of light and air at the street level. Thus, these plazas had few standards and required no special features. The plazas could be as narrow as ten feet, as small as 500 square feet and finished with nothing more than asphalt paving. (See Figure 5.)

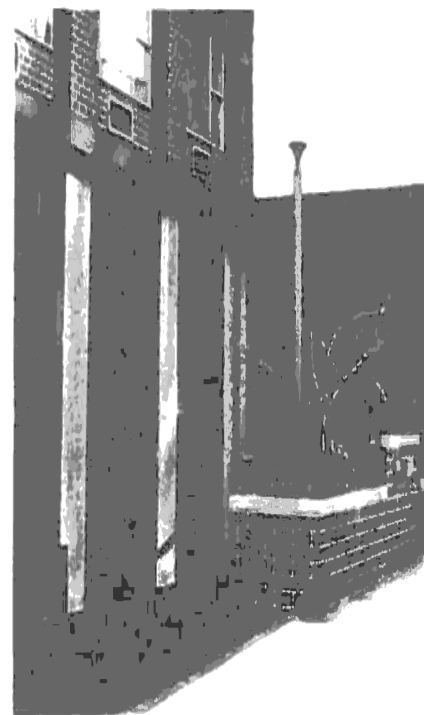
The problems associated with unadorned and underutilized plazas prompted an intensive review and upgrade of all plaza standards. In 1975, the Urban Open Space regulations for 15-18 FAR commercial districts were introduced. In 1977, the Residential Plaza zoning text was adopted which specified additional standards for all new residential plazas. The intent was to encourage plazas with abundant seating (some movable), trees, lighting and similar requirements to make the spaces more attractive and inviting. (See Figure 6.) The developer had to select from a list of required, additional and optional amenities. For the first



time, all bonused public spaces had to be identified by a sign. (See Residential Plaza Standards, Appendix B.)

The plaza bonus has been criticized by planning, civic and neighborhood groups who claim that some plazas were poorly designed and uninviting to the public. This criticism is particularly valid for those plazas built under the pre-1977 plaza standards. There is also a perception among some members of the public that the plaza bonus is primarily responsible for the increased height of residential towers. Poorly sited plazas can also disrupt the streetwall character of the neighborhood and diminish ground floor retail activities that help to enliven sidewalks. Finally, many view the as-of-right plaza bonus as competition for the Inclusionary Housing bonus program which was enacted in 1987.

Our review of residential plazas provides a perspective for responding to these criticisms: City Planning is considering a complete restructuring of the residential plaza bonus provisions. The Department's findings and proposals are discussed later in this report.



*Figure 5 - A 1961 plaza. Plazas developed to these minimal standards are often narrow and barren, serving little recreational purpose.*



*Figure 6 - A 1977 plaza. Plazas developed to these standards can be useful and attractive neighborhood resources.*

## Residential Development in CD8: 1978-1988

---

### Building Form

City Planning compiled a computerized database of residential buildings in CD8 that received a Certificate of Occupancy between January 1, 1978 and December 31, 1988. A total of 119 buildings were constructed during this eleven year period. Non-R10 district construction consisted of 42 buildings; the remaining 77 buildings in R10 or R10-equivalent districts were analyzed by City Planning in detail.

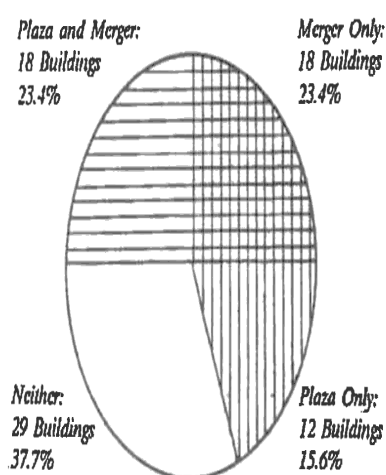
Each of the 77 projects was studied to determine:

- location
- zoning district
- block
- merged floor area
- lot
- floor area ratio
- address
- number of stories
- building name
- number of dwelling units
- parcel size
- percent tower coverage
- merged parcels
- typical floor plate
- floor area
- ownership
- bonus floor area
- size of plaza

With this data, DCP staff was able to apportion the floor area of each building to the base floor area accorded by the zoning designation, bonus floor area resulting from incentive programs, or floor area attributed to a zoning lot merger. (See Appendix C, List of 77 Buildings.)

## 77 R10 Buildings in CD8

1978-1988



Merger Developments



Plaza Developments



Figure 7 - The use of zoning lot mergers and the plaza bonus in R10 zoning districts (77 projects total) in Community District 8.

- Of the 77 projects, 36 (46.8 percent) were found to have included a zoning lot merger. Eighteen of these 36 also included a plaza, while 18 did not. (See Figure 7.)
- Of the 36 projects that involved zoning lot mergers, all retained one or more existing buildings on the merged zoning lots. The residual development rights from existing buildings were added to the new adjacent building. Twenty-five percent of the total new floor area constructed in these developments was generated through a zoning lot merger.
- Forty-one (53.2 percent) of the 77 projects were constructed without a zoning lot merger. Twelve of the 41 projects included a plaza, while 29 did not. (See Figure 7.)
- Twelve and one-half percent of the total new floor area in the 77 projects was gained through a zoning lot merger.
- Plazas tended to be constructed on the larger lots. When a portion of the site was used for the plaza, a taller building resulted. The tallest structures used both plaza bonuses and zoning lot mergers.
- The 31 plazas provided more than 212,000 square feet of publicly-accessible open space--nearly five acres.

The following characterizations were drawn from an analysis of the patterns of design and development among the 77 R10 projects developed in CD8 since the beginning of 1978.



- Three buildings were renovations or substantial rehabilitations. They contain a total of 381 dwelling units.
- Twelve buildings were constructed on small lots with 50 feet of frontage or less. The analysis revealed that these 12 buildings contain 463 total dwelling units (averaging 39 per building), with an average height of 14 stories, and an average zoning lot area of 4,165 square feet.
- The twelve buildings in special districts contained a total of 723 dwelling units and an average of 19 stories. The special districts included the Park Improvement, Madison Preservation and the former Special Yorkville--East 86th Street District.
- Eighteen buildings either received Housing Quality or other special permits approved by the City Planning Commission and the Board of Estimate (13 buildings), or were granted variances by the Board of Standards and Appeals (five buildings). These buildings have an average zoning lot area of 31,153 square feet. The average new building "footprint" FAR is 12.8, and the average zoning lot FAR is 10.6. The total number of dwelling units is 5,232, averaging 291 units per building. These buildings contain 33 stories, on average, and the typical floor plate averages 8,228 square feet.

- Thirty-two buildings were constructed in accordance with tower regulations or were on split zoning lot parcels (such as R10/R8) with an average zoning lot of 22,394 square feet. The building footprint FAR averaged 12.2, while the zoning lot FAR averaged 10.5. With 7,021 dwelling units, there is an average of 219 units per building. On average, tower buildings are 36 stories high.

In order to focus on the single zoning district tower structures, a detailed analysis of the 23 tower buildings constructed exclusively in R10 or R10-equivalent zoning districts was undertaken. The results of this analysis are as follows:

### 23 Towers Constructed in CD8 1978-1988

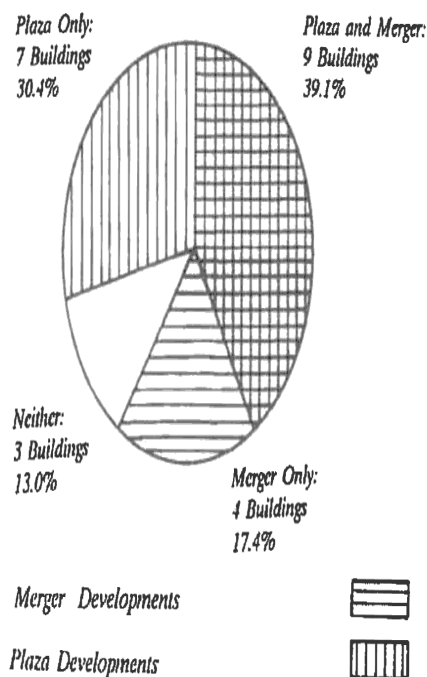


Figure 8 - Development characteristics of 23 tower projects exclusively in R10 zoning districts, in Community District 8.

- Of the 23 buildings, 13 (56.5 percent) included zoning lot mergers, while 16 (69.6 percent) included plazas. Nine projects (39.1 percent) were found in both of these groups; while only three (13 percent) of the 23 buildings did not use either the plaza bonus or a zoning lot merger. (See Figure 8.) The FAR ranges of these 23 buildings were 9.4 to 12.1 on the zoning lot, and 9.4 to 19.7 on the building "footprint." The average zoning lot area of this group is 15,462 square feet. The "typical" tower floor plate is 4,642 square feet, ranging from 2,261 to 8,091 square feet per building. The average number of dwelling units per building is 164; tower coverage ranges from 20-45 percent of the zoning lot, with an average of 32 percent.
- The analysis of tower buildings constructed on zoning lots of 10,000 square feet or more in CD8 reveals that there have been significant increases in the heights of buildings, as well as decreases in the size of floor plates and zoning lot coverage. This trend has become most apparent in recent years. The original prototype of the residential tower

entailed a 30 to 32 story building with tower coverage approaching the 40 percent standard. However, more recent buildings have been built at a coverage of 27 percent on the average, with the most extreme constructed at 20 percent. This lower tower coverage translates into buildings that are most recently ranging from 25 to 50 stories, averaging 40.

### Residential Plazas

Plazas provide 20 percent of the open space found within the boundaries of CD8. (See Figure 9.) In order to determine how successful these plazas are in terms of providing useful open space, City Planning undertook a detailed review of 22 plazas in CD8 that were developed under the 1977 residential plaza standards. The analysis provided insight in terms of which design elements were successful in creating plazas that were attractive and inviting to the public, and also pinpointed deficiencies in the current standards that need to be addressed.

Staff visited each plaza more than once at different times of the day, including lunch time. The number of users was noted during each visit. Each plaza was evaluated against criteria in five categories: location and visibility; attractiveness and maintenance; compatibility with the urban context; usefulness of the plaza; and the relationship between the plaza and bonus floor area in the new building. The evaluation criteria are included in Appendix D, as well as a table listing the name and address of each residential building with a plaza completed from 1978-1988, and the total plaza score as rated by the department's staff.

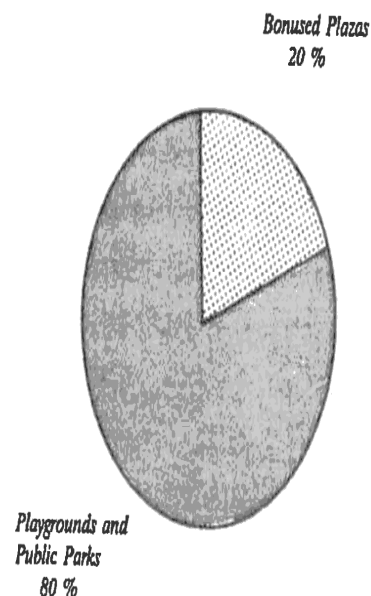


Figure 9 - Public open space in Community District 8.





*Figure 10 - The most welcoming plazas provide more than the minimal amenities required by the current standards. In the dense neighborhoods of the east side, a well designed public space is heavily used by neighborhood workers, visitors and residents.*

Based upon this design analysis, the following observations resulted:

1. Residential plazas are used regularly.
2. Plazas on corners, with high visibility, have a higher volume of users than those located in midblocks.
3. The presence of people in plazas becomes a magnet in attracting additional users.
4. Plazas are not necessarily needed on every block. People will walk a few (short) blocks to use a nearby plaza.
5. Plazas with the most attractive design elements (water features, planter and landscape design, attractive artwork and seating) and a high level of maintenance are used more frequently. They tend to create a "sense of place."
6. Unsupervised plazas, remote from the building lobby or retail uses, tend to have increased maintenance problems and are not well used.
7. Residual plaza spaces (the "visual residual" and "usable residual" categories) are rarely used and provide little public benefit.
8. Drinking fountains frequently are not in operable condition.
9. Some plazas experienced security problems, particularly those that were unsupervised and/or poorly maintained.

## Alternatives

---

### Alternatives Considered

The DCP working group considered a range of controls which could work in harmony to strengthen the character of the built environment: to increase the attractiveness of high-density residential neighborhoods and to promote the development of more visible and useful public spaces, so that the form of new buildings will fit more compatibly into the existing neighborhoods.

A number of alternative solutions were explored. Each of these alternatives is identified below. The pros and cons of each are explained.

#### **Option 1--Extend contextual zoning.**

##### **Advantage**

- A tightly defined building envelope would regulate the amount of bulk that could occur on the "footprint."

##### **Disadvantages**

- The building type that results from the R10A high-density contextual zoning districts is not appropriate in all contexts: it mandates a higher streetwall than may be appropriate in many areas.
- The contextual envelopes are relatively tight and may limit architectural diversity or flexibility in responding to specific site conditions.

#### **Option 2--Eliminate the tower regulations.**

##### **Advantage**

- Prohibit new buildings from piercing the sky exposure plane.

#### Disadvantage

- The design of new buildings would be limited to only two choices--Quality Housing or standard height and setback regulations.

#### Option 3--Modify the tower regulations to control massing, lot coverage and height.

##### Advantages

- These controls could be structured to strengthen relationships between new buildings, existing tenements, high-coverage streetwall and tower buildings.
- New regulations could accommodate architectural variation and flexibility.

##### Disadvantages

- Administration of zoning regulations could potentially become more cumbersome.

#### Option 4--Introduce an absolute height limit.

##### Advantages

- Administration is simplified; unduly tall towers may be restricted.

##### Disadvantages

- Height limits have rarely been used in New York and only in a limited number of special circumstances. There is no logical point at which to set a limit which would work in the plurality of zoning districts and neighborhoods. (Washington D.C., for instance, has based its limit upon the height of the Washington Monument. Other cities established their height limits by mapping certain heights for various neighborhoods.)



- This cap on tower height could have the unintended result of encouraging the cantilevering of new buildings beyond their structural foundations, potentially creating "popsicles and cleavers"--buildings that may project over existing buildings on the zoning lot.
- It would be necessary to determine whether the height should be set by zoning district, neighborhood or use, and whether variations should be established. This is a particularly difficult process for established, built-up areas.

**Option 5--Regulate zoning lot mergers by various mechanisms, all of which would differentiate between the "footprint" of the new building portion of a zoning lot and the entire zoning lot.**

**Advantage**

- This could limit the amount of bulk (by percent or an absolute amount) that may be transferred from the "built portions" of the zoning lot to the "footprint" of the new building.

**Disadvantages**

- Any such mechanism would require a differentiation between the new building and existing buildings located on the same zoning lot.
- This would add an administrative burden, as it would require the Department of Buildings to conduct extensive research of ownership transfers and the development rights associated with each parcel.
- Modern construction techniques permit the expansion of existing buildings, construction of cantilevered buildings, and other technical advances that make it virtually impossible in some cases to differentiate between new construction and enlargements of existing buildings.

- The potential elimination of zoning lot mergers could encourage demolition of smaller buildings (including low- and moderate-income housing); religious institutions and other nonprofit organizations could be prevented from fully realizing the value of their unused development rights.
- Limiting zoning lot mergers to lots in concurrent ownership does not provide a meaningful restriction: the amount of available bulk will be determined by market vagaries and legal technicalities, rather than sound planning principles.
- Even if an effective means could be determined to regulate zoning lot mergers, it might be necessary to set the effective date at a subsequent point in time, as assemblages can extend over several years, in order to further minimize any potential claims of "takings."

#### **Option 6--Modify or eliminate the plaza bonus.**

##### **Advantages of modification**

- Strengthening the design standards could result in more successful plazas.
- Reducing the plaza bonus would balance the public and private benefits, and could make the benefits derived from the plaza bonus more closely equivalent to those provided by the Inclusionary Housing bonus.

##### **Disadvantage of elimination**

- Existing plazas provide a significant share of the publicly-accessible open space in many high density residential neighborhoods. (Plazas comprise 20 percent of the publicly-accessible open space in CD8, excluding Central Park.) Eliminating the bonus would remove an incentive to increase that limited inventory of open space.

The working group considered all the options described above. After considering the advantages and disadvantages of each, the group further explored Options One, Three and Six. The working group believes that these proposals have the ability to work in concert to properly control the built form of residential buildings in R10 and R10-equivalent districts.

R. 000765



## Proposals for Discussion

The broad range of building forms that exists in the R10 and R10-equivalent zones on the Upper East Side argues for a multi-dimensional approach. At one end of the spectrum are sections of the wide crosstown streets which are characterized by high coverage buildings with a relatively consistent streetwall of 125 to 150 feet. These streets are strong candidates for contextual zoning controls. However, the diversity of building forms along the avenues demands a more flexible approach that can successfully relate the form of new buildings to the varied context.

In considering possible new bulk controls for developments in high density residential zones, the DCP working group was guided by the following criteria:

- Any proposal should be in the form of a new set of envelope controls which would provide architectural flexibility and accommodate economic realities.
- Some minimum streetwall height should be required in order to strengthen the pedestrian-oriented streetscape and to create bases which have a proportional relationship with the towers above.
- A tower should be set back from the streetline in order to reduce the tower's prominence on the street.
- The new building form should relate to the established pattern of bulk placement of the varied building forms along the avenues.

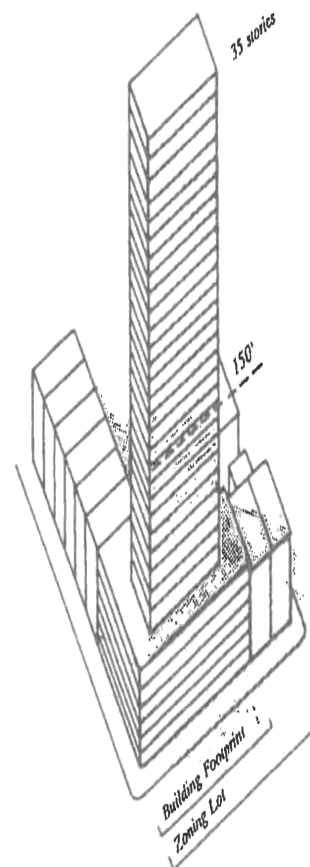


Figure 11 - A possible building configuration illustrating the "Packing-the-Bulk" concept applied to a large corner site.

Many variations of possible envelope controls were tested with drawings, computer simulations and computer analyses. Some results of this work were clear and led to relatively specific recommendations. Other elements of the work established a general direction, with a variety of solutions that might achieve the goal. Further analysis--which would benefit from the experience and perspective of civic, professional, business organizations and the development community--can refine the choices, or perhaps identify other alternatives for consideration.

The proposals developed by the DCP working group envision changes in the regulations that govern tower buildings and those that control residential plazas. The thrust of new regulations would be toward a "tower-on-a-base" form of building with specified controls on the amount of floor area that could be massed in the tower portion. The proposals for amending the residential plaza regulations are directed toward both improving the quality and usefulness of bonused public spaces and establishing parity between the Inclusionary Housing bonus and the residential plaza bonus. A description of these proposals follows.

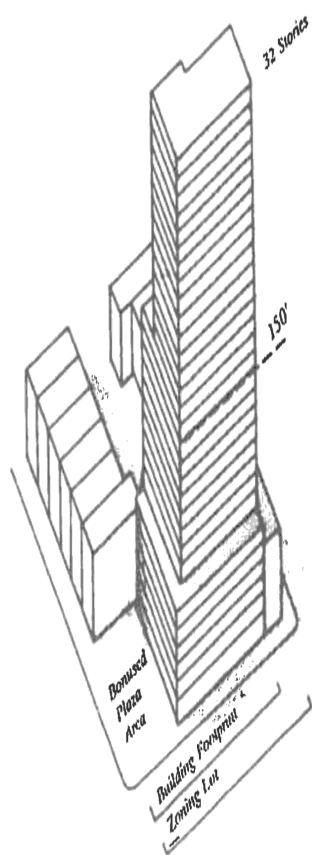


Figure 12 - A possible development using the plaza bonus under the proposed "Packing-the-Bulk" regulations.

### Building Form

- Supplemental bulk controls would be established for residential towers in R10, C1-9 and C2-8 districts to require a "tower-on-a-base" form of building. The base of the building would reinforce the traditional streetwall character, and mandatory setbacks would reduce the tower's impact on the streetscape. Given the patterns of development along the avenues on the Upper East Side, the desirable range for the required streetwall is between 60 feet and 85 feet. The streetwall would be required to be located at the streetline, although permitted recesses would

be established; controls on the first 50 feet of the wrap-around from the avenue would also be defined. Above the maximum streetwall height, the building would be governed by the existing setback requirements which are 15 feet from a wide street and 20 feet from a narrow street. The current tower coverage provision would remain in effect above 85 feet.

- Envelope controls would be established that would govern the massing and height of new buildings. A potentially effective approach could be to require that a minimum percentage of the total floor area of the zoning lot be located at elevations less than 150 feet above the curb level. The DCP working group refers to this concept as "Packing-the-Bulk." In exploring this approach, staff analyzed recent developments and their zoning lot configurations, and concluded that a minimum percentage in the low 60's would result in an appropriate relationship between the base and the tower portions of new buildings. In some instances, an appropriate relationship might be established by coupling other envelope controls, such as a minimum tower coverage, with a lower minimum percentage for the proposed Packing-the-Bulk regulations. Identifying which approach, or mix of approaches, for supplementing existing envelope controls can only be determined after further analysis and discussion with design professionals and others with housing and development expertise.

### Residential Plazas

- The bonus rate for residential plazas would be reduced substantially. The DCP working group proposes that the bonus rate for residential plazas



(which is currently six square feet of floor area for each square foot of bonused plaza) be reduced to provide three square feet of floor area for each square foot of bonused plaza--one-half the current bonus rate. As a result, the maximum bonus for a residential plaza would be limited to 1.0 FAR. A "cap" of 1.0 FAR would provide sufficient space on the zoning lot for a workable building in conjunction with an upgraded plaza, and would allow the Inclusionary Housing bonus to compete on an even footing with the plaza bonus. A developer could achieve 12 FAR (the maximum residential FAR allowed) by using the Inclusionary Housing bonus to earn the remaining 1.0 FAR.

- A number of the design standards for residential plazas should be upgraded to improve the quality and usefulness of these public spaces. Among the revisions considered favorably by the DCP working group were:
  - Minimum residential plaza size should be 2,000 square feet, with minimum dimensions of 30' x 40';
  - Zoning lots of less than 12,500 square feet would not be eligible for a plaza bonus;
  - Ancillary spaces (currently defined as "visual residual" and "usable residual") would not be eligible for a bonus;
  - Restrictions with respect to the permitted location of residential plazas should include: northern-facing plazas to be allowed only by authorization of the City Planning Commission; residential plazas to be permitted only at corners; and a distribution rule to prohibit a bonus for any plaza proposed within a specified distance (perhaps 300 feet) of an existing residential plaza or park.

- At least 50 percent of the ground floor frontage facing a plaza should be reserved for retail or commercial services use in zoning districts that allow commercial uses;
- Required amenities must be accessible to the physically disabled;
- More fixed seating should be required and the number of required trees (particularly shade-trees) should be increased; and
- The maintenance obligations should be tightened.

R. 000770

2019-94-A

05/14/2019

## Appendix A--Building Form

As mentioned on page 7 of this report, several regulations guide the design of residential buildings in R10 and R10-equivalent zoning districts.

### Height and Setback

The "height and setback" regulations applicable to R10 zoning districts (Section 23-632) are as follows:

- The streetwall may be located at the streetline and may extend vertically to a maximum height of 85 feet, as measured from the curb level.
- Above 85 feet, the building mass must set back at least 20 feet from a narrow street streetline or at least 15 feet from a wide streetline. This distance is referred to as the "initial setback distance."
- The building mass may not penetrate the sky exposure plane which begins 85 feet above the curb level and slopes upward at a ratio of 2.7 to 1 from a narrow street or at a ratio of 5.6 to 1 from a wide street.

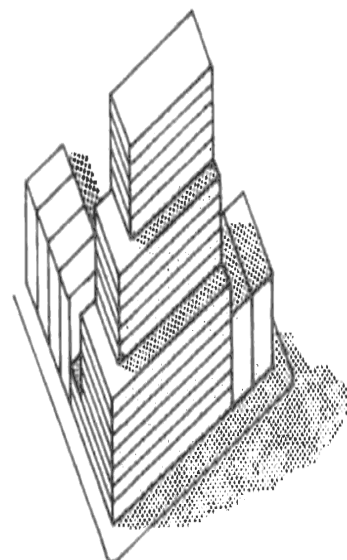


Figure A1 - Height and Setback Regulations

### Alternate Front Setback

The alternate front setback regulations are defined in Section 23-64. When a building setback is provided at the street level for the full length of the front zoning lot line and is at least 15 feet from a narrow streetline or 10 feet from a wide streetline, the following apply:

- The building shall not penetrate a sky exposure plane which begins 85 feet above the curb level at the street line, and slopes upward at a ratio of 3.7 to 1 from a narrow street, or at a ratio of 7.6 to 1 from a wide street.

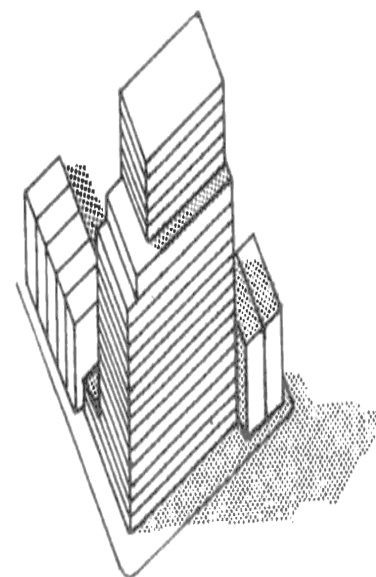


Figure A2 - Alternate Front Setback Regulations



---

### Tower Regulations

The tower regulations are defined by Section 23-65 of the Zoning Resolution.

These regulations consist of the following requirements:

- In R9 and R10 and the equivalent zoning districts, a portion of a building that occupies less than 40% of a zoning lot (or for lots less than 20,000 square feet, the percent set forth in Section 23-651), may penetrate the sky exposure plane at the limit previously described in the section above discussing the height and setback regulations.
- The tower portion of a building must set back at least 15 feet from a narrow streetline or 10 feet from a wide streetline.
- The tower regulations are not applicable to buildings located in a residential district within 100 feet of a public park larger than one acre, nor to buildings with a streetline opposite a public park.
- The tower regulations are also not applicable to buildings in contextual zoning districts, nor for buildings complying with the Quality Housing program defined in Section 23-632(b).

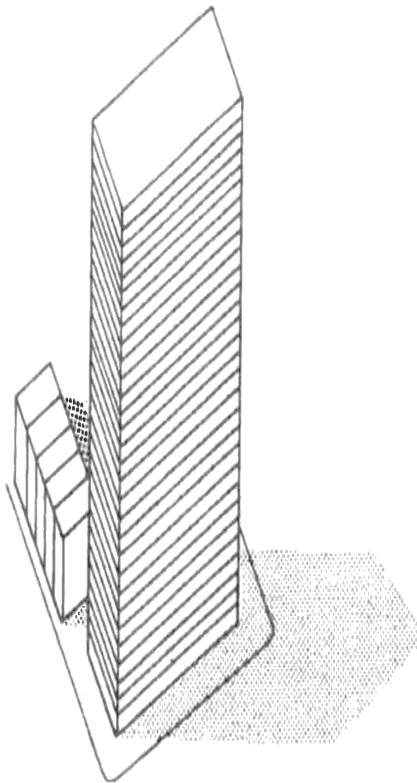
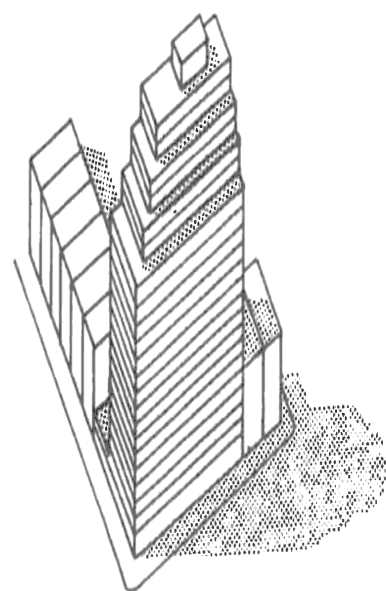


Figure A3 - Tower Regulations

### Contextual Zoning Districts

Contextual bulk regulations define controls on the streetwall, height and setback requirements as identified in Section 23-633. These requirements apply to zoning districts with suffixes, ie. R10A, and are summarized below:

- A building is mandated to provide a streetwall at least 125 feet high along the full length of a development at a wide streetline and for the first 50 feet at a narrow street line from the corner of an intersection.
- Building streetwall height along a narrow street beyond 50 feet from the corner of an intersection must be at least 23 feet.
- On wide streets, the streetwall must be located at the street line.
- On narrow streets where a building is located more than 50 feet from the corner of an intersection, the street wall must not set back more than the setback of an adjacent adjoining building.
- At the corner of an intersection, the streetwall must be located within 5 feet of the streetline.
- The maximum street wall height is 150 feet above the curb level. Above this point, the sky exposure plane slopes upward at a ratio of 2.5 to 1 from narrow or wide streets.
- Lot coverage is limited to 100% for corner lots, and 70% for interior lots (Section 23-145).



*Figure A4 - Contextual Regulations in R10A Zoning District*

tv



## Appendix B--Residential Plaza Standards

Standard	1961 Plaza	1977 Plaza
Applicability	10 FAR residential districts & equivalents with 10 FAR.	10 FAR residential districts & equivalents with 10 FAR, except in special districts or Housing Quality projects.
Administration	As-of-right.	As-of-right.
Filing Requirement	Not specified.	To DOB with plaza plan and section, with detailed landscape plan.
Bonus	1:6.	1:6.
Location & Orientation	Not specified.	South, east-west, and north all allowed by site condition.
Elevation	No more than 5 feet above curb level nearest adjoining sidewalk.  No more than 12 feet above curb level nearest adjoining sidewalk.	No more than 3 feet above curb level nearest adjoining sidewalk.  No more than 3 feet above curb level nearest adjoining sidewalk.
Minimum Size	750 sq ft in midblock. 500 sq ft at corner.	None.
Minimum Dimension	10 feet.	For lots < 10,000 sq ft: no minimum dimension. For lots > 10,000 sq ft and < 12,500 sq ft: 30 ft in midblock, 0 ft at corner. For lots > 12,500 sq ft and < 20,000 sq ft: 30 ft in midblock, 40 ft at corner. For lots > 20,000 sq ft: 40 ft in midblock, 50 ft at corner.
Width of Midblock Plaza	Not specified.	Width of midblock plaza related to height of adjacent buildings.
Proportion	Not specified.	For lots > 12,500 sq ft: Maximum 2:1. For lots < 12,500 sq ft: Maximum 2.5:1.





## Residential Plaza Standards, Cont'd.

Standard	1961 Plaza	1977 Plaza
Residual Space	Not specified.	Primary space = min. 60% of plaza. Residual space = max. 40% of plaza.
Permitted Obstruction	Area not specified.	Allowed to a maximum of 60% of primary space. Unspecified for residual space.
Access	An open area accessible to the public.	50% of primary space frontage unobstructed and accessible.
Fences & Railings	No fences allowed; railing height maximum 3'-8".	Fences allowed on midblock plaza on narrow street, access permitted 8 am to 8 pm, or dark.
Handicapped Access	Not required.	Required for 60% of the unobstructed area.
Required Amenities	Not required.	Trees: 1:1,000 sq ft primary space as a minimum; 4" caliper. Plantings: 150 sq ft:1,000 sq ft optimal. Lighting: 2 fc min (horizontally). Other: drinking fountain, bicycle rack.  For north-facing plaza: less seating required no trees, enclosed pavillion allowed.
Optional Amenities	Not required.	Grass, ground cover, game table, artwork, fountain and pool, play equipment.
Maintenance	Not specified.	Provide litter receptacles, performance bond.
Public Signage	Not specified.	Plaque required .
Vehicle, and Refuse	Not specified.	Driveway, parking, trash storage not allowed.
Exhaust Vents	Not specified.	Not allowed in or facing primary space unless higher than 10'-6" above plaza level.

## Appendix C--Database of 77 R10 Buildings

ID	BUILDING NAME	ADDRESS	PLAZA TYPE <sup>1</sup>	NEW BUILDING FOOTPRINT (SF)	MERGED LOTS (SF)	ZONING LOT SIZE <sup>2</sup> (SF)	FLOOR AREA NEW BLDG. (SF)	FLOOR AREA EXISTING RETAINED(SF)	FLOOR AREA ON ZONING LOT (SF)	# FLOORS IN NEW BUILDING	UNITS IN NEW BUILDING	TYPICAL FLOOR PLATE (SF)	TOWER COVERAGE <sup>3</sup>	CoFo DATE <sup>4</sup>	ZONING LOT FAR
<b>Renovations</b>															
152	NA	201 E. 69TH ST.		20,103	0	20,103	249,956	0	249,956	14	300	17,854		80	12.4
412	NA	1724 SECOND AVE		4,375	0	4,375	18,375	0	18,375	7	26	2,625		86	4.2
562	NA	2 EAST END AVE.		15,126	0	15,126	117,550	0	117,550	10	55	11,755		78	7.8
TOTALS				39,604	0	39,604	385,881	0	385,881		381	10,745			
AVERAGES				13,201	0	13,201	128,627	0	128,627	10	127				
<b>Small Lots/Non-Tower Buildings</b>															
82	THE VISCAYA	110 E. 71ST ST.		3,015	0	3,015	28,055	0	28,055	23	21	1,507		81	9.3
192	NA	344 E. 63RD ST.		6,500	0	6,500	44,625	0	44,625	16	72	2,975		80	6.9
212	NA	359 E. 68TH ST.		1,825	0	1,825	18,200	0	18,200	11	20	1,539		84	10.0
262	NA	353 E. 78TH ST.		6,080	0	6,080	45,102	0	45,102	15	64	3,006		86	7.4
272	L'APARTEMENT	402 E. 64TH ST.		5,025	0	5,025	46,230	0	46,230	10	31	4,623		81	9.2
322	NA	1470 FIRST AVE.		7,050	0	7,050	66,450	0	66,450	12	81	5,537		78	9.4
432	LOUISIANA	300 E. 90TH ST.		3,125	0	3,125	31,250	0	31,250	10	32	3,125		87	10.0
602	NA	169 E. 91ST ST.		5,038	0	5,038	27,000	0	27,000	10	53	3,500		85	5.4
682	NA	1743 FIRST AVE.		2,500	0	2,500	19,250	0	19,250	11	23	1,750		81	7.7
702	NA	1474 THIRD AVE.		5,620	0	5,620	51,000	0	51,000	17	34	3,000		82	9.1
722	NA	177 E. 79TH ST.		2,255	0	2,255	22,550	0	22,550	18	14	1,252		81	10.0
752	CAMEO COURT	300 E. 95TH ST.		1,950	0	1,950	19,500	0	19,500	10	18	1,950		87	10.0
TOTALS				49,983	0	49,983	419,212	0	419,212		463	2,014			
AVERAGES				4,165	0	4,165	34,934	0	34,934	14	39				
<b>Special Districts</b>															
22	NA	52 E. 72ND ST.		4,800	0	4,800	48,000	0	48,000	18	20	3,024		86	10.0
32	GALLERY APTS	32 E. 76TH ST.		7,442	0	7,442	74,400	0	74,400	13	30	5,723		83	10.0
42	NA	30 E. 76TH ST.		2,940	1,310	4,250	37,700	3,900	41,600	16	32	2,356		84	9.8
92	NA	813 PARK AVE.		1,875	0	1,875	15,000	0	15,000	12	12	1,500		82	8.0
372	NA	45 E. 80TH ST.		10,043	6,467	16,510	140,911	19,401	160,312	27	79	7,045		87	9.7
382	LA RESIDENCE	1080 MADISON AV		4,896	0	4,896	48,900	0	48,900	15	34	3,260		81	10.0
402	NA	30 E. 85TH ST.		15,073	4,340	19,413	173,511	13,020	186,531	30	103	11,567		87	9.6
622	NA	14 E. 96TH ST.		2,215	2,517	4,731	25,757	15,096	40,853	15	17	1,515		85	8.6
652	EAST HILL	233 E. 86TH ST.		4,479	0	4,479	44,790	0	44,790	21	56	2,132		83	10.0
692	NA	225 E. 86TH ST.		6,745	0	6,745	64,090	0	64,090	13	60	4,620		84	9.5
712	NA	328 E. 86TH ST.		2,555	0	2,555	24,360	0	24,360	13	24	1,873		81	9.5
742	COLORADO	201 E. 86TH ST.		10,319	15,090	25,409	190,286	31,500	227,786	16	756	5,100		87	9.0
TOTALS				73,382	29,724	103,105	887,705	88,917	976,622		723	4,143			
AVERAGES				6,115	2,477	8,592	73,975	7,410	81,385	19	60				
<b>BSA or CPC<sup>5</sup></b>															
12	NA	800 5TH AVENUE		28,125	7,550	35,675	320,795	15,500	336,295	33	208	9,115		78	9.4
72	TRAFALGAR HS	180 E. 70TH ST.		7,500	7,738	15,238	121,540	30,940	152,480	31	104	5,900		85	10.0
102	BELGRAVIA	124 E. 79TH ST.		4,545	2,200	6,745	60,792	6,600	67,392	21	66	3,494		85	10.0
132	RIVER TERRAC	515 E. 72ND ST.		43,350	0	43,350	479,191	0	479,191	41	410	8,125		85	11.1
162	WELLSLEY	200 E. 72ND ST.		11,220	20,689	31,909	357,795	48,197	405,992	35	433	8,754		79	12.7
252	THE FAIRMONT	300 E. 75TH ST.	61	37,063	1,600	38,663	436,079	5,408	441,487	37	470	13,796		79	11.4
352	1 E. RIV. PL	525 E. 72ND ST.	77	28,140	12,262	40,402	380,093	60,331	440,424	49	414	7,757		88	10.9
362	PROMENADE	530 E. 76TH ST.		16,462	11,702	28,164	310,000	12,995	322,995	37	266	6,666		87	11.5
392	NA	1001 FIFTH AVE		7,500	2,720	10,220	90,640	14,688	105,328	27	76	4,120		78	10.3
452	HAMILTON	1731-1737 YORK		14,650	11,820	26,471	231,291	33,484	264,775	38	265	6,237		86	10.0

1 Floor area bonus for plaza.

1 Arcade  
2 Public Open Area61 1961 Plaza  
77 1977 Residential Plaza

2 Zoning lot includes area of footprint of new building and merged lot.

3 Amount of floor area contained within a single floor of the new building at 85' above the curb.

4 Portion of zoning lot occupied by the new building at the point where the building penetrates the sky exposure plane.

5 Date of Temporary or Final Certificate of Occupancy.

6 CPC Special Permits for Housing Quality or Large Scale Residential Developments.

7 Floor area in excess of 12 FAR by BSA action.



1	Floor area bonus for plaza.	ID	BUILDING NAME	ADDRESS	PLAZA TYPE <sup>1</sup>	NEW BUILDING MERGED		ZONING LOT SIZE <sup>2</sup> (SF)	FLOOR AREA NEW BLDG. (SF)	EXISTING FLOOR AREA RETAINED(SF)	FLOOR AREA ON ZONING LOT (SF)	# FLOORS IN NEW BUILDING	UNITS IN NEW BUILDING	TYPICAL FLOOR PLATE (SF) <sup>3</sup>	TOWER COVD <sup>4</sup> COVD <sup>5</sup>	ZONING LOT FAR	
						FOOTPRINT (SF)	LOTS (SF)										
1	Arcade																
2	Public Open Area																
61	1961 Plaza																
77	1977 Residential Plaza																
2	Zoning lot includes area of footprint of new building and merged lots.	BSA or CPC <sup>6</sup>															
		492	CARNEGIE PK	200 E. 94TH ST.		57,679	0	57,679	560,000	0	560,000	30	369	18,000	86	9.7	
		512	WIMBLETON	200 E. 82ND ST.	61	11,344	9,396	20,740	203,203	37,920	241,123	27	235	7,257	80	11.6	
		522	GRACIE MENS	401 E. 80TH ST.	77	21,761	2,555	24,316	891,712	6,538	298,250	35	311	8,334	80	12.3	
		537	PLYMOUTH THR	340 E. 93RD ST.	77	25,150	0	25,150	296,623	0	296,623	30	356	8,310	80	11.8	
		582	CLARIDGE HS	201 E. 87TH ST.		35,720	0	35,720	419,284	0	419,284	30	419	13,976	78	11.7	
		612	BARCLAYS	1755 YORK AVE		19,176	17,500	36,676	317,802	35,000	352,802	37	329	7,718	85	9.6	
3	Amount of floor area contained within a single floor of the new building at 85' above the curb.	632	ASTOR TERRAC	245 E. 93RD ST		47,353	0	47,353	360,640	0	360,640	32	290	11,633	85	7.6	
		672	CARNEGIE HILL	40 E. 94TH ST.	2	18,940	17,299	36,239	336,309	61,830	398,139	32	211	7,103	83	11.0	
		TOTALS															
		AVERAGES															
		Split Lots (R10 and R11)															
4	Portion of zoning lot occupied by the new building at the point where the building penetrates the sky exposure plane.	122	THE BRISTOL	200-210 E. 65TH	77	46,191	0	46,191	427,980	0	427,980	50	308	10,575	87	9.3	
		142	NA	265 E. 66TH ST.	61	22,604	17,500	40,104	301,220	75,375	376,596	47	301	6,408	78	9.4	
		242	THE SARATOGA	330 E. 75TH ST.	77	20,994	0	20,994	185,000	0	185,000	39	197	8,743	85	8.8	
		292	KINGSLEY	400 E. 70TH ST.	77	13,805	11,097	24,902	226,594	42,027	268,621	40	210	5,532	84	10.8	
		302	WINDSOR 400	400 E. 71ST ST.	61	34,969	0	34,969	323,385	0	323,385	23	417	17,699	79	9.2	
		312	SOMERSET	1365 YORK AVE.	61	38,367	17,850	56,217	415,362	70,000	485,362	39	418	10,370	78	8.6	
		442	THE DUNHILL	401 E. 84TH ST.	77	6,140	7,665	13,805	94,587	27,440	122,229	28	88	3,507	87	8.9	
5	Date of Temporary or Final Certificate of Occupancy.	502	NORMANDY CT	205 E. 95TH ST.	77	95,754	0	95,754	1,059,840	0	1,059,840	30	1,100	10,100	86	11.1	
		572	EVANS THR	171 E. 84TH ST.	77	17,748	10,424	28,172	245,000	40,000	285,000	35	220	8,655	86	10.1	
		TOTALS															
6	CPC Special Permits for Housing Quality or Large Scale Residential Developments.	AVERAGES															
		R10 Towers															
7	Floor area in excess of 12 FAR by BSA action.	52	TRUMP PLAZA	167 E. 61ST ST.	77	21,091	0	21,091	253,018	0	253,018	39	167	6,487	.31	83	12.0
		62	THE ROYAL	188 E. 64TH ST.	77	20,083	0	20,083	240,832	0	240,832	42	205	4,935	.25	86	12.0
		112	THE SAVOY	200 E. 61ST ST.	77	19,986	0	19,986	239,935	0	239,935	43	234	5,579	.28	86	12.0
		172	EVANSVIEW	303 E. 60TH ST.	77	10,042	3,000	13,042	142,968	7,200	150,168	39	157	3,665	.28	86	11.5
		182	PALADIN	300 E. 62ND ST.	77	6,713	2,716	9,428	101,677	11,437	113,114	31	112	3,279	.35	85	12.0
		202	THE RIO	304 E. 65TH ST.	77	8,885	3,595	12,163	129,478	15,978	145,456	39	150	3,466	.35	86	12.0
		222	LE CHAMBERD	350 E. 72ND ST.		6,831	0	6,831	67,188	0	67,188	22	39	3,054	.45	87	9.8
		232	THE FONTAINE	349 E. 72ND ST.	61	8,568	2,862	11,430	114,751	7,887	122,638	35	137	3,278	.29	78	10.7
		282	LE DOMAINE	403 E. 62ND ST.		5,075	0	5,075	47,496	0	47,496	21	54	2,261	.45	85	9.4
		332	HAMPTON HS.	404 E. 79TH ST.		8,037	11,375	19,412	158,657	23,780	182,437	32	208	5,281	.27	85	9.4
		342	THE BELLAIRE	524 E. 72ND ST.	77	25,541	0	25,541	271,292	0	271,292	50	183	5,553	.22	88	10.6
		422	THE AMERICA	300 E. 85TH ST.	77	11,855	6,100	17,955	188,759	22,294	211,053	37	200	4,688	.26	87	11.8
		462	96 EAST	1850 SECOND AVE	1	5,000	5,200	10,200	86,400	15,600	102,000	25	48	3,600	.35	87	10.0
		472	THE MONARCH	200 E. 89TH ST.	77	12,625	9,249	21,874	214,783	27,746	242,529	44	263	4,791	.22	86	11.1
		482	CHANNEL CLUB	455 E. 86TH ST.	77	9,052	4,875	13,927	152,492	14,625	167,117	39	164	4,199	.30	87	12.0
		542	WHITNEY HS	200 E. 90TH ST.	61	16,583	0	16,583	198,984	0	198,984	28	215	7,000	.42	80	12.0
		552	HIGHGATE	182 E. 95TH ST.	77	17,575	0	17,575	205,858	0	207,058	29	252	6,110	.35	80	11.8
592	CARMARQUE	303 E. 83RD ST.	61	17,888	2,500	20,388	242,751	4,016	246,767	30	261	8,091	.40	78	12.1		
642	LE TRIANON	1441 THIRD AVE.		7,783	0	7,783	77,566	0	77,566	24	62	3,231	.42	84	10.0		
662	ASTEN HOUSE	515 E. 79TH ST.	77	18,931	0	18,931	227,050	0	227,050	30	164	7,568	.40	82	12.0		
732	NA	54 EAST END AVE		6,701	9,622	16,323	130,471	28,866	159,337	40	82	3,261	.20	88	9.8		
752	TURNBURY THR	1438 THIRD AVE.		7,583	4,820	12,403	105,000	17,353	122,353	31	175	3,387	.27	85	9.9		
772	WATERFORD	300 E. 93RD ST.	77	10,100	7,500	17,600	192,000	18,000	210,000	47	230	4,000	.73	87	11.9		
		TOTALS															
		AVERAGES															

TOTALS

1,177,747 292,705 1,470,174 14,334,961 927,972 15,254,136

13,820

## Appendix D--Residential Plaza Statistics

### Evaluation Criteria

#### Location and Visibility

- Number of users
- Corner plazas receive the most use
- Plazas of visually open design are more likely to be used
- Location too close to other plazas or parks dilutes the number of users
- Seating areas should be visible from the adjacent sidewalk(s)

#### Attractiveness and Maintenance

- Landscaping, finish materials, and use of water elements, ornamental trees and changes in scale strengthen plaza design
- Quality of maintenance

#### Compatibility of urban context

- Incorporates adjacent wall surfaces as components in the design of the plaza creates a (feeling of enclosure)
- Capitalizes on natural sunlight and provides the choice of shade
- Retail businesses front on plaza

#### Usefulness

- Provides flexible furniture (such as movable seats and tables)
- Design and location of signage, lighting, fences, gates and planters can encourage or discourage public use

#### Public Equity

- Plaza appears to provide an adequate amenity to the public





## Residential Plaza Statistics--CD8

ID	BUILDING NAME	ADDRESS	SIZE	SCORE
5Z	TRUMP PLAZA	167 E. 61ST ST.	7,320	126
6Z	THE ROYAL	188 E. 64TH ST.	6,667	106
11Z	THE SAVOY	200 E. 61ST ST.	6,667	103
12Z	THE BRISTOL	200-210 E. 65TH	10,676	97
17Z	EVANSVIEW	303 E. 60TH ST.	3,292	62
18Z	PALADIN	300 E. 62ND ST.	3,165	98
20Z	THE RIO	304 E. 65TH ST.	4,054	98
24Z	THE SARATOGA	330 E. 75TH ST.	4,862	128
29Z	KINGSLEY	400 E. 70TH ST.	7,200	126
34Z	THE BELLAIRE	524 E. 72ND ST.	8,412	Under construction
35Z	1 E. RIVER PLACE	525 E. 72ND ST.	8,250	Under construction
42Z	THE AMERICA	300 E. 85TH ST.	5,300	135
44Z	THE DUNHILL	401 E. 84TH ST.	1,675	68
47Z	THE MONARCH	200 E. 89TH ST.	4,869	44
48Z	CHANNEL CLUB	455 E. 86TH ST.	4,642	116
50Z	NORMANDY COURT	205 E. 95TH ST.	17,050	144
52Z	GRACIE MEWS	401 E. 80TH ST.	8,902	132
53Z	PLYMOUTH TOWER	340 E. 93RD ST.	7,324	89
55Z	HIGHGATE	182 E. 95TH ST.	6,400	64
57Z	EVANS TOWER	171 E. 84TH ST.	5,280	149
66Z	ASTEN HOUSE	515 E. 79TH ST.	6,290	71
77Z	WATERFORD	300 E. 93RD ST.	5,666	Under construction
TOTALS		22 Plazas	143,963 S.F.	
Average Score				103



Department of City Planning

Sylvia Deutsch, Director

Con Howe, Executive Director

Manhattan Office

Robert E. Flahive, Director

Kathryn Gillespie, Plans and Policies Coordinator, Project Director

Patrick Ping-tze Too, Project Designer

Stuart Parks, Urban Designer

Amy Kates, Planner

Jennifer Bitz, Government Scholar

Philip Schneider, Former Project Director

Counsel's Office

Jonathan Lindsey

Office of the Chief Urban Designer

Lauren F. Otis, Chief Urban Designer

Zoning Study Group

Sandy Hornick, Director

Thomas Wargo, Planner

Planning Management and Support

Barbara Weisberg, Assistant Executive Director

Anne Pizzicara, Director, Policy and Project Management

Housing and Economic Planning

Eric Kober, Director

Richard Satkin, Real Estate Analyst

The Department of City Planning staff appreciate the contributions of Commissioner Wm. Garrison McNeil and former Commissioner Stuart Pertz as members of the DCP working group.

# City Planning Department Report - Special Lincoln ...review (1993)

## **SPECIAL LINCOLN SQUARE DISTRICT ZONING REVIEW**



**David N. Dinkins, Mayor  
City of New York**

**Richard L. Schaffer, Director  
Department of City Planning**

**May 1993  
NYC DCP 93-17**

**JBX  
F - 777**

R. 000783



**TABLE OF CONTENTS**

EXECUTIVE SUMMARY .....	1
SPECIAL DISTRICT OVERVIEW .....	2
Background .....	2
Recent and Proposed Development .....	4
Development Sites .....	7
Landmarks .....	8
Other Planning Initiatives .....	8
ISSUES AND RECOMMENDATIONS .....	9
Land Use .....	9
Building Form and Urban Design .....	13
Mandatory Arcades .....	15
Subway Improvements .....	16
Pedestrian Conditions .....	17
Parking and Off-Street Loading .....	17
Site-Specific Recommendations .....	18

## EXECUTIVE SUMMARY

The Special Lincoln Square District, located in the southern portion of Community District Seven between Central Park West, Amsterdam Avenue, and West 60th and West 68th streets, was established in 1969. The area is characterized by major institutions, such as Lincoln Center for the Performing Arts, and a number of relatively recent mixed-use developments along Broadway.

After evaluating more than twenty years of development pursuant to the special district's controls, the Department of City Planning has identified several outstanding planning issues relating to the mix of uses, and the form and height of development. These issues are particularly relevant to Broadway, which is the spine of the district and contains its most significant development opportunities.

The Department proposes revisions to the special district in order to guide development in a more predictable form, with a level of commercial use that is consistent with the area's overall development pattern and with building heights that are compatible with the character of the district.

The first major recommendation relates to the regulation of commercial use. The current regulations permit a maximum base of 10 FAR of either commercial or residential use within the district's C4-7 zoning. The Department proposes to reduce the allowable amount of commercial use in future as-of-right development from 10 to 3.4 FAR in those areas of the district where residential use predominates. In addition, the amount of floor area allowed for theaters and other entertainment uses (Use Group 8), is proposed to be limited in areas of the district.

The second major recommendation relates to building form. The Department proposes an envelope control that would reinforce the "tower on a base" form already mandated along Broadway. These regulations combined would result in building heights in the range of the mid-20 to 30 stories tall, which would complement the district's existing neighborhood character.

Other recommendations address additional land use and urban design issues. Principal among them is a proposed requirement for subway stair relocation or access, applicable to sites adjacent to the district's two subway stations. Modifications to the arcade, parking and off-street loading provisions are also proposed.

## **SPECIAL DISTRICT OVERVIEW**

### **BACKGROUND**

In the early 1960's the Lincoln Square area was redeveloped for major cultural and institutional uses, with the city facilitating site acquisition under the 1957 Lincoln Square Urban Renewal Plan. After the development of Lincoln Center and Fordham University, the areas surrounding the Urban Renewal Area experienced increased development pressure. Recognizing the unique opportunity that this presented, the City Planning Commission created the Special Lincoln Square District in 1969 to guide new growth and uses in a way that would complement the newly-sited institutions.

The Special Lincoln Square District was established with the following purposes:

1. To promote the area as a "location of a unique cultural and architectural complex" including "office headquarters and a cosmopolitan residential community;"
  2. To improve circulation by improving subway stations and providing arcades, open space and subsurface concourses;
  3. To attract retail uses that will complement and enhance the area; and
  4. To encourage a "desirable urban design relationship of each building to its neighbors and to Broadway".
- To achieve its objectives, the district regulates ground floor uses and urban design elements, and makes floor area bonuses available by City Planning Commission Special Permit in exchange for the provision of certain public amenities.

Since it was created, certain changes have been made to the district relating to public amenities, bonuses and floor area. Originally, bonuses could be granted for a variety of amenities, including arcades, plazas, pedestrian malls, covered plazas, subsurface connections to the subway and low or moderate income housing. The amount of development on a zoning lot was restricted to 14.4 FAR, with no more than 12 FAR for residential uses.

After the adoption of Upper West Side contextual zoning (1984) and the city-wide inclusionary housing program (1987) amendments, all bonusable public amenities were eliminated, except for the arcade required along Broadway, subway improvements and low or moderate income housing. The 1984 amendment reduced the permitted maximum FAR from 14.4 to 12. The 1987 amendment substituted the as-of-right inclusionary housing program for the lower income housing bonus.

The district lies north of midtown Manhattan and Clinton; to its east is Central Park and Central Park West's residential buildings; to the north is the Capital Cities/ABC headquarters block and the predominantly residential Upper West Side neighborhood; and to the west are several superblock residential developments such as Amsterdam Houses and Lincoln Towers.



This report examines development that has occurred since the district was established. It analyzes issues, including use and bulk controls, mandated amenities and subway access, and recommends modifications to the Special District.

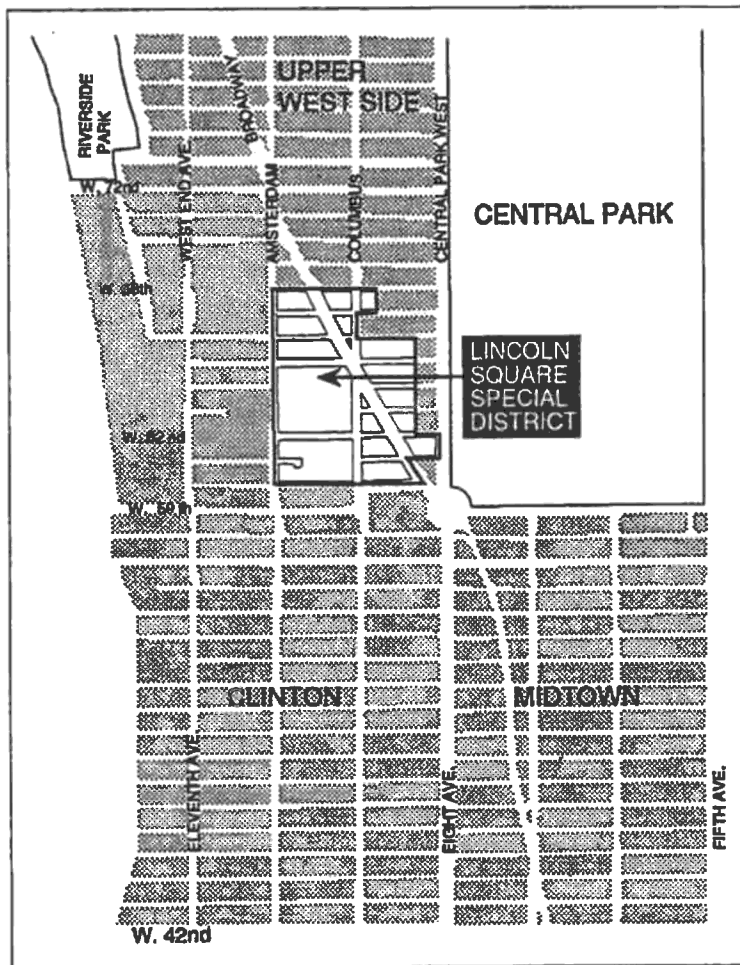


FIGURE 1

### LOCATION OF LINCOLN SQUARE SPECIAL DISTRICT

## RECENT AND PROPOSED DEVELOPMENT

Since the enactment of the special district in 1969, 18 buildings have been developed (see Figure 2, Table 1). The majority of these projects were developed in generally two periods: the early to mid-1970s and the mid-1980s. Ten of the 18 buildings are primarily residential with either ground floor retail, and offices or institutions in the base; five are entirely residential; two are institutions and one is an office building.

Six of the post-1969 buildings were built on Broadway. Five of these are residential buildings with ground floor retail, and some commercial or institutional office space in the base. The remaining building, 1995 Broadway, is an office building.

Except the five purely residential buildings, post-1969 buildings generally have a small amount of commercial floor area (usually less than 2 FAR). The only buildings which have significant commercial use are the one office building (8.21 FAR), and 1 Lincoln Plaza, a mixed-use building with a commercial FAR of 4.62.

Of the 18 projects, ten received City Planning Commission special permits, and eight were built as-of-right. Five of the special permit developments are located along Broadway. These mixed-use projects range in density from 13 to 16.7 FAR<sup>1</sup>. They received floor area bonuses for the provision of various public amenities, such as arcades, plazas and covered plazas, and received waivers from applicable height and setback controls. The as-of-right residential projects range from 8.64 to 12 FAR, with those over 10 FAR receiving as-of-right residential plaza bonuses.

In addition, there are four projects that are under construction or have approvals but have not commenced construction:

1. **Lincoln Square**, an as-of-right project located on a full block site bounded by Broadway, Columbus Avenue, West 67th and West 68th streets, is under construction. It will be a 662,428 square foot building containing 305 residential units, 10 movie theaters, ground floor retail and a health club, with an additional 110,000 square feet of cellar retail space. It will be a 12 FAR building with 4.9 FAR devoted to commercial uses and 7.1 FAR residential.
2. **Fordham University Residence Hall**, a 270,655 square foot dormitory, with 205 units is located on West 60th Street between Amsterdam and Columbus avenues. This project is in the last stages of construction and is scheduled to open to students in Summer 1993.

---

<sup>1</sup> Lincoln Plaza achieved 16.7 FAR by receiving a bonus and a BSA variance.

- FIGURE 2

## 98 of 192



TABLE 1  
EXISTING AND PROPOSED DEVELOPMENTS

Building Name	Location	Height (stories)	Res. FAR	Comm FAR	C.F. FAR	Total FAR
1. Bel Canto ◦	1991 Broadway	26	12	1.3	—	13.3
2. 30 Lincoln Plaza ◦	1886-96 Broadway	32	13.7	.6	—	14.3
3. Harkness ◦	61 W. 62nd St.	26	12	2.4	—	14.4
4. 1 Lincoln Plaza ◦ *	1900-16 Broadway	42	12.1	4.6	—	16.7
5. 2 Lincoln Square ◦	58-70 W. 66th St.	36	11	.3	1.70	13.0
6. Lincoln Center North ◦ #	137 Amsterdam	0	3.7	1.2	1.5	6.4
7. Lincoln Plaza	44 W. 62nd St.	30	8.6	—	—	8.6
8. The Beaumont ◦	30 W. 61st St.	30	11.6	1.9	—	13.5
9. The Alfred	161 W. 61st St.	36	9.9	.1	—	10.0
10. Brodsky ◦ #	45 W. 67th St.	32	10.1	2.3	.1	12.5
11. The Toulaine	130 W. 67th St.	25	11.3	—	—	11.3
12. The Regent ◦	45 W. 60th St.	34	9.3	.1	—	9.4
13. The Checquers	62 W. 62nd St.	26	9.5	.5	—	10.0
14. Tower 67 ◦	145 W. 67th St.	47	11.2	.1	—	11.3
15. —	1995 Broadway	18	—	8.2	—	8.2
16. Cong. Habonim	15-25 W. 65th St.	11	—	—	5.7	5.7
17. —	32-34 W. 66th St.	10	12.0	—	—	12.0
18. Kaufman Cultural Center	129 W. 67th St.	6	—	—	3.9	3.9
19. Fordham Dorm (under con)	60th/Amsterdam	20	—	—	1.3	1.3
20. The Sofia (renovation)	43 W. 61st St.	24	7.5	5.3	—	12.8
21. YMCA (approved) ◦	15 W. 63rd St.	40	4.8	—	7.1	11.9
22. Alfred Ct. (approved) ◦ #	62nd/Amsterdam	41	11.6	.2	—	11.8
23. Lincoln Square (under con.)	1992 Broadway	47	7.0	4.9	—	11.9

◦ Project received a City Planning Commission special permit.

\* Project received a Board of Standards and Appeals variance.

# Includes a merged zoning lot.

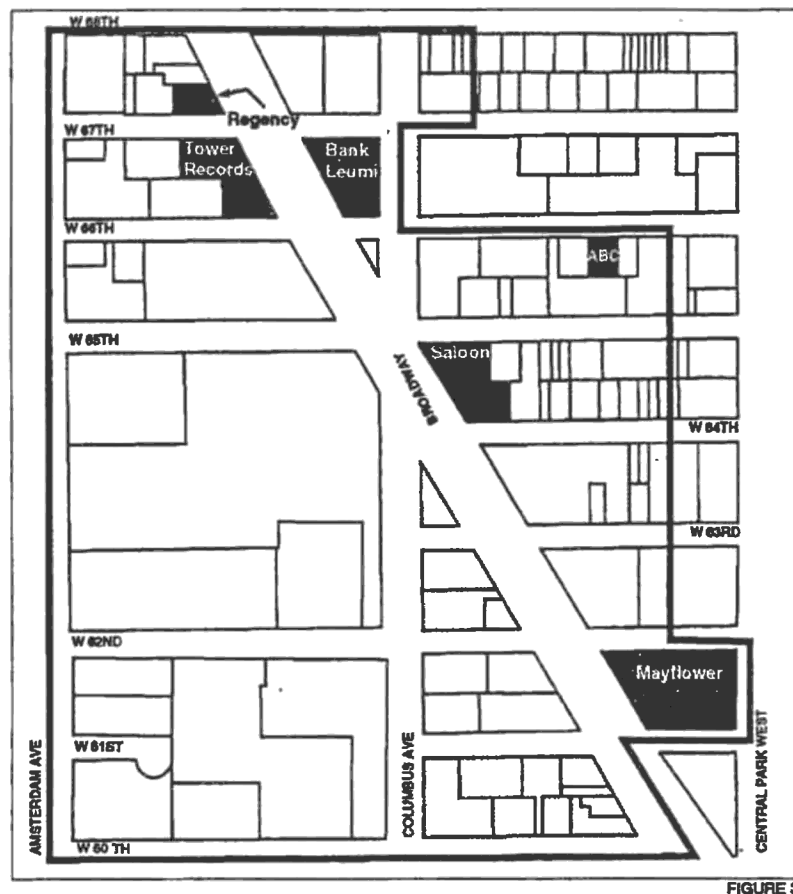


FIGURE 3

## DEVELOPMENT SITES

### DEVELOPMENT SITES

There are six remaining development sites in the district (Figure 3). For the purposes of this study, a property is considered a development site if it is either vacant land or contains a vacant building; contains a commercial building which is at least 50 percent under allowable FAR; or is a residential building with less than four occupied units. The sites are:

1. **Bank Leumi**, a full-block site directly south of the Lincoln Square development between Broadway, Columbus Avenue, West 66th and West 67th streets;
2. **Tower Records/Penthouse Magazine building**, a five story commercial building on Broadway, just north of Lincoln Center between West 66th and West 67th streets;

3. **Regency Theater**, located at West 67th and Broadway;
4. **Saloon/Chemical Bank buildings**, a possible assemblage located on Broadway between West 64th and West 65th streets;
5. **Mayflower block**, a full-block site bounded by Broadway, Central Park West, West 61st and West 62nd streets, containing a vacant parcel facing Broadway and the Mayflower Hotel on Central Park West;
6. **ABC assemblage**, three low-rise structures located on the south side of West 66th Street, between Columbus Avenue and Central Park West.

### **LANDMARKS**

The special district contains three buildings designated as landmarks by the New York City Landmark Preservation Commission: the Sofia Warehouse; the First Battery Armory; and the Century Apartments. In addition, the southern portion of the Central Park West Historic District falls within the district. It should also be noted that the Lincoln Center complex, or its individual buildings, would be candidates for designation in the near future.

### **OTHER PLANNING INITIATIVES**

Community Board 7 and Landmark West!, a community organization, are currently studying the special district in response to the Lincoln Square development and other issues that have been raised by recent developments in the district. This effort is to include recommendations regarding zoning, urban design and pedestrian conditions.



## ISSUES AND RECOMMENDATIONS

### LAND USE

Most of the district is zoned C4-7, which permits high density residential, commercial and community facility development with a base maximum FAR of 10, bonusable to 12. The district encourages retail uses compatible with the area by permitting those commercial uses allowed in the underlying district or listed in Use Group L. Use Group L comprises uses selected from those permitted in the C4-7 district which promote pedestrian oriented activity and serve visitors to the area. On any zoning lot fronting on Broadway, Columbus or Amsterdam avenues, the street frontage devoted to any permitted use is limited to 40 feet, unless the use is also listed in Use Group L, in which case there is no street frontage limitation.

Overall, the district can be characterized as mixed-use and conforms to the C4-7 designation: over a third of its land contains institutional uses such as Lincoln Center, Fordham University and other schools, and cultural and religious facilities. Residential use is found throughout the district, primarily in highrise apartments along Broadway, Columbus Avenue and Amsterdam Avenue, and in midrise buildings east of Broadway. Retail uses line Broadway, and occur less frequently on Columbus and Amsterdam avenues. Office uses are generally located in the southern part of the study area.

### *Issues*

The great majority of developments in the special district are predominately residential, with only limited amounts of commercial and/or community facility uses. In contrast, the Lincoln Square project now under construction will contain about 5 FAR of retail, movie and health club uses (plus another 1 FAR of below-grade, commercial use). The intensity of activity generated by this concentration of commercial uses greatly exceeds that of more typical district buildings which average about 1 FAR of commercial use. The amount and type of commercial use permitted by the current regulations is one of the major issues that needs to be addressed.

Among the issues raised by the Lincoln Square project are the space allocated to movie theaters and the traffic generated by these and other intense commercial uses. Currently, the district contains approximately 13,000 seats in Lincoln Center's major theaters and 1,700 movie theater seats. Just south of the district is the 500-seat Paramount movie theater. The 10 movie theaters under construction in the Lincoln Square project will add 4,000 more seats by 1994. Due to the fact that theaters typically require double height or higher spaces, theater complexes are relatively hollow spaces, containing less floor area than residential or other commercial spaces would normally have in the same volume. These hollow spaces

result in significantly taller and more massive buildings than those of the same FAR that do not contain theaters.

Although theaters and other commercial uses are distinguishing features of the district's identity and are generally supportive of its goals, the large amount of pedestrian and vehicular traffic which they generate is an issue. For instance, a typical 12 FAR residential building with ground floor retail on a 55,000 square foot lot would generate approximately 17,000 person trips per day, and an office building with ground floor retail would generate approximately 24,000 person trips per day.

In sharp contrast, a project with the same elements as the Lincoln Square project (a 12 FAR building containing 1 FAR of ground floor retail, 2 FAR of movie theater uses, a 2 FAR health club and 7 FAR of residential uses) would generate approximately 41,500 person trips per day, 144 percent more than the residential scenario. If commercial use were limited to 3.4 FAR and movie theaters were limited to 1 FAR, as recommended in the following section, the number of person trips generated would be significantly reduced to 30,000 trips per day.

#### ***Recommendations***

A further examination of overall land use trends in the district reveals three distinct sub-areas:

##### **Sub-area A**

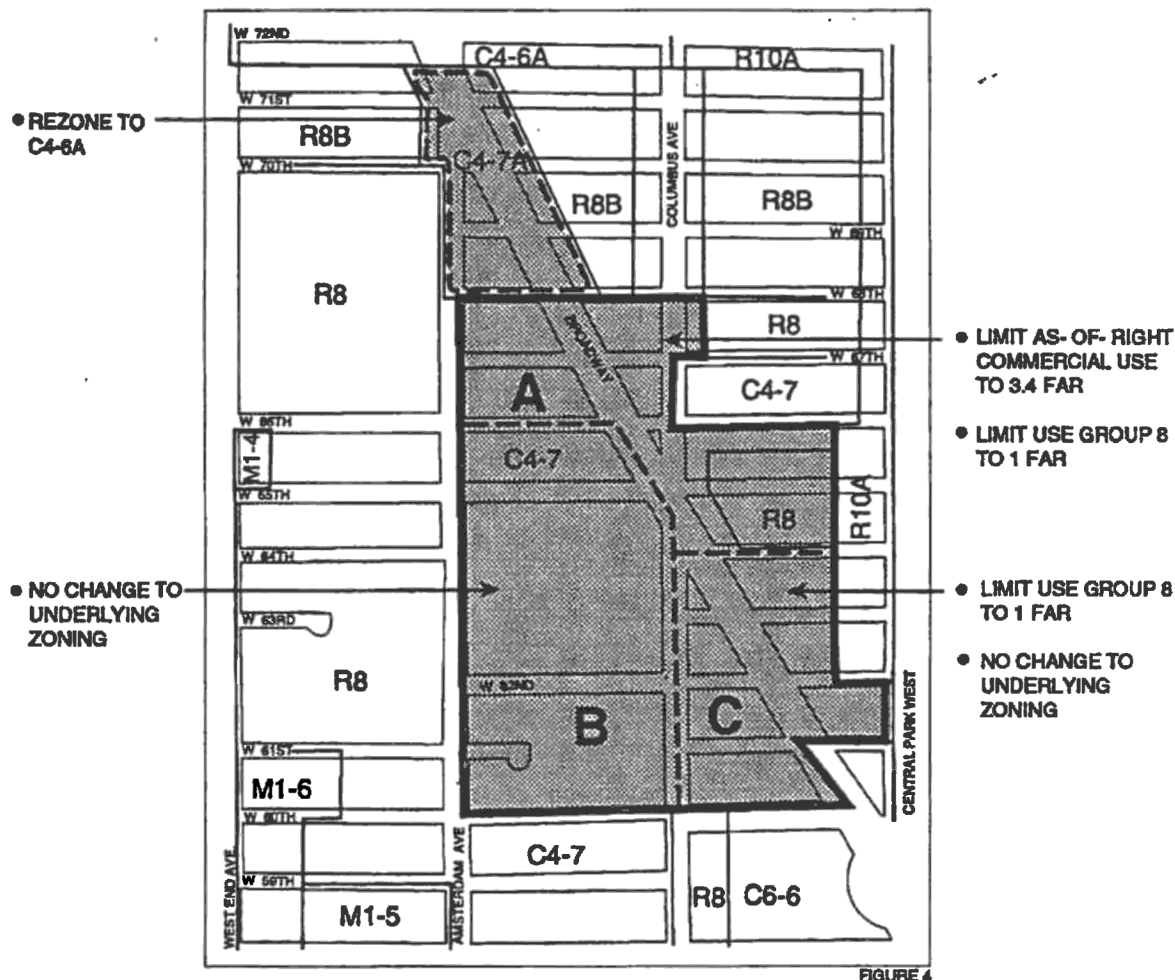
The northern section of the district, between West 64th and West 68th streets, contains special district development that has predominately replicated the traditional Upper West Side land use pattern found directly to the north: high density residential use with ground floor commercial uses. In effect, it has developed as a transition area between Columbus Circle and the Upper West Side. It also contains some of the area's smaller institutions, such as the Church of Latter Day Saints, the Museum of Folk Art and the Kaufman Cultural Center.

##### **Sub-area B**

The district's major institutions, Lincoln Center and Fordham University, are located in the southwestern section of the district, west of Columbus Avenue between West 60th and West 68th streets.

##### **Sub-area C**

The southern portion of the district, between West 60th and West 64th streets is a center of commercial activity, due to its proximity to midtown, Columbus Circle and the Paramount Building. The area contains a large amount of office use in buildings built prior to 1969, including older loft buildings and the American Building Society, and mixed use projects such as 1 Lincoln Plaza and the Sofia Warehouse. This sub-area also contains the district's two transient hotels, the Mayflower on Central Park West and the Raddison Empire on West 63rd Street.



LAND USE PROPOSAL

The following land use proposal is tailored to address the district's neighborhood character distinctions and reinforce existing land use patterns (see Figure 4):

- Retain the C4-7 district in the southern portion of the district, Sub-area C, where commercial uses predominate. This area functions as an extension of midtown, with a high degree of commercial use, access to two subway lines and proximity to the Columbus Circle area, and should continue to do so. Therefore no change in the maximum amount of commercial use permitted is proposed.
- Limit the amount of commercial floor area allowed where residential and institutional development predominates, in Sub-area A, to 3.4 FAR in as-of-right projects, and permit a full commercial build out by CPC special permit only. Under this proposal, the overall density of the sub-area would remain constant,



while the amount of as-of-right commercial use would be reduced. This proposal has the advantage of limiting the amount of future trips that would be generated from more intense commercial uses. In special permit cases, the Commission would assess the proposed use, site plan and environmental effects on a case-by-case basis.

- Reduce the amount of commercial floor area allowed from 10 to 3.4 FAR for the portion of Broadway immediately north of the special district, between West 68th and West 71st streets, by rezoning it from C4-7A to C4-6A. This change complies with existing conditions - high density residential buildings with ground floor retail. The C4-6A district, like C4-7A, permits high density, residential development with a base maximum FAR of 10, bonusable to 12.
- Limit Use Group 8, including movie theaters and entertainment uses, to 1 FAR in Sub-areas A and C. This restriction would reduce the amount of entertainment uses in new buildings, therefore decreasing the number of possible future trips generated and decreasing the overall volume and height of new buildings. This restriction would not apply in Sub-area B, which is dominated by Lincoln Center.
- Eliminate Use Group L from the district, since it replicates the underlying zoning. Furthermore, given the strong pedestrian character of Broadway, Columbus and Amsterdam avenues, the 40 foot limitation on unlisted uses is not necessary to discourage uses which do not generate pedestrian traffic.

## BUILDING FORM AND URBAN DESIGN

The special district's urban design regulations require buildings facing Broadway to have an 85-foot high base built at the streetline, with the tower above the base set back at least 15 feet on wide streets and 20 feet on narrow streets (Figure 5). The 85-foot streetwall strongly characterizes the existing Broadway streetscape. Generally, these bases range from 5 to 7 stories and contain retail uses on the ground floor. The remainder of the bases contain either office or residential uses.

The six Broadway buildings range from 18 to 42 stories or 192 to 419 feet in height. All of these developments followed the required urban design guidelines, with towers rising above the mandated base. Among these buildings, three received height and setback waivers, 1 Lincoln Plaza, Two Lincoln Square and 30 Lincoln Plaza. These buildings are also the tallest Broadway buildings, averaging 37 stories or 360 feet.

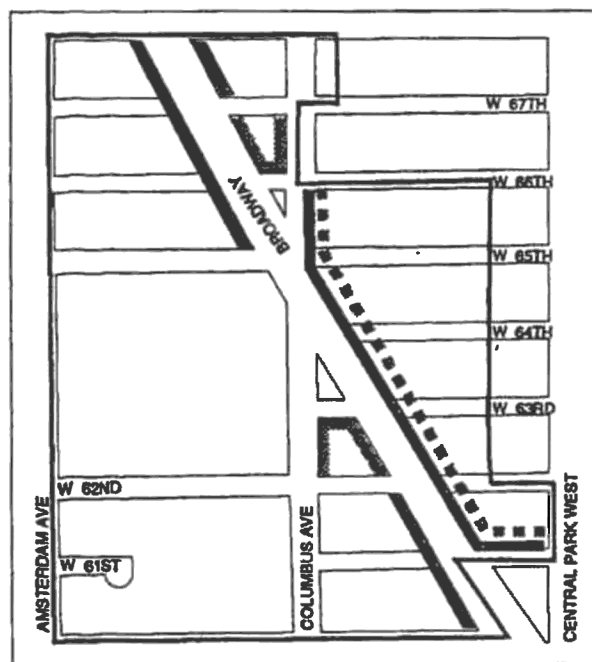





FIGURE 5

### EXISTING URBAN DESIGN REGULATIONS

-  85' BUILDING WALL  
15' TOWER SETBACK
-  BUILDING WALL COINCIDENT  
WITH STREETLINE
-  MANDATORY ARCADE

In addition, an analysis of the distribution of floor area within the Broadway buildings envelopes was performed. This reveals a direct relationship between the height of the buildings and the amount of floor area located below 150 feet. For example, 1991 Broadway (263 feet) and Checquers (264 feet) are both 26 stories tall and 1995 Broadway (192 feet) is 18 stories. The amount of floor area located below 150 feet in these projects is 60, 63 and 87 percent respectively.

In comparison, when a lower percentage of bulk is located below 150 feet, buildings are higher. For instance, in 1 Lincoln Plaza (42 stories, 419 feet), 2 Lincoln Square (36 stories, 362 feet) and 30 Lincoln Plaza (32 stories, 298 feet), the corresponding amount of floor area located below 150 feet is 45, 48 and 49 percent. In an extreme case, the new Lincoln Square building will rise to 46 stories or 525 feet in height, with only 42 percent its bulk located below 150 feet. This is largely due to almost 125,000 square feet of movie theater uses, which create hollow spaces that substantially add to the mass and height of the building.

In order to foster a positive relationship between the tower and base and a more successful massing of a development's bulk, and to avoid excessive height, as in the Lincoln Square project, the Department proposes the following:

- Maintain the current controls requiring an 85 foot high base along Broadway, to relate to existing special district development and Lincoln Center. Towers should continue to be setback from the streetline for a minimum of 15 feet on wide streets and a minimum of 20 feet on narrow streets.
- Establish envelope controls to govern the massing and height of new buildings throughout the district. The proposed regulation would require a minimum of 60 percent of a development's total floor area to be located below an elevation of 150 feet. This regulation, "Packing-the-Bulk," results in a better relationship between the base and tower portions of buildings, producing building heights ranging from the mid-20 to 30 stories.



## **MANDATORY ARCADES**

The district requires that mandatory arcades be provided on the following street frontages: the north side of West 61st Street between Central Park West and Broadway, the east side of Broadway between West 61st and West 65th streets, and the east side of Columbus Avenue between West 65th and West 66th streets. The requirement is intended to provide an expanded and protected area for pedestrians along the length of Broadway opposite Lincoln Center and it has become a signature element along Broadway. This mandatory amenity generates a floor area bonus at a rate of seven square feet per square foot of mandatory arcade, not to exceed 1.0 FAR on the zoning lot, and requires a special permit.

Since 1969, three arcades have been constructed along Broadway -- 1 Lincoln Plaza, 2 Lincoln Square and 30 Lincoln Plaza. They have added a special element to this section of Broadway, and provide additional space for outdoor seating for the area's eating places which support the district's entertainment uses.

Based on an evaluation of the remaining arcade locations, the following changes to the arcade requirements are proposed:

- Retain the arcade as a mandated urban design requirement, since the remaining sites along Broadway are adjacent to built arcades and present an opportunity to create a succession of sidewalk widenings that runs north from Columbus Circle to West 66th Street.
- Reduce the bonus rate to three square feet per square foot of arcade, equating it with the bonus rate applicable in other C4-7 districts.
- Eliminate the requirement for an arcade on the north side of West 61st Street.

## SUBWAY IMPROVEMENTS

The Special Lincoln Square District allows the City Planning Commission to grant floor area bonuses to a development in exchange for improvements to an adjacent subway station. A bonus was granted in the case of the development at 45 West 67th Street, which supplied the Transit Authority with funds for improvements to the 66th Street IRT station. In addition, a housing quality special permit granted for the Copley, located just north of the special district on West 68th Street, also provided funds for improvements to this station. These funds total approximately \$1.25 million and have not yet been spent by the Transit Authority.

Another subway improvement in the district is included in the mitigation plan for the proposed Riverside South project, which when completed would have a significant impact on the 66th Street station. The developer has agreed to construct a new stairway entrance at West 65th Street by the time 85 percent of the development is ready for occupancy.

Since there are additional development opportunities in the district which if built would increase subway usage, the Department believes that additional subway improvements should be sought. However, the current standards for the special permit do not require performance on the part of the developer. Therefore, it is recommended that construction of all required and bonused subway improvements become a developer obligation, rather than accepting contributions to be spent by public agencies.

Specific recommendations for improved subway accessibility are:

- Mandate subway stair relocation or access in the development of sites adjacent to the West 66th Street and the 59th Street/Columbus Circle subway stations to improve pedestrian conditions and improve subway access. These stations are adjacent to the Tower Records/Penthouse site, the Bank Leumi site and the Mayflower site. This improvement would be mandatory and would not generate a bonus. The standards of Section 37-032 and the administrative procedure set forth in Section 37-033 should also be applied so that the district's provisions relating to stairway relocation are consistent with those in other parts of the city.
- Continue the bonus by CPC special permit for improvements to the subway, such as better accessibility, safety, adding escalators or elevators and improving circulation. The bonus provision of the district should be revised to reflect the standards of Section 24-634 to require the construction of improvements, outline Transit Authority Design Standards, procedures and Commission findings.
- Reach agreement with the MTA and TA regarding the outstanding funds acquired from 45 West 67th Street and the Copley. The Department

recommends that these funds should be used to improve the northbound platform of the West 66th Street station.

- Coordinate the plans for a new subway stair at West 65th and Broadway, which is to be provided by the Riverside South development, with the existing off-street stair that is part of the Lincoln Center complex.

### **PEDESTRIAN CONDITIONS**

As a part of Community Board 7's study of the Lincoln Square area, certain area-wide landscape and streetscape improvements to enhance the district such as tree plantings, street lighting, improved pedestrian network and a redesign of Tucker Park, the park immediately south of the Bank Leumi site, were recommended. These suggestions would best be taken up by a local management entity such as a Business Improvement District, rather than through land use controls. However, the Department proposes to incorporate the following requirements in the special district to complement this effort:

- Mandate retail continuity at the ground level along Broadway, Columbus and Amsterdam avenues, to ensure the continuation of the area's pedestrian-oriented character and maintain active uses continuously along the sidewalks. This requirement would replace Use Group L as the mechanism for promoting the district's retail character.
- Mandate transparency regulations which would require glazing on the ground floor of new developments to encourage active street life and give pedestrians visual access to the interior of retail shops.

### **PARKING AND OFF-STREET LOADING**

Accessory off-street parking and public parking garages are permitted only by CPC special permit. Off-street loading facilities are only permitted under the terms of another special permit. The Department recommends certain modifications to clarify these regulations.

- Eliminate the district's special permit for public parking garages, since a special permit mechanism is provided in the underlying zoning regulations. The prohibition of roof-top parking would be maintained.
- Establish a City Planning Commission authorization for curb-cuts that would serve any required loading docks.



## **SITE-SPECIFIC RECOMMENDATIONS**

Because of their locations, two areas of the district require the following special urban design requirements.

### ***Bow Tie Sites***

The area of the special district defined by the intersection of Broadway and Columbus Avenue creates a highly recognizable space known as the bow tie. Two small triangularly-shaped parks abut the intersection - Dante Park to the south, and Richard Tucker Park to the north. These parks are framed by the Bank Leumi site to the north, located on the block bounded by West 66th, West 67th, Columbus Avenue and Broadway, and by the Empire/Harkness block on the south, bounded by West 62nd, West 63rd, Columbus Avenue and Broadway.

The special district acknowledges the significance of this space by requiring that on the two blockfronts framing the bow tie intersection and parks, building walls of new developments must coincide with the streetlines, without any setback and with no minimum or maximum height specified. This regulation, however, does not take into account development scenarios on small sites involving merged zoning lots, which could result in buildings of excessive height. Furthermore, existing low structures located on the merged zoning lot would accentuate the contrast in scale between the new and existing buildings.

The Department continues to recognize the uniqueness of the blocks north and south of the bow tie area, and believes regulations prescribing a high streetwall building form for new buildings is appropriate in these locations. Therefore it is proposed to:

- Clarify the text requirement that the bow tie sites be developed with a streetwall building without setbacks. The regulations would require new buildings be built to the streetlines of West 63rd and West 66th streets and continue around the adjoining corners for one-half of the Broadway and Columbus Avenue block frontages.
- Require that developments with frontage along the remaining portion of Broadway provide a 85 foot streetwall, to relate to the surrounding context.
- Establish an envelope control to govern the massing and height of new buildings, by requiring that 60 percent of a development's total floor area be located below an elevation of 150 feet.

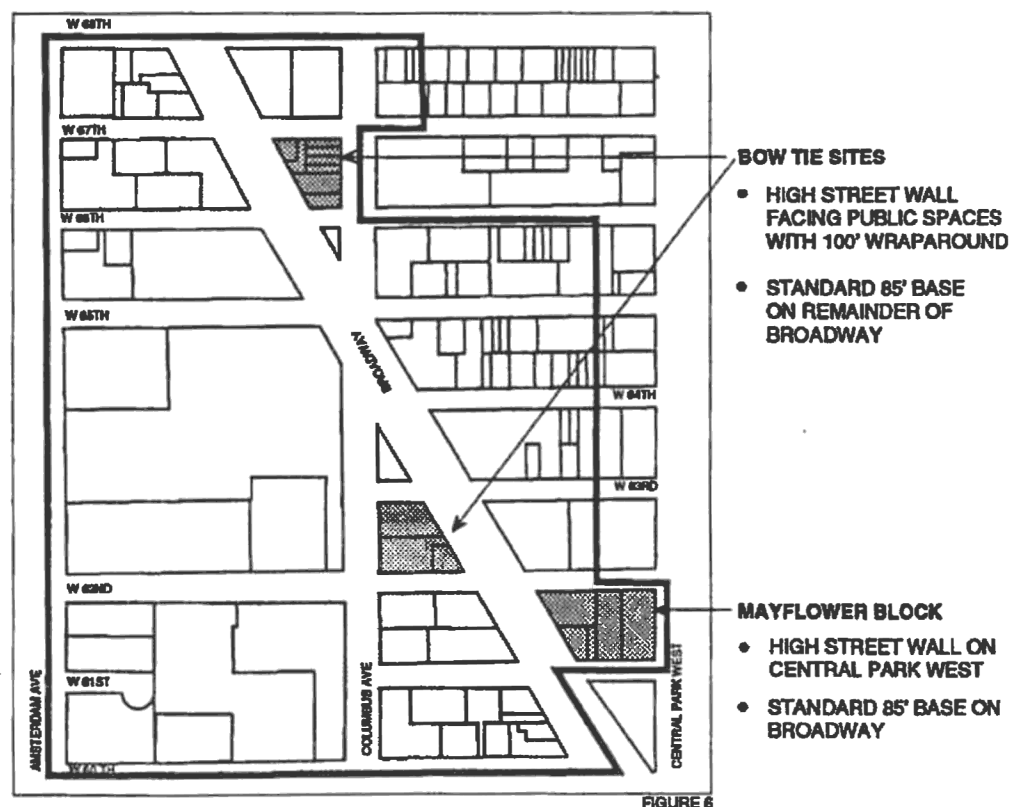
### ***Mayflower Block***

The Mayflower block, located on Broadway between West 61 and West 62nd streets, is the district's only block fronting Central Park West. This block contains a vacant

site facing Broadway and the Mayflower Hotel, a 17-story building facing Central Park West. Both are under the same ownership and could be considered a single zoning lot.

When assessing this block for future development, it became apparent that the site could be developed in two ways: new development could either occur on the vacant parcel fronting Broadway only, or on the entire site, including the location of the existing hotel. The proposal recognizes both circumstances:

- Impose contextual regulations on the Central Park West frontage of the Mayflower site to insure that if the existing hotel were to be redeveloped it would relate appropriately to the Central Park West context.
- Require an 85 foot high base on the Broadway frontage, consistent with all other Broadway development.
- Eliminate the arcade requirement from the north side of West 61st Street, but maintain the mandated arcade along Broadway to complete the southern terminus of the arcade system along the east side of Broadway.



SITE-SPECIFIC RECOMMENDATIONS

## Credits

### DEPARTMENT OF CITY PLANNING

Richard L. Schaffer, *Director*

William Bernstein, *First Deputy Executive Director*

### MANHATTAN OFFICE

Robert E. Flahive, *Director*

Regina Myer, *Project Director*

Bernadette Gittings, *Project Coordinator*

Patrick Too, *Project Urban Designer*

Walter McRae, H.T. Kuo, Albert Depas

### STRATEGIC PLANNING

Sandy Hornick, *Deputy Executive Director*

Richard Barth, *Deputy Director*

### ZONING AND URBAN DESIGN

Marilyn Mammano, *Director*

Tony Levy, *Deputy Director*

Lauren Otis, *Chief Urban Designer*

Douglas Woodward, Pares Bhattacharji

### ENVIRONMENTAL REVIEW DIVISION

Annette Barbaccia, *Director*

Glen Price

### COUNSEL

William Valletta, *General Counsel*

Barbara Rosen

### ECONOMIC, HOUSING AND INFRASTRUCTURE PLANNING

Eric Kober, *Director*

### GRAPHICS

Stan Shabronsky, *Director*

Michael Greene, Carol Lubowski

### PRODUCTION

Lucille Rogers, *Director*

Antonio Mendez, *Deputy Director*

Gerald Anderson



2019-04-A  
NYSCEF DOC. NO. 24  
Project Name: Residential Tower Mechanical Voids Text Amendment

RECEIVED NYSCEF: 02/16/2021

CEQR #: 19DCP110Y

SEQRA Classification: Type I

EAS FULL FORM PAGE 11

REVISED NEGATIVE DECLARATION - supersedes the Negative Declaration issued January 28, 2019

**Statement of No Significant Effect**

Pursuant to Executive Order 91 of 1977, as amended, and the Rules of Procedure for City Environmental Quality Review, found at Title 62, Chapter 5 of the Rules of the City of New York and 6 NYCRR, Part 617, State Environmental Quality Review, the Department of City Planning, acting on behalf of the City Planning Commission assumed the role of lead agency for the environmental review of the proposed project. Based on a review of information about the project contained in this environmental assessment statement and any attachments hereto, which are incorporated by reference herein, the lead agency has determined that the proposed project would not have a significant adverse impact on the environment.

**Reasons Supporting this Determination**

The above determination is based on information contained in this EAS, which finds the proposed actions sought before the City Planning Commission would have no significant effect on the quality of the environment. Reasons supporting this determination are noted below.

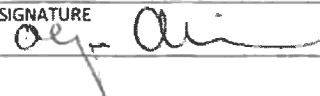
Land Use, Zoning and Public Policy

1. This EAS includes a Land Use, Zoning and Public Policy assessment which analyzes the potential significance of the proposed text amendment on land use, zoning and public policy in the study area. The Proposed Zoning Text Amendment would limit the use of zoning floor area deductions for excessive structural voids in high-density tower districts. The Proposed Action is intended to discourage the use of excessive mechanical or structural floors to increase building height by limiting the height and frequency of such spaces incorporated into a building's design. The Proposed Action would not otherwise affect land use, zoning or public policy in the affected area. This EAS includes a consistency assessment with the Waterfront Revitalization Program (WRP). The analysis concludes that the proposed actions would not result in significant adverse impacts on land use, zoning or public policy.

Urban Design and Visual Resources

2. This EAS includes an Urban Design and Visual Resources assessment which analyzes the potential significance of the Proposed Action on urban design. The Proposed Action would not alter the permitted height, bulk, setback or arrangement of the existing zoning districts. Rather, the proposed text amendment would limit the use of excessively tall mechanical floors to elevate upper-story residential units above the surrounding context. Thus, the Proposed Action is intended to reinforce and improve existing neighborhood character and urban design. Therefore, there would be no significant adverse impacts on urban design and visual resources.

*No other significant effects upon the environment that would require the preparation of a Draft Environmental Impact Statement are foreseeable. This Negative Declaration has been prepared in accordance with Article 8 of the New York State Environmental Conservation Law (SEQRA).*

TITLE Acting Director, Environmental Assessment and Review Division	LEAD AGENCY Department of City Planning, acting on behalf of the City Planning Commission
NAME Olga Abinader	DATE April 9, 2019
SIGNATURE 	

Project Name: Residential Tower Mechanical Voids Text Amendment

CEQR #: 19DCP110Y

EAS FULL FORM PAGE 12

SEQRA Classification: Type I

TITLE Chair, City Planning Commission	
NAME Marisa Lago	DATE April 9, 2019
SIGNATURE	

\* Following certification of the related land use application (ULURP No. N 190230 ZRY) on January 28, 2019, the City Planning Commission (CPC) proposed modifications to the proposed zoning text amendment. This Revised Negative Declaration supersedes the Negative Declaration issued January 28, 2019 and reflects the Revised EAS dated April 9, 2019 which assesses the proposed CPC Modification to the application. As described in the Revised EAS, the change would not alter the conclusions of the previous EAS.

## **Residential Tower Mechanical Voids**

### **Text Amendment**

#### **Revised Environmental Assessment Statement\***

**CEQR No. 19DCP110Y**

**ULURP No. N190230 ZRY**

\* Following certification of the related land use application (ULURP No. N190230 ZRY) on January 28, 2019, the City Planning Commission (CPC) proposed modifications to the proposed zoning text amendment. This Revised EAS supersedes the EAS issued January 25, 2019 and assesses the change to the application, provided in Appendix D. As described herein, the change would not alter the conclusions of the previous environmental review.



EAS FULL FORM PAGE 1



## City Environmental Quality Review

## ENVIRONMENTAL ASSESSMENT STATEMENT (EAS) FULL FORM

Please fill out and submit to the appropriate agency (see instructions)

## Part I: GENERAL INFORMATION

PROJECT NAME Residential Tower Mechanical Voids Text Amendment

## 1. Reference Numbers

CEQR REFERENCE NUMBER (to be assigned by lead agency)  
19DCP110Y

BSA REFERENCE NUMBER (if applicable)

ULURP REFERENCE NUMBER (if applicable)  
N190230 ZRYOTHER REFERENCE NUMBER(S) (if applicable)  
(e.g., legislative intro, CAPA)

## 2a. Lead Agency Information

NAME OF LEAD AGENCY

New York City Department of City Planning

## 2b. Applicant Information

NAME OF APPLICANT

New York City Department of City Planning

NAME OF LEAD AGENCY CONTACT PERSON

Olga Abinader, Acting Director of Environmental  
Assessment and Review Division

NAME OF APPLICANT'S REPRESENTATIVE OR CONTACT PERSON

Frank Ruchala Jr., Deputy Director of Zoning Division

ADDRESS 120 Broadway, 31<sup>st</sup> Floor

ADDRESS 120 Broadway, 31st Floor

CITY New York

STATE NY

ZIP 10271

CITY New York

STATE NY

ZIP 10271

TELEPHONE 212-720-3493

EMAIL

oabinad@planning.nyc.gov

TELEPHONE 212-720-3436

EMAIL

fruchal@planning.nyc.gov

## 3. Action Classification and Type

## SEQRA Classification

☐ UNLISTED ☒ TYPE I: Specify Category (see 6 NYCRR 617.4 and NYC Executive Order 91 of 1977, as amended):

Action Type (refer to Chapter 2, "Establishing the Analysis Framework" for guidance)

☐ LOCALIZED ACTION, SITE SPECIFIC☐ LOCALIZED ACTION, SMALL AREA☒ GENERIC ACTION

## 4. Project Description

The New York City Department of City Planning (DCP) proposes a zoning text amendment pursuant to Zoning Resolution (ZR) Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) and related sections, to modify floor area regulations for residential tower developments located within non-contextual R9 and R10 Residence Districts, their equivalent Commercial Districts, as well as Special Purpose Districts that rely on underlying floor area and height and setback regulations or that are primarily residential in character. The proposed zoning text amendment (the "Proposed Action") would count mechanical floors in such buildings as zoning floor area when they are taller than 25 feet in height or when they are located within 75 feet in height of each other. Currently, mechanical space does not count towards zoning floor area of a building as permitted by zoning. The Proposed Action is intended to discourage the use of excessive mechanical floors to artificially increase building height by limiting the height and frequency of such spaces incorporated into a building's design.

## Project Location

BOROUGH Manhattan,  
Bronx, and QueensCOMMUNITY DISTRICT(S)  
Manhattan Community  
District 1, 2, 3, 4, 5, 6, 7, 8,  
10, and 11; Bronx  
Community District 4; and  
Queens Community District  
2 and 12

STREET ADDRESS N/A

TAX BLOCK(S) AND LOT(S) N/A

ZIP CODE N/A

DESCRIPTION OF PROPERTY BY BOUNDING OR CROSS STREETS N/A

EXISTING ZONING DISTRICT, INCLUDING SPECIAL ZONING DISTRICT DESIGNATION, IF ANY Various  
(see Project Description)ZONING SECTIONAL MAP NUMBER  
Various (see Project Description)

## 5. Required Actions or Approvals (check all that apply)

City Planning Commission: ☒ YES☐ NO☒ UNIFORM LAND USE REVIEW PROCEDURE (ULURP)☐ CITY MAP AMENDMENT☐ ZONING CERTIFICATION☐ CONCESSION

R. 000808

EAS FULL FORM PAGE 2

<input type="checkbox"/> ZONING MAP AMENDMENT <input type="checkbox"/> ZONING TEXT AMENDMENT <input type="checkbox"/> SITE SELECTION—PUBLIC FACILITY <input type="checkbox"/> HOUSING PLAN & PROJECT <input type="checkbox"/> SPECIAL PERMIT (if appropriate, specify type: <input type="checkbox"/> modification; <input type="checkbox"/> renewal; <input type="checkbox"/> other); EXPIRATION DATE:	<input type="checkbox"/> ZONING AUTHORIZATION <input type="checkbox"/> ACQUISITION—REAL PROPERTY <input type="checkbox"/> DISPOSITION—REAL PROPERTY <input type="checkbox"/> OTHER, explain: <input type="checkbox"/> modification; <input type="checkbox"/> renewal; <input type="checkbox"/> other); EXPIRATION DATE:	<input type="checkbox"/> UDAAP <input type="checkbox"/> REVOCABLE CONSENT <input type="checkbox"/> FRANCHISE
SPECIFY AFFECTED SECTIONS OF THE ZONING RESOLUTION		
<b>Board of Standards and Appeals:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> VARIANCE (use) <input type="checkbox"/> VARIANCE (bulk) <input type="checkbox"/> SPECIAL PERMIT (if appropriate, specify type: <input type="checkbox"/> modification; <input type="checkbox"/> renewal; <input type="checkbox"/> other); EXPIRATION DATE:		
SPECIFY AFFECTED SECTIONS OF THE ZONING RESOLUTION		
<b>Department of Environmental Protection:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO If "yes," specify:		
<b>Other City Approvals Subject to CEQR</b> (check all that apply) <input type="checkbox"/> LEGISLATION <input type="checkbox"/> FUNDING OF CONSTRUCTION, specify: <input type="checkbox"/> RULEMAKING <input type="checkbox"/> POLICY OR PLAN, specify: <input type="checkbox"/> CONSTRUCTION OF PUBLIC FACILITIES <input type="checkbox"/> FUNDING OF PROGRAMS, specify: <input type="checkbox"/> 384(b)(4) APPROVAL <input type="checkbox"/> PERMITS, specify: <input type="checkbox"/> OTHER, explain:		
<b>Other City Approvals Not Subject to CEQR</b> (check all that apply) <input type="checkbox"/> PERMITS FROM DOT'S OFFICE OF CONSTRUCTION MITIGATION AND COORDINATION (OCMC) <input type="checkbox"/> LANDMARKS PRESERVATION COMMISSION APPROVAL <input type="checkbox"/> OTHER, explain:		
<b>State or Federal Actions/Approvals/Funding:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If "yes," specify:		
<b>6. Site Description:</b> The directly affected area consists of the project site and the area subject to any change in regulatory controls. Except where otherwise indicated, provide the following information with regard to the directly affected area. <b>Graphics:</b> The following graphics must be attached and each box must be checked off before the EAS is complete. Each map must clearly depict the boundaries of the directly affected area or areas and indicate a 400-foot radius drawn from the outer boundaries of the project site. Maps may not exceed 11 x 17 inches in size and, for paper filings, must be folded to 8.5 x 11 inches. <input type="checkbox"/> SITE LOCATION MAP <input type="checkbox"/> ZONING MAP <input type="checkbox"/> SANBORN OR OTHER LAND USE MAP <input type="checkbox"/> TAX MAP <input type="checkbox"/> FOR LARGE AREAS OR MULTIPLE SITES, A GIS SHAPE FILE THAT DEFINES THE PROJECT SITE(S) <input type="checkbox"/> PHOTOGRAPHS OF THE PROJECT SITE TAKEN WITHIN 6 MONTHS OF EAS SUBMISSION AND KEYED TO THE SITE LOCATION MAP		
<b>Physical Setting</b> (both developed and undeveloped areas) Total directly affected area (sq. ft.): N/A Waterbody area (sq. ft.) and type: N/A Roads, buildings, and other paved surfaces (sq. ft.): N/A Other, describe (sq. ft.): N/A		
<b>7. Physical Dimensions and Scale of Project</b> (if the project affects multiple sites, provide the total development facilitated by the action) SIZE OF PROJECT TO BE DEVELOPED (gross square feet): N/A NUMBER OF BUILDINGS: N/A GROSS FLOOR AREA OF EACH BUILDING (sq. ft.): N/A HEIGHT OF EACH BUILDING (ft.): N/A NUMBER OF STORIES OF EACH BUILDING: N/A		
Does the proposed project involve changes in zoning on one or more sites? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If "yes," specify: The total square feet owned or controlled by the applicant: The total square feet not owned or controlled by the applicant:		
Does the proposed project involve in-ground excavation or subsurface disturbance, including, but not limited to foundation work, pilings, utility lines, or grading? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If "yes," indicate the estimated area and volume dimensions of subsurface disturbance (if known): AREA OF TEMPORARY DISTURBANCE: sq. ft. (width x length) VOLUME OF DISTURBANCE: cubic ft. (width x length x depth) AREA OF PERMANENT DISTURBANCE: sq. ft. (width x length)		
<b>8. Analysis Year</b> CEQR Technical Manual Chapter 2		
ANTICIPATED BUILD YEAR (date the project would be completed and operational): 2029		
ANTICIPATED PERIOD OF CONSTRUCTION IN MONTHS: N/A (Generic Action)		
WOULD THE PROJECT BE IMPLEMENTED IN A SINGLE PHASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF MULTIPLE PHASES, HOW MANY? N/A		
BRIEFLY DESCRIBE PHASES AND CONSTRUCTION SCHEDULE: N/A		
<b>9. Predominant Land Use in the Vicinity of the Project</b> (check all that apply) <input checked="" type="checkbox"/> RESIDENTIAL <input type="checkbox"/> MANUFACTURING <input checked="" type="checkbox"/> COMMERCIAL <input checked="" type="checkbox"/> PARK/FOREST/OPEN SPACE <input type="checkbox"/> OTHER, specify:		

05/14/2019

## EAS FULL FORM PAGE 3

## DESCRIPTION OF EXISTING AND PROPOSED CONDITIONS

The information requested in this table applies to the directly affected area. The directly affected area consists of the project site and the area subject to any change in regulatory control. The increment is the difference between the No-Action and the With-Action conditions.

	EXISTING CONDITION	NO-ACTION CONDITION	WITH-ACTION CONDITION	INCREMENT
<b>LAND USE</b>				
<b>Residential</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," specify the following:				
Describe type of residential structures	SEE PROJECT DESCRIPTION	SEE PROJECT DESCRIPTION	SEE PROJECT DESCRIPTION	SEE PROJECT DESCRIPTION
No. of dwelling units				
No. of low- to moderate-income units				
Gross floor area (sq. ft.)				
<b>Commercial</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," specify the following:				
Describe type (retail, office, other)				
Gross floor area (sq. ft.)				
<b>Manufacturing/Industrial</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," specify the following:				
Type of use				
Gross floor area (sq. ft.)				
Open storage area (sq. ft.)				
If any unenclosed activities, specify:				
<b>Community Facility</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," specify the following:				
Type				
Gross floor area (sq. ft.)				
<b>Vacant Land</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," describe:				
<b>Publicly Accessible Open Space</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," specify type (mapped City, State, or Federal parkland, wetland—mapped or otherwise known, other):				
<b>Other Land Uses</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," describe:				
<b>PARKING</b>				
<b>Garages</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," specify the following:				
No. of public spaces				
No. of accessory spaces				
Operating hours				
Attended or non-attended				
<b>Lots</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," specify the following:				
No. of public spaces				
No. of accessory spaces				
Operating hours				
<b>Other</b> (includes street parking)	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," describe:				
<b>POPULATION</b>				
<b>Residents</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," specify number:				
Briefly explain how the number of residents				

## EAS FULL FORM PAGE 4

	EXISTING CONDITION	NO-ACTION CONDITION	WITH-ACTION CONDITION	INCREMENT
was calculated:				
<b>Businesses</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If "yes," specify the following:				
No. and type				
No. and type of workers by business				
No. and type of non-residents who are not workers				
Briefly explain how the number of businesses was calculated:				
<b>Other</b> (students, visitors, concert-goers, etc.)	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> YES <input type="checkbox"/> NO	
If any, specify type and number:				
Briefly explain how the number was calculated:				
<b>ZONING</b>				
Zoning classification	SEE PROJECT DESCRIPTION	SEE PROJECT DESCRIPTION	SEE PROJECT DESCRIPTION	SEE PROJECT DESCRIPTION
Maximum amount of floor area that can be developed				
Predominant land use and zoning classifications within land use study area(s) or a 400 ft. radius of proposed project				
Attach any additional information that may be needed to describe the project.				
If your project involves changes that affect one or more sites not associated with a specific development, it is generally appropriate to include total development projections in the above table and attach separate tables outlining the reasonable development scenarios for each site.				



## EAS FULL FORM PAGE 5

## Part II: TECHNICAL ANALYSIS

**INSTRUCTIONS:** For each of the analysis categories listed in this section, assess the proposed project's impacts based on the thresholds and criteria presented in the CEQR Technical Manual. Check each box that applies.

- If the proposed project can be demonstrated not to meet or exceed the threshold, check the "no" box.
- If the proposed project will meet or exceed the threshold, or if this cannot be determined, check the "yes" box.
- For each "yes" response, provide additional analyses (and, if needed, attach supporting information) based on guidance in the CEQR Technical Manual to determine whether the potential for significant impacts exists. Please note that a "yes" answer does not mean that an EIS must be prepared—it means that more information may be required for the lead agency to make a determination of significance.
- The lead agency, upon reviewing Part II, may require an applicant to provide additional information to support the Full EAS Form. For example, if a question is answered "no," an agency may request a short explanation for this response.

	YES	NO
<b>1. LAND USE, ZONING, AND PUBLIC POLICY: CEQR Technical Manual Chapter 4</b>		
(a) Would the proposed project result in a change in land use different from surrounding land uses?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) Would the proposed project result in a change in zoning different from surrounding zoning?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) Is there the potential to affect an applicable public policy?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(d) If "yes," to (a), (b), and/or (c), complete a preliminary assessment and attach.		
(e) Is the project a large, publicly sponsored project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o If "yes," complete a PlaNYC assessment and attach.		
(f) Is any part of the directly affected area within the City's Waterfront Revitalization Program boundaries?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o If "yes," complete the Consistency Assessment Form.		
<b>2. SOCIOECONOMIC CONDITIONS: CEQR Technical Manual Chapter 5</b>		
(a) Would the proposed project:		
o Generate a net increase of more than 200 residential units or 200,000 square feet of commercial space?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ If "yes," answer both questions 2(b)(ii) and 2(b)(iv) below.		
o Directly displace 500 or more residents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ If "yes," answer questions 2(b)(i), 2(b)(ii), and 2(b)(iv) below.		
o Directly displace more than 100 employees?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ If "yes," answer questions under 2(b)(iii) and 2(b)(iv) below.		
o Affect conditions in a specific industry?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
▪ If "yes," answer question 2(b)(v) below.		
(b) If "yes" to any of the above, attach supporting information to answer the relevant questions below. If "no" was checked for each category above, the remaining questions in this technical area do not need to be answered.		
<b>i. Direct Residential Displacement</b>		
o If more than 500 residents would be displaced, would these residents represent more than 5% of the primary study area population?	<input type="checkbox"/>	<input type="checkbox"/>
o If "yes," is the average income of the directly displaced population markedly lower than the average income of the rest of the study area population?	<input type="checkbox"/>	<input type="checkbox"/>
<b>ii. Indirect Residential Displacement</b>		
o Would expected average incomes of the new population exceed the average incomes of study area populations?	<input type="checkbox"/>	<input type="checkbox"/>
o If "yes:"		
▪ Would the population of the primary study area increase by more than 10 percent?	<input type="checkbox"/>	<input type="checkbox"/>
▪ Would the population of the primary study area increase by more than 5 percent in an area where there is the potential to accelerate trends toward increasing rents?	<input type="checkbox"/>	<input type="checkbox"/>
o If "yes" to either of the preceding questions, would more than 5 percent of all housing units be renter-occupied and unprotected?	<input type="checkbox"/>	<input type="checkbox"/>
<b>iii. Direct Business Displacement</b>		
o Do any of the displaced businesses provide goods or services that otherwise would not be found within the trade area, either under existing conditions or in the future with the proposed project?	<input type="checkbox"/>	<input type="checkbox"/>
o Is any category of business to be displaced the subject of other regulations or publicly adopted plans to preserve,	<input type="checkbox"/>	<input type="checkbox"/>

## EAS FULL FORM PAGE 6

	YES	NO
enhance, or otherwise protect it?		
<b>iv. Indirect Business Displacement</b>		
o Would the project potentially introduce trends that make it difficult for businesses to remain in the area?	<input type="checkbox"/>	<input type="checkbox"/>
o Would the project capture retail sales in a particular category of goods to the extent that the market for such goods would become saturated, potentially resulting in vacancies and disinvestment on neighborhood commercial streets?	<input type="checkbox"/>	<input type="checkbox"/>
<b>v. Effects on Industry</b>		
o Would the project significantly affect business conditions in any industry or any category of businesses within or outside the study area?	<input type="checkbox"/>	<input type="checkbox"/>
o Would the project indirectly substantially reduce employment or impair the economic viability in the industry or category of businesses?	<input type="checkbox"/>	<input type="checkbox"/>
<b>3. COMMUNITY FACILITIES: CEQR Technical Manual Chapter 6</b>		
<b>(a) Direct Effects</b>		
o Would the project directly eliminate, displace, or alter public or publicly funded community facilities such as educational facilities, libraries, health care facilities, day care centers, police stations, or fire stations?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>(b) Indirect Effects</b>		
<b>i. Child Care Centers</b>		
o Would the project result in 20 or more eligible children under age 6, based on the number of low or low/moderate income residential units? (See Table 6-1 in Chapter 6)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o If "yes," would the project result in a collective utilization rate of the group child care/Head Start centers in the study area that is greater than 100 percent?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o If "yes," would the project increase the collective utilization rate by 5 percent or more from the No-Action scenario?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>ii. Libraries</b>		
o Would the project result in a 5 percent or more increase in the ratio of residential units to library branches? (See Table 6-1 in Chapter 6)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o If "yes," would the project increase the study area population by 5 percent or more from the No-Action levels?	<input type="checkbox"/>	<input type="checkbox"/>
o If "yes," would the additional population impair the delivery of library services in the study area?	<input type="checkbox"/>	<input type="checkbox"/>
<b>iii. Public Schools</b>		
o Would the project result in 50 or more elementary or middle school students, or 150 or more high school students based on number of residential units? (See Table 6-1 in Chapter 6)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o If "yes," would the project result in a collective utilization rate of the elementary and/or intermediate schools in the study area that is equal to or greater than 100 percent?	<input type="checkbox"/>	<input type="checkbox"/>
o If "yes," would the project increase this collective utilization rate by 5 percent or more from the No-Action scenario?	<input type="checkbox"/>	<input type="checkbox"/>
<b>iv. Health Care Facilities</b>		
o Would the project result in the introduction of a sizeable new neighborhood?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o If "yes," would the project affect the operation of health care facilities in the area?	<input type="checkbox"/>	<input type="checkbox"/>
<b>v. Fire and Police Protection</b>		
o Would the project result in the introduction of a sizeable new neighborhood?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o If "yes," would the project affect the operation of fire or police protection in the area?	<input type="checkbox"/>	<input type="checkbox"/>
<b>4. OPEN SPACE: CEQR Technical Manual Chapter 7</b>		
<b>(a)</b> Would the project change or eliminate existing open space?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>(b)</b> Is the project located within an under-served area in the <u>Bronx, Brooklyn, Manhattan, Queens, or Staten Island</u> ?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>(c)</b> If "yes," would the project generate more than 50 additional residents or 125 additional employees?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>(d)</b> Is the project located within a well-served area in the <u>Bronx, Brooklyn, Manhattan, Queens, or Staten Island</u> ?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>(e)</b> If "yes," would the project generate more than 350 additional residents or 750 additional employees?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>(f)</b> If the project is located in an area that is neither under-served nor well-served, would it generate more than 200 additional residents or 500 additional employees?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>(g)</b> If "yes" to questions (c), (e), or (f) above, attach supporting information to answer the following:		
o If in an under-served area, would the project result in a decrease in the open space ratio by more than 1 percent?	<input type="checkbox"/>	<input type="checkbox"/>
o If in an area that is not under-served, would the project result in a decrease in the open space ratio by more than 5	<input type="checkbox"/>	<input type="checkbox"/>

## EAS FULL FORM PAGE 7


	YES	NO
percent?		
o If "yes," are there qualitative considerations, such as the quality of open space, that need to be considered? Please specify:	<input type="checkbox"/>	<input type="checkbox"/>
<b>5. SHADOWS:</b> CEQR Technical Manual Chapter 8		
(a) Would the proposed project result in a net height increase of any structure of 50 feet or more?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) Would the proposed project result in any increase in structure height and be located adjacent to or across the street from a sunlight-sensitive resource?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) If "yes" to either of the above questions, attach supporting information explaining whether the project's shadow would reach any sunlight-sensitive resource at any time of the year.		
<b>6. HISTORIC AND CULTURAL RESOURCES:</b> CEQR Technical Manual Chapter 9		
(a) Does the proposed project site or an adjacent site contain any architectural and/or archaeological resource that is eligible for or has been designated (or is calendared for consideration) as a New York City Landmark, Interior Landmark or Scenic Landmark; that is listed or eligible for listing on the New York State or National Register of Historic Places; or that is within a designated or eligible New York City, New York State or National Register Historic District? (See the GIS System for Archaeology and National Register to confirm)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(b) Would the proposed project involve construction resulting in in-ground disturbance to an area not previously excavated?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) If "yes" to either of the above, list any identified architectural and/or archaeological resources and attach supporting information on whether the proposed project would potentially affect any architectural or archeological resources.		
<b>7. URBAN DESIGN AND VISUAL RESOURCES:</b> CEQR Technical Manual Chapter 10		
(a) Would the proposed project introduce a new building, a new building height, or result in any substantial physical alteration to the streetscape or public space in the vicinity of the proposed project that is not currently allowed by existing zoning?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(b) Would the proposed project result in obstruction of publicly accessible views to visual resources not currently allowed by existing zoning?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) If "yes" to either of the above, please provide the information requested in Chapter 10.		
<b>8. NATURAL RESOURCES:</b> CEQR Technical Manual Chapter 11		
(a) Does the proposed project site or a site adjacent to the project contain natural resources as defined in Section 100 of Chapter 11?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o If "yes," list the resources and attach supporting information on whether the project would affect any of these resources.		
(b) Is any part of the directly affected area within the Jamaica Bay Watershed?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o If "yes," complete the Jamaica Bay Watershed Form and submit according to its instructions.		
<b>9. HAZARDOUS MATERIALS:</b> CEQR Technical Manual Chapter 12		
(a) Would the proposed project allow commercial or residential uses in an area that is currently, or was historically, a manufacturing area that involved hazardous materials?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) Does the proposed project site have existing institutional controls (e.g., (E) designation or Restrictive Declaration) relating to hazardous materials that preclude the potential for significant adverse impacts?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) Would the project require soil disturbance in a manufacturing area or any development on or near a manufacturing area or existing/historic facilities listed in Appendix 1 (including nonconforming uses)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(d) Would the project result in the development of a site where there is reason to suspect the presence of hazardous materials, contamination, illegal dumping or fill, or fill material of unknown origin?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(e) Would the project result in development on or near a site that has or had underground and/or aboveground storage tanks (e.g., gas stations, oil storage facilities, heating oil storage)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(f) Would the project result in renovation of interior existing space on a site with the potential for compromised air quality; vapor intrusion from either on-site or off-site sources; or the presence of asbestos, PCBs, mercury or lead-based paint?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(g) Would the project result in development on or near a site with potential hazardous materials issues such as government-listed voluntary cleanup/brownfield site, current or former power generation/transmission facilities, coal gasification or gas storage sites, railroad tracks or rights-of-way, or municipal incinerators?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(h) Has a Phase I Environmental Site Assessment been performed for the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o If "yes," were Recognized Environmental Conditions (RECs) identified? Briefly identify:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(i) Based on the Phase I Assessment, is a Phase II Investigation needed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>10. WATER AND SEWER INFRASTRUCTURE:</b> CEQR Technical Manual Chapter 13		
(a) Would the project result in water demand of more than one million gallons per day?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) If the proposed project located in a combined sewer area, would it result in at least 1,000 residential units or 250,000 square feet or more of commercial space in Manhattan, or at least 400 residential units or 150,000 square feet or more of commercial space in the Bronx, Brooklyn, Staten Island, or Queens?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## EAS FULL FORM PAGE 8

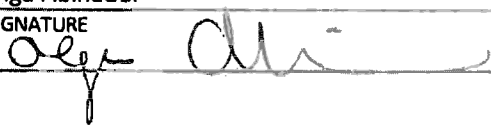
	YES	NO
(c) If the proposed project located in a <u>separately sewer</u> ed area, would it result in the same or greater development than that listed in Table 13-1 in <u>Chapter 13</u> ?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(d) Would the project involve development on a site that is 5 acres or larger where the amount of impervious surface would increase?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(e) If the project is located within the <u>Jamaica Bay Watershed</u> or in certain <u>specific drainage</u> areas, including Bronx River, Coney Island Creek, Flushing Bay and Creek, Gowanus Canal, Hutchinson River, Newtown Creek, or Westchester Creek, would it involve development on a site that is 1 acre or larger where the amount of impervious surface would increase?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(f) Would the proposed project be located in an area that is partially sewer	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(g) Is the project proposing an industrial facility or activity that would contribute industrial discharges to a Wastewater Treatment Plant and/or contribute contaminated stormwater to a separate storm sewer system?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(h) Would the project involve construction of a new stormwater outfall that requires federal and/or state permits?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(i) If "yes" to any of the above, conduct the appropriate preliminary analyses and attach supporting documentation.		
<b>11. SOLID WASTE AND SANITATION SERVICES:</b> <u>CEQR Technical Manual Chapter 14</u>		
(a) Using Table 14-1 in <u>Chapter 14</u> , the project's projected operational solid waste generation is estimated to be (pounds per week):		
o Would the proposed project have the potential to generate 100,000 pounds (50 tons) or more of solid waste per week?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) Would the proposed project involve a reduction in capacity at a solid waste management facility used for refuse or recyclables generated within the City?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o If "yes," would the proposed project comply with the City's Solid Waste Management Plan?	<input type="checkbox"/>	<input type="checkbox"/>
<b>12. ENERGY:</b> <u>CEQR Technical Manual Chapter 15</u>		
(a) Using energy modeling or Table 15-1 in <u>Chapter 15</u> , the project's projected energy use is estimated to be (annual BTUs):		
(b) Would the proposed project affect the transmission or generation of energy?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>13. TRANSPORTATION:</b> <u>CEQR Technical Manual Chapter 16</u>		
(a) Would the proposed project exceed any threshold identified in Table 16-1 in <u>Chapter 16</u> ?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) If "yes," conduct the appropriate screening analyses, attach back up data as needed for each stage, and answer the following questions:		
o Would the proposed project result in 50 or more Passenger Car Equivalents (PCEs) per project peak hour?	<input type="checkbox"/>	<input type="checkbox"/>
If "yes," would the proposed project result in 50 or more vehicle trips per project peak hour at any given intersection? **It should be noted that the lead agency may require further analysis of intersections of concern even when a project generates fewer than 50 vehicles in the peak hour. See Subsection 313 of <u>Chapter 16</u> for more information.	<input type="checkbox"/>	<input type="checkbox"/>
o Would the proposed project result in more than 200 subway/rail or bus trips per project peak hour?	<input type="checkbox"/>	<input type="checkbox"/>
If "yes," would the proposed project result, per project peak hour, in 50 or more bus trips on a single line (in one direction) or 200 subway/rail trips per station or line?	<input type="checkbox"/>	<input type="checkbox"/>
o Would the proposed project result in more than 200 pedestrian trips per project peak hour?	<input type="checkbox"/>	<input type="checkbox"/>
If "yes," would the proposed project result in more than 200 pedestrian trips per project peak hour to any given pedestrian or transit element, crosswalk, subway stair, or bus stop?	<input type="checkbox"/>	<input type="checkbox"/>
<b>14. AIR QUALITY:</b> <u>CEQR Technical Manual Chapter 17</u>		
(a) <u>Mobile Sources:</u> Would the proposed project result in the conditions outlined in Section 210 in <u>Chapter 17</u> ?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) <u>Stationary Sources:</u> Would the proposed project result in the conditions outlined in Section 220 in <u>Chapter 17</u> ?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o If "yes," would the proposed project exceed the thresholds in Figure 17-3, Stationary Source Screen Graph in <u>Chapter 17</u> ? (Attach graph as needed)	<input type="checkbox"/>	<input type="checkbox"/>
(c) Does the proposed project involve multiple buildings on the project site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(d) Does the proposed project require federal approvals, support, licensing, or permits subject to conformity requirements?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(e) Does the proposed project site have existing institutional controls (e.g., (E) designation or Restrictive Declaration) relating to air quality that preclude the potential for significant adverse impacts?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(f) If "yes" to any of the above, conduct the appropriate analyses and attach any supporting documentation.		
<b>15. GREENHOUSE GAS EMISSIONS:</b> <u>CEQR Technical Manual Chapter 18</u>		
(a) Is the proposed project a city capital project or a power generation plant?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) Would the proposed project fundamentally change the City's solid waste management system?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) Would the proposed project result in the development of 350,000 square feet or more?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(d) If "yes" to any of the above, would the project require a GHG emissions assessment based on guidance in <u>Chapter 18</u> ?	<input type="checkbox"/>	<input type="checkbox"/>
o If "yes," would the project result in inconsistencies with the City's GHG reduction goal? (See <u>Local Law 22 of 2008</u> , § 24-	<input type="checkbox"/>	<input type="checkbox"/>



## EAS FULL FORM PAGE 9

	YES	NO
803 of the Administrative Code of the City of New York). Please attach supporting documentation.		
<b>16. NOISE:</b> CEQR Technical Manual Chapter 19		
(a) Would the proposed project generate or reroute vehicular traffic?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) Would the proposed project introduce new or additional receptors (see Section 124 in Chapter 19) near heavily trafficked roadways, within one horizontal mile of an existing or proposed flight path, or within 1,500 feet of an existing or proposed rail line with a direct line of site to that rail line?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(c) Would the proposed project cause a stationary noise source to operate within 1,500 feet of a receptor with a direct line of sight to that receptor or introduce receptors into an area with high ambient stationary noise?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(d) Does the proposed project site have existing institutional controls (e.g., (E) designation or Restrictive Declaration) relating to noise that preclude the potential for significant adverse impacts?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(e) If "yes" to any of the above, conduct the appropriate analyses and attach any supporting documentation.		
<b>17. PUBLIC HEALTH:</b> CEQR Technical Manual Chapter 20		
(a) Based upon the analyses conducted, do any of the following technical areas require a detailed analysis: Air Quality; Hazardous Materials; Noise?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(b) If "yes," explain why an assessment of public health is or is not warranted based on the guidance in Chapter 20, "Public Health." Attach a preliminary analysis, if necessary.		
<b>18. NEIGHBORHOOD CHARACTER:</b> CEQR Technical Manual Chapter 21		
(a) Based upon the analyses conducted, do any of the following technical areas require a detailed analysis: Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Open Space; Historic and Cultural Resources; Urban Design and Visual Resources; Shadows; Transportation; Noise?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
(b) If "yes," explain why an assessment of neighborhood character is or is not warranted based on the guidance in Chapter 21, "Neighborhood Character." Attach a preliminary analysis, if necessary.		
<b>19. CONSTRUCTION:</b> CEQR Technical Manual Chapter 22		
(a) Would the project's construction activities involve:		
o Construction activities lasting longer than two years?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o Construction activities within a Central Business District or along an arterial highway or major thoroughfare?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o Closing, narrowing, or otherwise impeding traffic, transit, or pedestrian elements (roadways, parking spaces, bicycle routes, sidewalks, crosswalks, corners, etc.)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o Construction of multiple buildings where there is a potential for on-site receptors on buildings completed before the final build-out?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o The operation of several pieces of diesel equipment in a single location at peak construction?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o Closure of a community facility or disruption in its services?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o Activities within 400 feet of a historic or cultural resource?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o Disturbance of a site containing or adjacent to a site containing natural resources?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o Construction on multiple development sites in the same geographic area, such that there is the potential for several construction timelines to overlap or last for more than two years overall?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
(b) If any boxes are checked "yes," explain why a preliminary construction assessment is or is not warranted based on the guidance in Chapter 22, "Construction." It should be noted that the nature and extent of any commitment to use the Best Available Technology for construction equipment or Best Management Practices for construction activities should be considered when making this determination.		
<b>20. APPLICANT'S CERTIFICATION</b>		
I swear or affirm under oath and subject to the penalties for perjury that the information provided in this Environmental Assessment Statement (EAS) is true and accurate to the best of my knowledge and belief, based upon my personal knowledge and familiarity with the information described herein and after examination of the pertinent books and records and/or after inquiry of persons who have personal knowledge of such information or who have examined pertinent books and records.		
Still under oath, I further swear or affirm that I make this statement in my capacity as the applicant or representative of the entity that seeks the permits, approvals, funding, or other governmental action(s) described in this EAS.		
APPLICANT/REPRESENTATIVE NAME	SIGNATURE	DATE
Frank Ruchala Jr. Deputy Director of Zoning Division		April 9, 2019
PLEASE NOTE THAT APPLICANTS MAY BE REQUIRED TO SUBSTANTIATE RESPONSES IN THIS FORM AT THE DISCRETION OF THE LEAD AGENCY SO THAT IT MAY SUPPORT ITS DETERMINATION OF SIGNIFICANCE.		

## EAS FULL FORM PAGE 10

Part III: DETERMINATION OF SIGNIFICANCE (To Be Completed by Lead Agency)		
INSTRUCTIONS: In completing Part III, the lead agency should consult 6 NYCRR 617.7 and 43 RCNY § 6-06 (Executive Order 91 or 1977, as amended), which contain the State and City criteria for determining significance.		
1. For each of the impact categories listed below, consider whether the project may have a significant adverse effect on the environment, taking into account its (a) location; (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude.	Potentially Significant Adverse Impact	
IMPACT CATEGORY	YES	NO
Land Use, Zoning, and Public Policy	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Socioeconomic Conditions	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Community Facilities and Services	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Open Space	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Shadows	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Historic and Cultural Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Urban Design/Visual Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Natural Resources	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Hazardous Materials	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Water and Sewer Infrastructure	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Solid Waste and Sanitation Services	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Energy	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Transportation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Air Quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Greenhouse Gas Emissions	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Noise	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Public Health	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Neighborhood Character	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Construction	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Are there any aspects of the project relevant to the determination of whether the project may have a significant impact on the environment, such as combined or cumulative impacts, that were not fully covered by other responses and supporting materials?  If there are such impacts, attach an explanation stating whether, as a result of them, the project may have a significant impact on the environment.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Check determination to be issued by the lead agency:		
<input type="checkbox"/> <b>Positive Declaration:</b> If the lead agency has determined that the project may have a significant impact on the environment, and if a Conditional Negative Declaration is not appropriate, then the lead agency issues a <i>Positive Declaration</i> and prepares a draft Scope of Work for the Environmental Impact Statement (EIS).		
<input type="checkbox"/> <b>Conditional Negative Declaration:</b> A <i>Conditional Negative Declaration</i> (CND) may be appropriate if there is a private applicant for an Unlisted action AND when conditions imposed by the lead agency will modify the proposed project so that no significant adverse environmental impacts would result. The CND is prepared as a separate document and is subject to the requirements of 6 NYCRR Part 617.		
<input checked="" type="checkbox"/> <b>Negative Declaration:</b> If the lead agency has determined that the project would not result in potentially significant adverse environmental impacts, then the lead agency issues a <i>Negative Declaration</i> . The <i>Negative Declaration</i> may be prepared as a separate document (see <a href="#">template</a> ) or using the embedded Negative Declaration on the next page.		
4. LEAD AGENCY'S CERTIFICATION		
TITLE Acting Director, Environmental Assessment and Review Division	LEAD AGENCY New York City Department of City Planning, on Behalf of the City Planning Commission	
NAME Olga Abinader	DATE April 9, 2019	
SIGNATURE 		

Project Name: Residential Tower Mechanical Voids Text Amendment

CEQR #: 19DCP110Y

SEQRA Classification: Type I

EAS FULL FORM PAGE 11

**REVISED NEGATIVE DECLARATION - supersedes the Negative Declaration issued January 28, 2019****Statement of No Significant Effect**

Pursuant to Executive Order 91 of 1977, as amended, and the Rules of Procedure for City Environmental Quality Review, found at Title 62, Chapter 5 of the Rules of the City of New York and 6 NYCRR, Part 617, State Environmental Quality Review, the Department of City Planning, acting on behalf of the City Planning Commission assumed the role of lead agency for the environmental review of the proposed project. Based on a review of information about the project contained in this environmental assessment statement and any attachments hereto, which are incorporated by reference herein, the lead agency has determined that the proposed project would not have a significant adverse impact on the environment.

**Reasons Supporting this Determination**

The above determination is based on information contained in this EAS, which finds the proposed actions sought before the City Planning Commission would have no significant effect on the quality of the environment. Reasons supporting this determination are noted below.

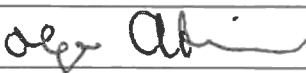
**Land Use, Zoning and Public Policy**

1. This EAS includes a Land Use, Zoning and Public Policy assessment which analyzes the potential significance of the proposed text amendment on land use, zoning and public policy in the study area. The Proposed Zoning Text Amendment would limit the use of zoning floor area deductions for excessive structural voids in high-density tower districts. The Proposed Action is intended to discourage the use of excessive mechanical or structural floors to increase building height by limiting the height and frequency of such spaces incorporated into a building's design. The Proposed Action would not otherwise affect land use, zoning or public policy in the affected area. This EAS includes a consistency assessment with the Waterfront Revitalization Program (WRP). The analysis concludes that the proposed actions would not result in significant adverse impacts on land use, zoning or public policy.

**Urban Design and Visual Resources**

2. This EAS includes an Urban Design and Visual Resources assessment which analyzes the potential significance of the Proposed Action on urban design. The Proposed Action would not alter the permitted height, bulk, setback or arrangement of the existing zoning districts. Rather, the proposed text amendment would limit the use of excessively tall mechanical floors to elevate upper-story residential units above the surrounding context. Thus, the Proposed Action is intended to reinforce and improve existing neighborhood character and urban design. Therefore, there would be no significant adverse impacts on urban design and visual resources.

*No other significant effects upon the environment that would require the preparation of a Draft Environmental Impact Statement are foreseeable. This Negative Declaration has been prepared in accordance with Article 8 of the New York State Environmental Conservation Law (SEQRA).*

TITLE Acting Director, Environmental Assessment and Review Division	LEAD AGENCY Department of City Planning, acting on behalf of the City Planning Commission
NAME Olga Abinader	DATE April 9, 2019
SIGNATURE 	

**Project Name: Residential Tower Mechanical Voids Text Amendment****CEQR #: 19DCP110Y****EAS FULL FORM PAGE 12****SEQRA Classification: Type I**

TITLE Chair, City Planning Commission	
NAME Marisa Lago	DATE April 9, 2019
SIGNATURE	

\* Following certification of the related land use application (ULURP No. N 190230 ZRY) on January 28, 2019, the City Planning Commission (CPC) proposed modifications to the proposed zoning text amendment. This Revised Negative Declaration supersedes the Negative Declaration issued January 28, 2019 and reflects the Revised EAS dated April 9, 2019 which assesses the proposed CPC Modification to the application. As described in the Revised EAS, the change would not alter the conclusions of the previous EAS.



## Residential Tower Mechanical Voids Text Amendment EAS Attachment A: Project Description

### I. INTRODUCTION

The New York City Department of City Planning (DCP) proposes a zoning text amendment pursuant to Zoning Resolution (ZR) Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) and related sections, to modify floor area regulations for residential tower developments located within non-contextual R9 and R10 Residence Districts, their equivalent Commercial Districts, as well as Special Purpose Districts that rely on underlying floor area and height and setback regulations or that are primarily residential in character. The proposed zoning text amendment (the "Proposed Action") would count residential mechanical floors in such buildings as zoning floor area when they are taller than 25 feet in height or when they are located within 75 feet in height of each other. Currently, mechanical space is excluded from zoning floor area calculations. The Proposed Action is intended to discourage the use of excessively tall mechanical floors that elevate upper-story residential units above the surrounding context.

### II. BACKGROUND

The New York City Zoning Resolution allows floor space containing mechanical equipment to be excluded from zoning floor area calculations. The Resolution does not specifically identify a limit to the height of such spaces. In recent years, some developments have been built or proposed that use tall, inflated mechanical or structural floors to elevate upper-story residential units above the surrounding context and improve their views. These spaces have been commonly described as "mechanical voids".

Renderings of a proposed residential tower on the Upper East Side released in 2018 showed four mechanical floors taking up a total of approximately 150 feet in the middle of the building and raising its overall height to over 500 feet, far above other buildings in the surrounding area built under the same regulations. In response to this building, Mayor De Blasio requested that DCP examine the issue of excessive mechanical voids that are used in ways not anticipated or intended by zoning.

The Department subsequently conducted a citywide analysis of recent construction to better understand the mechanical needs of residential buildings and to assess when excessive mechanical spaces were being used to inflate their overall height. DCP assessed the residential buildings constructed in R6 through R10 districts and their Commercial District equivalents over the past 10 years and generally found excessive mechanical voids to be limited to a narrow set of circumstances in the city.

In R6 through R8 non-contextual zoning districts and their equivalent Commercial Districts, the Department assessed over 700 buildings and found no examples of excessive mechanical spaces. DCP attributes this primarily to the existing regulations that generally limit the overall height of buildings and impose additional restrictions as buildings become taller through the use of sky exposure planes.

In R9 and R10 non-contextual zoning districts and their equivalent Commercial Districts, residential buildings can penetrate the sky exposure plane through the optional tower regulations, which do not impose a limit on height for portions of buildings that meet certain lot coverage requirements. In these tower districts, generally concentrated in Manhattan, the Department assessed over 80 new residential

*Residential Tower Mechanical Voids Text Amendment EAS**Project Description*

buildings and found that most towers exhibit consistent configurations of mechanical floors. This typically included one mechanical floor in the lower section of the building located between the non-residential and residential portions of the building. In addition, taller towers tended to have additional mechanical floors midway through the building, or regularly located every 10 to 20 stories. In both instances, these mechanical floors range in height from 10 to approximately 25 feet. Larger mechanical spaces were generally reserved for the uppermost floors of the building in a mechanical penthouse, or in the cellar below ground.

In contrast to these more typical scenarios, the Department identified seven buildings, either completed or currently undergoing construction, that were characterized by either a single, extremely tall mechanical space, or multiple mechanical floors stacked closely together. The height of these mechanical spaces varied significantly but ranged between approximately 80 feet to 190 feet in the aggregate. In districts where the tower-on-a-base regulations are applicable, like the Upper East Side building described above, these spaces were often located right above the 150-foot mark, which suggests that they are intended to elevate as many units as possible while also complying with the 'bulk packing' rule of these regulations, which require 55 percent of the floor area to be located below 150 feet. In other districts, these spaces were typically located lower in the building to raise more residential units higher in the air, which often also has the detrimental side effect of "deadening" the streetscape with inactive space close to the ground.

### III. PROPOSED ACTION

#### Proposed Text Amendment

The Applicant, the Department of City Planning, is proposing a zoning text amendment to Zoning Resolution Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) and related sections, for residential towers in R9 and R10 non-contextual zoning districts, their equivalent Commercial Districts, and certain Special Districts to discourage the use of excessively tall mechanical spaces that disengage substantial amounts of building spaces from their surroundings. The proposed text amendment also seeks to recognize the need for reasonably sized and distributed mechanical spaces in residential towers, as well as the virtue of providing overall flexibility to support design excellence in these areas.

The proposed new text amendment (see Appendix A) would require that, in certain buildings where the text applies, floors occupied predominantly by mechanical space that are taller than 25 feet in height (whether individually or in combination) be counted as floor area. Taller floors, or stacked floors taller than 25 feet, would be counted as floor area based on the new 25-foot height threshold. A contiguous mechanical floor that is 132 feet in height, for example, would now count as five floors of floor area (e.g.,  $132/25 = 5.28$ , rounded to the closest whole number equals 5). The 25-foot height is based on mechanical floors found in recently-constructed residential towers and is meant to allow the mechanical needs of residential buildings to continue to be met without increasing the height of residential buildings to a significant degree. The provision would only apply to floors located below residential floor area to not impact mechanical penthouses found at the top of buildings where large amounts of mechanical space is typically located.

Additionally, any floors occupied predominantly by mechanical space located within 75 feet of one another that, in the aggregate, add up to more than 25 feet in height would count as floor area. This change is intended to address situations where non-mechanical floors are interspersed among mechanical

**Residential Tower Mechanical Voids Text Amendment EAS****Project Description**

floors in response to the proposed new 25-foot height threshold, while still allowing buildings to provide mechanical space necessary in different portions of a building.

For example, a cluster of four fully mechanical floors in the lower section of the tower which total 80 feet in height, even with non-mechanical floors splitting the mechanical floors into separate segments, would count as three floors of floor area, even when each floor is less than 25 feet tall and they are not contiguous (e.g.  $80' / 25' = 3.2$  rounded to the closest whole number equals 3).

The proposed new regulation would also be applicable to the non-residential portions of a mixed-use building if the non-residential uses occupy less than 25 percent of the building. This would ensure that tall mechanical floors could not be assigned as mechanical space to non-residential uses in the building, and therefore not be subject to the rule. The 25-foot height threshold would not apply to the non-residential portion of buildings with more than 25 percent of their floor area allocated to non-residential use as the uses in mixed buildings like this (offices, community facilities, etc.) commonly have different mechanical needs than residential buildings. Finally, the regulations would also be made applicable to floors occupied predominantly by spaces that are unused or inaccessible within a building. The Zoning Resolution already considers these types of spaces as floor area, but it does not provide explicit limits to the height that can be considered part of a single story within these spaces. This change would ensure that mechanical spaces and these types of spaces are treated similarly.

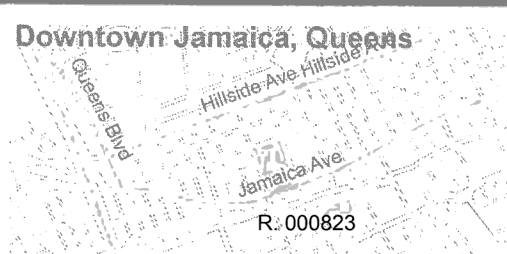
**Geographic Applicability of the Proposed Action**

The proposed text amendment would apply to towers in R9 and R10 Residence Districts and their equivalent Commercial Districts. The proposal would also apply to Special Purpose Districts that rely on the underlying tower regulations for floor area and height and setback regulations, as well as sections of the Special Clinton District and the Special West Chelsea District that impose special tower regulations. The applicable areas are shown on Map 1, and the applicable Special Purpose Districts are shown in Table 1.

**Table 1: Applicability of the Proposed Action on Special Purpose Districts and Other Areas**

Borough	Special District/Area	Notes
MN	Lincoln Square	C4-7 Districts
MN	Union Square	C6-4 Districts
MN	West Chelsea	Subdistrict A
MN	Clinton	R9 District and equivalent Commercial Districts that do not have special height restrictions, as well as C6-4 Districts in the 42nd Street Perimeter Area
QN	Long Island City	Court Square Subdistrict
QN	Downtown Jamaica	"No Building Height Limit" area as shown on Map 5 of Appendix A in Article XI, Chapter 5.

05/14/2019





*Residential Tower Mechanical Voids Text Amendment EAS**Project Description***IV. PURPOSE AND NEED FOR PROPOSED ACTION**

The Proposed Action is intended to i) limit the use of tall, inflated mechanical or structural floors to elevate upper-story residential units above the surrounding context; ii) encourage residential buildings that activate and engage with their surroundings; iii) recognize the need for reasonably sized and distributed mechanical spaces in residential buildings; and iv) continue to support flexibility for excellence in design.

Currently, the Zoning Resolution allows floor space containing mechanical equipment to be excluded from zoning floor area calculations. Due to this exclusion and a lack of height limits for such spaces, some developments have been designed to utilize mechanical or structural floors to inflate building height to improve the views from their upper residential units. The Proposed Action is intended to discourage the use of excessively tall mechanical floors in such ways not intended by zoning.

**V. ANALYSIS FRAMEWORK****Analysis Year**

CEQR requires analysis of the project's effects on its environmental setting. Since typically proposed projects, if approved, would be completed and become operational at a future date, the action's environmental setting is not the current environment but the environment as it would exist at project completion and operation, in the future. Therefore, future conditions must be projected. This prediction is made for a particular year, generally known as the "analysis year" or the "build year," which is the year when the proposed project would be substantially operational.

For generic actions, where the build-out depends on market conditions and other variables, the build year cannot be determined with precision. In these cases, a ten-year build year is generally considered reasonable as it captures a typical cycle of market conditions and generally represents the outer timeframe within which predictions of future development may usually be made without speculation. Therefore, an analysis year of 2029 has been identified for this environmental review.

**Analysis Approach**

Consistent with 2014 CEQR Technical Manual guidelines, the Proposed Action is analyzed in this Environmental Assessment Statement as a "generic action" because there are no known developments that are projected and, due to the proposal's broad applicability, it is difficult to predict the sites where development would be facilitated by the Proposed Action. According to the 2014 CEQR Technical Manual, generic actions are programs and plans that have wide application or affect the range of future alternative policies. Usually these actions either affect the entire city or an area so large that site-specific description or analysis is not appropriate. As described in the 2014 CEQR Technical Manual, generic analyses are conducted using the following methodology:

- Identify Typical Cases: provide several descriptions similar to those in a localized action for cases that can reasonably typify the conditions and impacts of the entire proposal.
- Identify a Range of Conditions: A discussion of the range of conditions or situations under which the action(s) may take place, so that the full range of impacts can be identified.

*Residential Tower Mechanical Voids Text Amendment EAS**Project Description*

As this is a generic action with no specific development sites identified, quantifying the effect of the proposal on development with any sense of certainty is difficult. It should also be noted that this generic proposal is not in-and-of-itself expected to induce development where it would not have occurred in the future absent its approval.

Owing to the generic nature of this action, there are no known or projected development sites identified, as would traditionally be done in connection with a Reasonable Worst-Case Development Scenario under the guidance of the 2014 CEQR Technical Manual. To present a conservative environmental analysis of the likely effects of the Proposed Action, three generic prototypical developments ("prototypes" or "prototypical sites") that illustrate how the proposed text amendment may affect future development have been identified. The three prototypes represent a variety of possible development outcomes, and are loosely based on real-life case studies identified by the Department.

The three prototypes illustrate possible mechanical voids, based on tower-on-a-base or standard tower regulations as defined by the New York City Zoning Resolution, that may be constructed with and without the proposed text amendment. As shown for each prototype described below, the With-Action scenario identifies the type of reduced mechanical voids that may occur as a result of the Proposed Action. The future No-Action scenario identifies *excessive* mechanical voids that could occur in the future absent the Proposed Action scenario. The incremental difference between the two scenarios serves as the basis for analysis. The analysis illustrates any environmental effects that may result from the Proposed Action.

***Prototype 1: Tower-on-a-base Development in a C2-8 District, on 100'x175' Lot on a Wide Street***

As illustrated in Figure 1, this prototype affords the opportunity to understand the effects of the Proposed Action on a typical residential tower-on-a-base development, commonly found along avenues in non-contextual R9 and R10 Districts and their equivalent districts in C1 and C2 districts. In districts where the tower-on-a-base regulations are applicable, mechanical voids would generally be located above 150 feet to comply with the 'bulk packing' rule of these regulations, which require 55 percent of the floor area to be located below 150 feet. The No-Action Scenario reflects the stacking of these mechanical voids, with a total gross floor area of 235,500 sq. ft., a zoning floor area of 210,000 sq. ft., and a height of 480 ft.

In the With-Action Scenario, the Proposed Action would require that mechanical floors (whether individually or in combination) taller than 25 feet in height be counted as floor area in residential towers. Taller floors, or stacked floors taller than 25 feet, would be counted as floor area based on the new 25 foot height threshold. The mechanical void would be reduced significantly, decreasing the gross floor area from 235,500 sq. ft. to 220,500 sq. ft., lowering the height from 480 ft. to 344 ft., while maintaining the zoning floor area at 210,000 sq. ft.

***Prototype 2: Standard Tower in a C5-1, on a 37,500 sq. ft. Irregular Lot on Wide and Narrow Streets***

As shown in Figure 2, this prototype affords the opportunity to understand the effects of the Proposed Action on a typical residential standard tower, commonly found in a C4, C5 and C6 districts that are R9 or R10 equivalence. In districts where the standard tower regulations apply, mechanical voids would typically be located lower in the building to raise more residential units higher in the air. The No-Action Scenario reflects the stacking of these mechanical voids, with a total gross floor area of 487,500 sq. ft., a zoning floor area of 450,000 sq. ft., and a height of 907 ft. In the With-Action Scenario, the mechanical void on the lower floors would be reduced significantly, decreasing the gross floor area from 487,500 sq. ft. to

*Residential Tower Mechanical Voids Text Amendment EAS**Project Description*

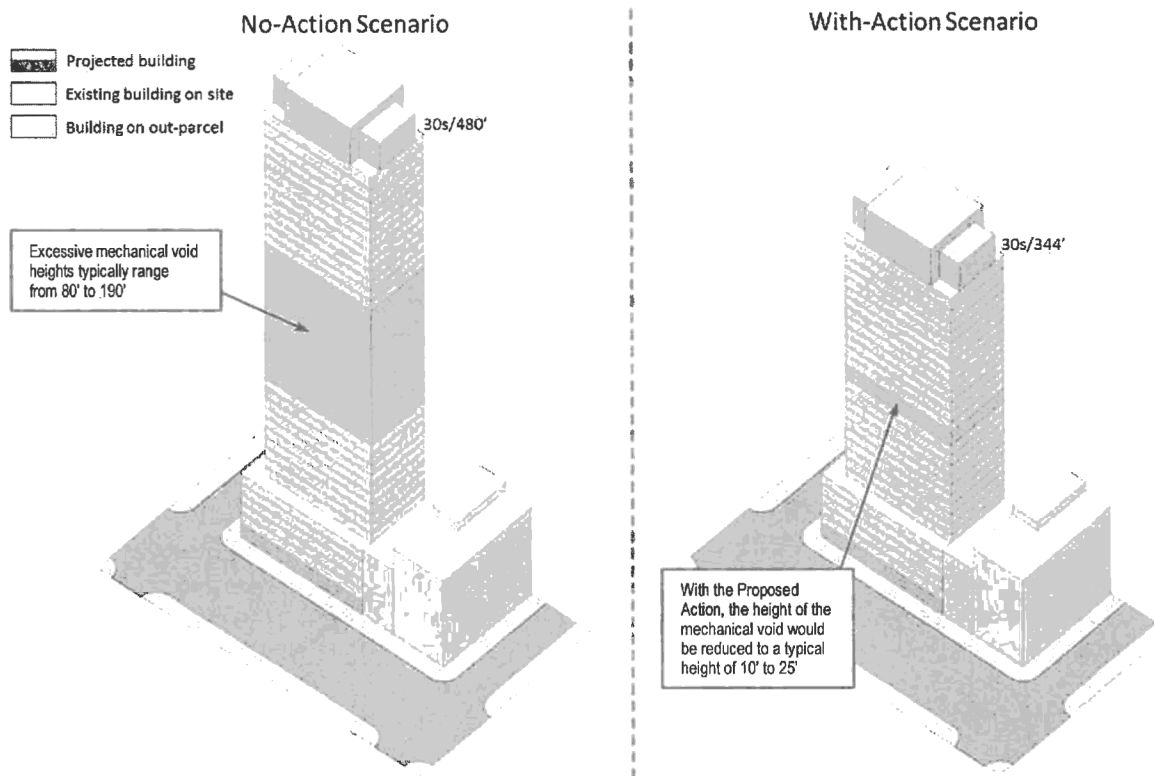
472,500 sq. ft., lowering the height from 907 ft. to 777 ft., while maintaining the zoning floor area at 450,000 sq. ft.

***Prototype 3: Modified Standard Tower Development in a Special District, on a 23,107 sq. ft. Irregular Lot on a Wide and Narrow Street***

As represented in Figure 3, this prototype affords the opportunity to understand the effects of the Proposed Action on a modified residential standard tower development found in one of the Special Districts that would be affected by the Proposed Action. The No-Action Scenario reflects a development that contains mechanical voids on the lower portion of the buildings. This scenario would provide a total gross floor area of 378,935 sq. ft., a zoning floor area of 346,605 sq. ft., and height of 652 ft. In the With-Action Scenario, the mechanical voids situated on the lower floors would be reduced significantly, decreasing the gross floor area from 378,935 sq. ft. to 363,935 sq. ft., lowering the height from 652 ft. to 592 ft., while maintaining the zoning floor area at 346,605 sq. ft.

## Residential Tower Mechanical Voids Text Amendment EAS

## Project Description

**FIGURE 1:****Prototype 1 - Tower-on-a-base Development in a C2-8 District on 100'x175' Lot on a Wide Street**

	No Action	With Action
<b>Lot Area (square feet)</b>	17,500 sq. ft.	17,500 sq. ft.
<b>Permitted FAR</b>	10.0/12.0 with Inclusionary Housing	10.0/ 12.0 with Inclusionary Housing
<b>Permitted Maximum Zoning Floor Area w/ Inclusionary Housing Bonus</b>	210,000 sq. ft.	210,000 sq. ft.
<b>Number of Stories/Overall Height/Height with Bulkhead</b>	30s/480'/520'	30s/344'/384'
<b>Difference in Buildable Floor Area (percent increase over No Action)</b>		0 %
<b>Gross Floor Area (@ 5% deduction)</b>	235,500 sq. ft.	220,500 sq. ft.
<b>Total Number of Units (@ 1,000 sf. ft. / unit)</b>	221 units	221 units

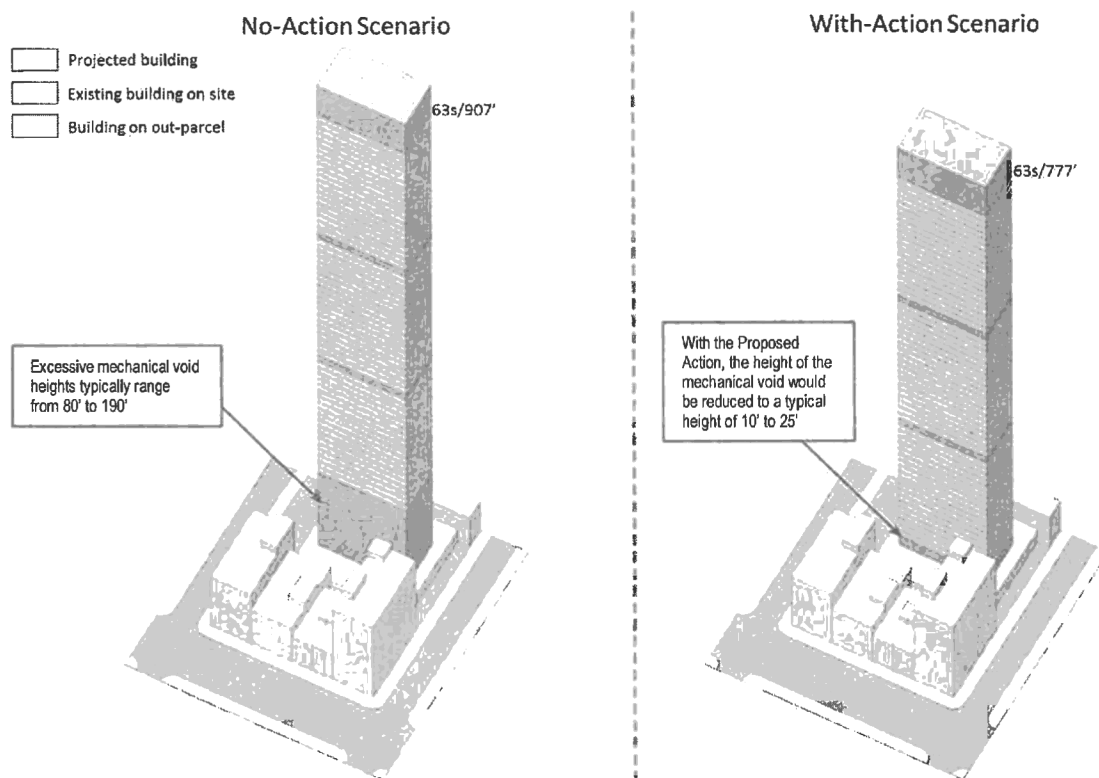


Residential Tower Mechanical Voids Text Amendment EAS

Project Description

**FIGURE 2:**

**Prototype 2 - Standard Tower in a C5-1 a 37,500 sq. ft. Lot on Wide and Narrow Streets**



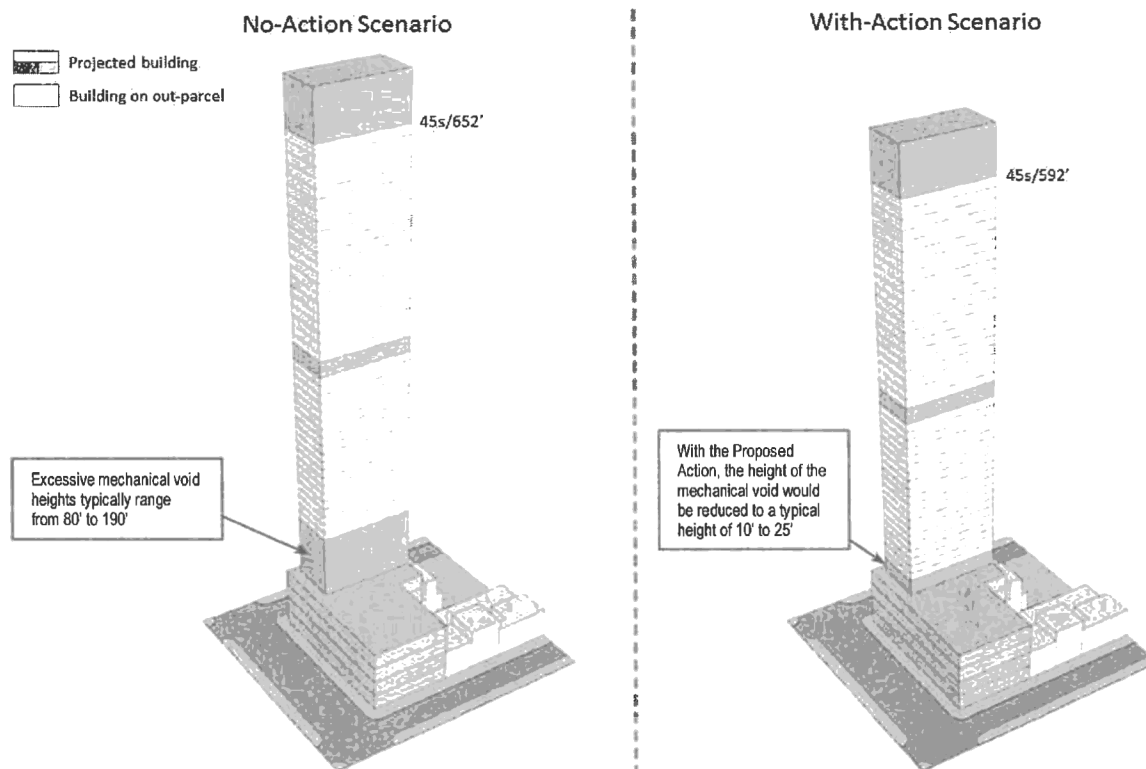
	No Action	With Action
Lot Area (square feet)	37,500 sq. ft.	37,500 sq. ft.
Permitted FAR	10.0/12.0 with Inclusionary Housing	10.0/ 12.0 with Inclusionary Housing
Permitted Maximum Zoning Floor Area w/ Inclusionary Housing Bonus	450,000 sq. ft.	450,000 sq. ft.
Number of Stories/Overall Height/Height with Bulkhead	63s/907'/967'	63s/777'/837'
Difference in Buildable Floor Area (percent increase over No Action)		0 %
Gross Floor Area (@ 5% deduction)	487,500 sq. ft.	472,500 sq. ft.
Total Number of Units (@ 1,000 sf. ft. / unit)	473 units	473 units

Residential Tower Mechanical Voids Text Amendment EAS

Project Description

**FIGURE 3:**

**Prototype 3 - Modified Standard Tower Development in the 42nd Street Perimeter Area in the Special Clinton District on a 23,107 sq. ft. Lot on a Wide and Narrow Street**



	No Action	With Action
Lot Area (square feet)	23,107 sq. ft.	23,107 sq. ft.
Permitted FAR	12.0/ 15.0 with New Theater Use Bonus	12.0/ 15.0 with New Theater Use Bonus
Permitted Maximum Zoning Floor Area w/ Inclusionary Housing Bonus	346,605 sq. ft.	346,605 sq. ft.
Number of Stories/Overall Height/Height with Bulkhead	45s/652'/712'	45s/592'/652'
Difference in Buildable Floor Area (percent increase over No Action)		0 %
Gross Floor Area (@ 5% deduction)	378,935 sq. ft.	363,935 sq. ft.
Total Number of Units (@ 1,000 sf. ft. / unit)	287 units	287 units

## Residential Tower Mechanical Voids Text Amendment EAS Attachment B: Technical Assessments

---

### I. INTRODUCTION

This Environmental Assessment Statement (EAS) has been prepared in accordance with the guidelines and methodologies presented in the 2014 City Environmental Quality Review (CEQR) Technical Manual. For each technical area, thresholds are defined, which, if met or exceeded, require that a detailed technical analysis be undertaken. Using these guidelines, preliminary assessments were conducted for all aspects of the Proposed Action to determine whether detailed analyses of any technical areas would be appropriate.

Part II of the EAS Form identifies those technical areas that warrant additional assessments. The technical areas that warranted a "Yes" answer in Part II of the EAS form were land use, zoning, and public policy; historic and cultural resources; urban design and visual resources; natural resources; air quality; and neighborhood character. As such, additional assessment for each of the analysis areas is provided in this attachment. All remaining technical areas detailed in the CEQR Technical Manual were not deemed to require supplemental assessment, as they do not trigger initial CEQR thresholds and are unlikely to result in significant adverse impacts.

### II. LAND USE, ZONING, AND PUBLIC POLICY

Under 2014 CEQR Technical Manual guidelines, a land use analysis evaluates the uses and development trends in the area that may be affected by a Proposed Action and determines whether the Proposed Action is compatible with those conditions or may affect them. Similarly, the analysis considers the Proposed Action's compliance with, and effect on, the area's zoning and other applicable public policies.

The Proposed Action is a citywide action and is not intended to facilitate a specific development or project. Rather it is intended to discourage the use of excessive mechanical or structural floors to increase building height by limiting the height and frequency of such spaces incorporated into a building's design. Accordingly, the assessment presented is not site-specific, but instead, to the extent practicable, considers the types of developments that could occur as a result of the Proposed Action.

#### Land Use

The Proposed Action would not result in a change in the prevailing land use in the city, in general, and specifically in any of the areas where high-rise buildings are permitted. As described in *Attachment A: Project Description*, the Proposed Action is a zoning text amendment for residential towers. It is intended to discourage the use of excessively tall mechanical floors that elevate upper-story residential units above the surrounding context. The amendment also looks to recognize the need for reasonably sized and distributed mechanical spaces in residential towers, as well as overall flexibility to support design excellence in these areas. Given that the Proposed Action would not result in any changes to land use, it is not anticipated that there would be any potential for significance adverse impacts and no further analysis is required.

*Residential Tower Mechanical Voids Text Amendment EAS**Technical Assessments***Zoning**

The Proposed Action would amend special floor area regulations in R9 and R10 Residence Districts and their equivalent Commercial Districts, and in Special Purpose Districts that rely on the underlying tower regulations for floor area as well as height and setback regulations or portions of Special Purpose Districts adjacent to CBDs that are primarily residential in nature and where towers are permitted. These Special Purpose Districts include Lincoln Square; Union Square; West Chelsea; Clinton; Long Island City; and Downtown Jamaica.

The Proposed Action would require that floors occupied predominantly by mechanical space that are taller than 25 feet in height (whether individually or in combination) be counted as floor area. Taller floors, or stacked floors taller than 25 feet, would be counted as floor area based on the new 25-foot height threshold. The provision would only apply to floors located below residential floor area to not impact mechanical penthouses found at the top of buildings where large amounts of mechanical space is typically located.

Additionally, any floors occupied predominantly by mechanical space located within 75 feet of one another that, in the aggregate, add up to more than 25 feet in height would similarly count as floor area. This would address situations where non-mechanical floors are interspersed among mechanical floors in response to the new 25-foot height threshold, while still allowing buildings to provide needed mechanical space for different portions of a building.

The new regulation would also be applicable to the non-residential portions of a mixed-use building if the non-residential uses occupy less than 25 percent of the building. This would ensure that tall mechanical floors could not be assigned as mechanical space to non-residential uses in the building, and therefore not be subject to the rule. The 25-foot height threshold would not apply to the non-residential portion of buildings with more than 25 percent of their floor area allocated to non-residential use as the uses in mixed buildings like this (offices, community facilities, etc.) commonly have different mechanical needs than residential buildings.

Finally, the regulations would also be made applicable to floors occupied predominantly by spaces that are unused or inaccessible within a building. The Zoning Resolution already considers these types of spaces as floor area, but there are no height limits for these spaces. This would ensure that mechanical spaces and these types of spaces are treated similarly.

As described above, the Proposed Action would not make any changes to allowed building height, lot coverage, open space or any other bulk requirement. The text amendment, which would count mechanical spaces in residential towers as zoning floor area, could result in buildings with less gross floor area and height, with the amount of achievable zoning floor area and net usable floor area unaffected. It is not anticipated that there would be any potential for significance adverse impacts on zoning as a result of the Proposed Action and no further analysis is required.



Residential Tower Mechanical Voids Text Amendment EASTechnical Assessments**Public Policy**

The Proposed Action, which would amend special floor area regulations for residential towers, would not be inconsistent with any public policies. As described above, it is intended to discourage the use of excessively tall mechanical floors that elevate upper-story residential units above the surrounding context.

**Waterfront Revitalization Program**

The Proposed Action could potentially affect properties located within the City's Coastal Zone and, therefore, it is subject to review for consistency with the policies of the Waterfront Revitalization Program (WRP). The WRP includes policies designed to maximize the benefits derived from economic development, environmental preservation, and public use of the waterfront while minimizing the conflicts among those objectives. The WRP Consistency Assessment Form lists the WRP policies and indicates whether the proposed project would promote or hinder that policy, or if that policy would not be applicable. This section provides additional information for the policies that have been checked "promote" or "hinder" in the WRP Consistency Assessment Form (attached in Appendix A).

***Policy 1.1: Encourage commercial and residential redevelopment in appropriate Coastal Zone areas.***

The Proposed Action would apply to residential towers in non-contextual high-density districts where residential towers are permitted, including R9 and R10 Residence Districts, and their equivalent Commercial Districts that are mapped outside of central business districts, along with certain Special Purpose Districts. The restriction would also apply to mixed-use buildings that contain a small amount of non-residential floor area. The provisions would limit the use of zoning floor area deductions for excessive structural voids in high-density tower districts without inhibiting current or future towers from effectively incorporating necessary mechanical space - including electrical equipment, ventilation shafts, heating/cooling systems and other equipment. The Proposed Action would limit the height and frequency of such excessive structural voids, incorporated into a building tower's design that serve no practical or functional purpose for the building, while ensuring sufficient volumes of spaces would continue to be available to house mechanical equipment or structural components without counting towards "floor area" for zoning purposes. The Proposed Action would not make any changes to allowed building height, lot coverage, open space or any other bulk requirement, including the permitted amount or bulk of residential or commercial development in Coastal Zone areas. Therefore, the Proposed Action would be consistent with this policy.

***Policy 1.5: Integrate consideration of climate change and sea level rise into the planning and design of waterfront residential and commercial development, pursuant to WRP Policy 6.******Policy 6.1: Minimize losses from flooding and erosion by employing non-structural and structural management measures appropriate to the site, the use of the property to be protected, and the surrounding area.***

The Proposed Action will not inhibit buildings from being designed to address current or future flood risks, including the ability integrate adaptive measure into the planning and design of flood prone residential and mixed-use developments. The proposal to modify residential tower provisions to count mechanical or structural voids that are taller than 25 feet as "floor area" would ensure sufficient mechanical space continues to remain available without counting as such "floor area" to house any needed mechanical equipment, including equipment proposed to be relocated from below grade or below projected flood

*Residential Tower Mechanical Voids Text Amendment EAS**Technical Assessments*

elevations as a future adaptive measure. Therefore, the Proposed Action would be consistent with these policies.

***Policy 9.1: Protect and improve visual quality associated with New York City's urban context and historic and working waterfront.***

The Proposed Action would restrict some towers, including those possibly located within the Coastal Zone, from exploiting the mechanical space exemption from "floor area" through the creation of excessive structural voids that serve no functional mechanical-related function. This would result in reducing some building heights without reducing the permitted amount of residential or commercial floor space. Therefore, the Proposed Action would be consistent with this policy.

### III. HISTORIC AND CULTURAL RESOURCES

Historic and cultural resources are defined as districts, buildings, structures, sites and objects of historical, aesthetic, cultural and archeological value. This includes properties that have been designated or are under consideration for designation as New York City Landmarks (NYCL) or Scenic Landmarks, or are eligible for such designation; properties within New York City Historic Districts; properties listed on the State and/or National Register of Historic Places (S/NR-listed); and National Historic Landmarks. An assessment of architectural and/or archaeological resources is usually needed for projects that are located adjacent to historic or landmark structures or projects that require in-ground disturbance, unless such disturbance occurs in an area that has been previously excavated.

According to the *CEQR Technical Manual* guidelines, impacts on historic resources are considered on those sites affected by proposed actions and in the area surrounding identified development sites. The historic resources study area is therefore defined as the affected area, as well as an approximately 400-foot radius around the affected area. Archaeological resources are considered only in those areas where new excavation or ground disturbance is likely and would result in new in-ground disturbance, as compared to No-Action conditions. The Proposed Action is a citywide action and is not intended to facilitate a specific development or project. While it may affect areas of archaeological sensitivity, no new in-ground disturbance is anticipated in the With-Action condition beyond what would be expected to occur in the No-Action condition. Therefore, no further archaeological analysis is warranted.

Architectural resources usually need to be assessed for actions that would result in new construction, demolition, or significant physical alteration to any building, structure, or object; a change in scale, visual prominence, or visual context of any building, structure, or object or landscape feature; construction, including excavating vibration, subsidence, dewatering, and the possibility of falling objects; additions to or significant removal, grading, or replanting of significant historic landscape features; screening or elimination of publicly accessible views; and introduction of significant new shadows or significant lengthening of the duration of existing shadows on an historic landscape or on an historic structure of the features that make the structure significant depend on sunlight.

As mentioned above, the Proposed Action would affect specific zoning districts on a citywide basis. These districts include R9 and R10 Residence Districts and their equivalent Commercial Districts, and in certain Special Purpose Districts. While some of these districts may be situated in historic districts, or adjacent to historic resources, the Proposed Action is not in-and-of-itself expected to induce development where it would not have occurred absent the Proposed Action. There would be no incremental change in the potential for properties that are NYCLs or in New York City Historic Districts, or non-designated eligible

*Residential Tower Mechanical Voids Text Amendment EAS**Technical Assessments*

sites, to be directly impacted between the Future No- Action and With-Action conditions. The Proposed Action would not result in any physical direct impacts on architectural resources.

In addition, privately owned properties that are NYCLs or in New York City Historic Districts would also be protected under the New York City Landmarks Law that requires New York City Landmarks Preservation Commission (LPC) review and approval before any alteration or demolition can occur. Since the Proposed Action is not in-and-of-itself expected to induce new construction activities where these would not have occurred absent the Proposed Action, the Proposed Action would not result in any significant adverse construction-related impacts to non- designated eligible sites. In addition, any designated NYCL or S/NR-listed historic buildings located within 90 linear feet of a new construction site would be subject to the protections of the New York City Department of Building's (DOB's) Technical Policy and Procedure Notice (TPPN) #10/88, ensuring that any development resulting from the Proposed Action would not result in any significant adverse construction-related impacts to designated historic resources.

The Proposed Action would not result in any significant adverse visual or contextual (indirect) impacts to architectural resources. The text amendment, which would count mechanical spaces in residential towers as zoning floor area, could result in buildings with less gross floor area and height. Therefore, it would not result in incremental shadows being cast on sunlight-sensitive features of historic resources. No significant adverse impact on historic resources is anticipated.

#### IV. URBAN DESIGN AND VISUAL RESOURCES

As defined in the CEQR Technical Manual, urban design and visual resources are the totality of components that may affect a pedestrian's experience of public space. The urban design characteristics of the neighborhood encompass the various components of buildings and streets in the area, including building bulk, use, and type; building arrangement; block form and street pattern; streetscape elements; street hierarchy; and natural features. The assessment focuses on the components of a proposed project that may have the potential to alter the arrangement, appearance and functionality of the built environment. An area's visual resources are its unique or important public view corridors, and can include views of the waterfront, public parks, landmark structures or districts, otherwise distinct buildings and natural resources. For CEQR analysis purposes, this includes only views from public and publicly accessible locations and does not include private residences or places of business.

An analysis of urban design and visual resources is appropriate if a proposed action would (a) result in buildings that have substantially different height, bulk, form, setbacks, size, scale, use, or arrangement than exists in an area; (b) change block form, de-map an active street or map a new street, or affect the street hierarchy, street wall, curb cuts, pedestrian activity or streetscape elements; or (c) would result in above-ground development in an area that includes significant visual resources.

The Proposed Action would not alter the permitted height, bulk, setback or arrangement of the existing zoning districts. As shown by the three prototypical analysis sites, described in *Attachment A: Project Description*, the developments in the With-Action condition would be shorter than development in the No-Action condition. In addition, the developments would be similar in bulk and height to buildings in the surrounding area, as they will continue to comply with the zoning regulations applicable to the site. New development under the Proposed Action would not alter an entrenched, consistent urban context, obstruct a natural or built visual corridor or be inconsistent with the existing character and building forms typically seen in the area. Rather, the proposed text amendment would limit the use of excessively tall mechanical floors to elevate upper-story residential units above the surrounding context. It is intended to

reinforce and improve existing neighborhood character and urban design. Therefore, there would be no significant adverse impacts on urban design and visual resources.

## V. NATURAL RESOURCES

Under CEQR, a natural resource is defined as the City's biodiversity (plants, wildlife and other organisms); any aquatic or terrestrial areas capable of providing suitable habitat to sustain the life processes of plants, wildlife, and other organisms; and any areas capable of functioning in support of the ecological systems that maintain the City's environmental stability. Such resources include ground water, soils and geologic features; numerous types of natural and human-created aquatic and terrestrial habitats (including wetlands, dunes, beaches, grasslands, woodlands, landscaped areas, gardens, parks, and built structures); as well as any areas used by wildlife. According to the *CEQR Technical Manual*, a natural resources assessment may be appropriate if a natural resource is present on or near the site of a project, and the project would, either directly or indirectly, cause a disturbance of that resource.

The Proposed Action would not result in significant adverse impacts to natural resources. The Proposed Action itself is not expected to induce development on sites where natural resources exist and where development would not have otherwise been possible. In addition, in many areas where natural resources exist, there are regulations that ensure their protection. These regulations include New York State Department of Environmental Conservation tidal and freshwater wetland regulations, the New York State Coastal Zone Management Program, and special zoning designations including Special Natural Area zoning. The Proposed Action would not eliminate and/or change the existing protections. As such, the Proposed Action would not result in significant adverse impacts to natural resources and a detailed analysis is not warranted. No effects to natural resources, incremental development, new soil disturbance or effects to groundwater are anticipated, and the Jamaica Bay Watershed Form is not necessary for this generic proposal.

## VI. AIR QUALITY

According to the CEQR Technical Manual, air quality impacts can be either direct or indirect. Direct impacts result from emissions generated by stationary sources from a prototype, such as emissions from on-site fuel combustion for heat and hot water systems ("stationary sources"). Indirect impacts are caused by off-site emissions associated with a project, such as emissions from on-road vehicle trips ("mobile sources") generated by the Proposed Action. The Proposed Action would not result in any significant adverse air quality impacts related to mobile or stationary sources.

### Mobile Sources

As stated in the CEQR Technical Manual, a project—whether site-specific or generic—may result in significant mobile source air quality impacts when they increase or cause a redistribution of traffic, create any other mobile sources of pollutants, or add new users near mobile sources. The Proposed Action itself is not expected to induce development on sites where development would not have otherwise been possible, and therefore would not increase or cause a redistribution of traffic, create other mobile sources, or add new users near mobile sources. As such, the Proposed Action would not result in significant adverse air quality impacts due to mobile sources.



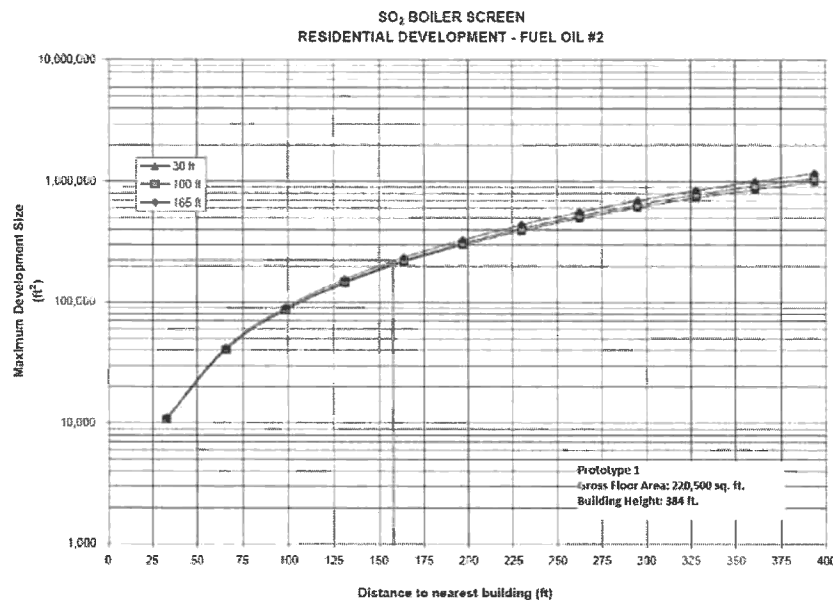
## Stationary Sources

The Proposed Action is a “Generic Action,” and there are no known potential or projected development sites and, due to its broad applicability, it is difficult to predict the sites where development would be facilitated by the Proposed Action. To produce a reasonable analysis of the likely effects of the Proposed Action, three representative development prototypes have been identified, as described in the Analytical Framework above. The screening analysis was performed for the three prototypes to assess air quality impacts associated with emissions from their heat and hot water systems. The methodology described in the 2014 CEQR Technical Manual was used for the analysis.

Generally, the screening methodology determines the threshold distance between a development site and the nearest building of similar or greater height beyond which the action would not have a significant adverse impact. Buildings of lower heights are not deemed to be under impact from a taller building. The screening procedures consider the type of fuel to be used, the maximum development size, the type of development, and the heat and hot water systems exhaust stack height to evaluate whether a significant adverse impact may occur. Based on the aforementioned parameters, if the distance between a development site and the nearest building of similar or greater height is less than the threshold distance as per in the 2014 CEQR Technical Manual figures, the potential for significant adverse air quality impacts is identified, and a detailed analysis involving a refined dispersion model is needed. Otherwise, if the prototype passes the screening analysis, no further analysis would be required.

For the screening analyses, it was assumed that No. 2 fuel oil would be used in all prototypes heat and hot water systems for conservative analysis. Screening nomographs were prepared as shown in Figures 4 – 6 below. The primary pollutants of concern are SO<sub>2</sub>, NO<sub>2</sub> and PM<sub>2.5</sub>. Exhaust stacks were assumed to be located 3 feet above the roof (as per the 2014 CEQR Technical Manual guidelines) and placed on the highest tier for buildings with different tier configurations.

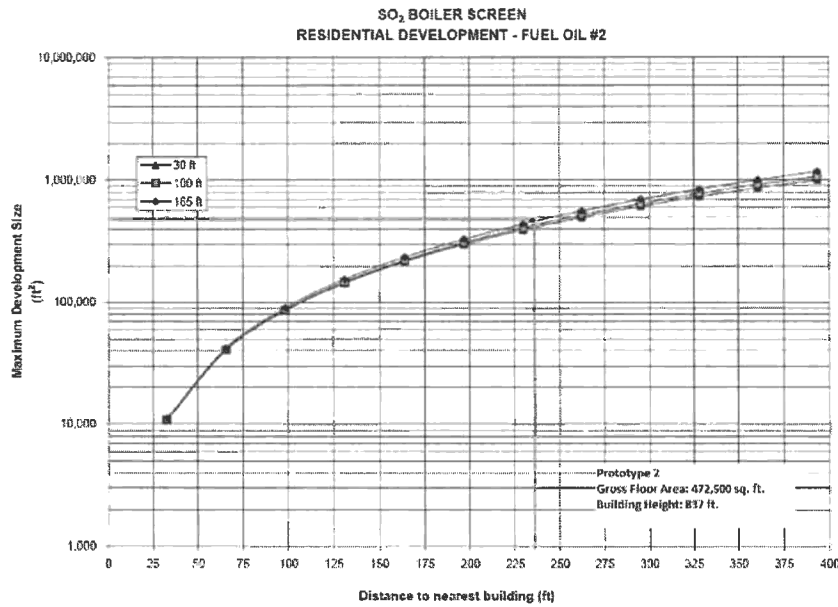
**FIGURE 4:**  
**Prototype 1 Heat and Hot Water System Air Quality Screening Graph**



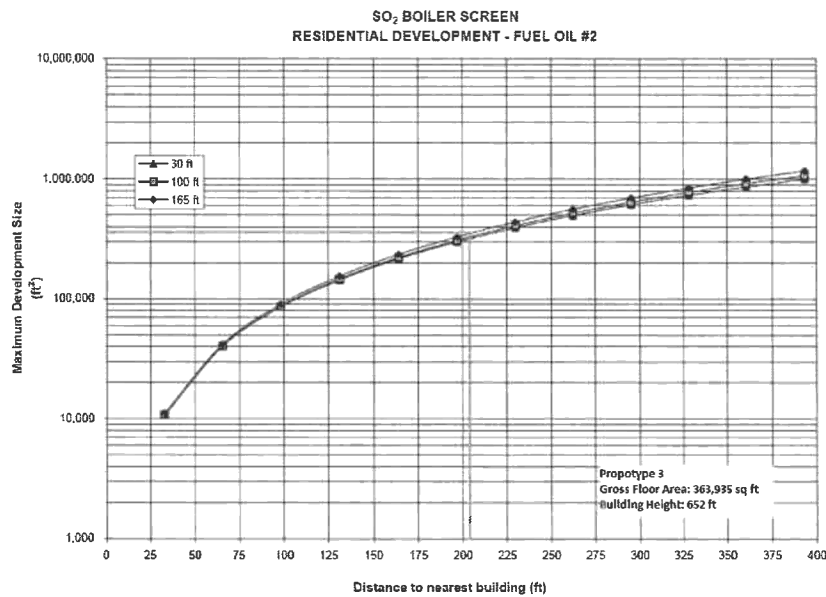
Residential Tower Mechanical Voids Text Amendment EAS

Technical Assessments

**FIGURE 5:**  
**Prototype 2 Heat and Hot Water System Air Quality Screening Graph**



**FIGURE 6:**  
**Prototype 3 Heat and Hot Water System Air Quality Screening Graph**



*Residential Tower Mechanical Voids Text Amendment EAS**Technical Assessments*

Figures 4 – 6 depicts screening analyses conducted for the three prototypes. The screening analyses show that the threshold distances for Prototype 1, Prototype 2, and Prototype 3 are 158 feet, 238 feet, and 205 feet respectively. Any buildings of similar or greater heights located within the threshold distances require detailed air quality impact analysis; any buildings of similar or greater heights located beyond the threshold distances will experience no potential significant adverse air quality impact from developments represented by the three prototypes.

Since R9 and R10 Residential District, their equivalent Commercial Districts, and Special Purpose Districts that rely on the underlying tower regulations are already highly developed, there are not many suitable sites that will have new developments affected by the proposed zoning text amendment. While the three prototypes studied are not tied to a specific geography, it is reasonable to believe that they represent the future potential developments in the affected zoning districts. Further investigation based on the prototypes and currently available sites for residential tower development indicates that, buildings abiding to the proposed zoning text amendment, i.e. buildings without excessively tall voids would still retain heights that exceed heights of their surrounding buildings - buildings of similar heights or taller than the prototypes are not anticipated to be in the vicinity closer than the threshold distances derived from the screening analyses. As such, the screening analysis results are sufficient to represent the air quality impact of the proposed action; no further detailed analyses are warranted. The proposed action will not lead to potential significant adverse air quality impact caused by residential towers with restricted void heights.

## VII. NEIGHBORHOOD CHARACTER

The CEQR Technical Manual defines neighborhood character as an amalgam of the various elements that give neighborhoods their distinct personality. These elements can include land use, socioeconomic conditions, open space, historic and cultural resources, urban design and visual resources, shadows, transportation and/or noise but not all of these elements contribute to neighborhood character in all cases. For neighborhood character, CEQR considers how those elements combine to create the context and feeling of a neighborhood, and how an action would affect that context.

The Proposed Action would not adversely affect any component of the affected area's neighborhood character. The proposal would not induce development that would conflict with the surrounding activities, nor would it significantly impact land use patterns. Rather, it is intended to discourage the use of excessively tall mechanical floors that elevate upper-story residential units above the surrounding context. By limiting the size and frequency of excessive mechanical voids, the Proposed Action encourages the development of buildings that engage their surroundings and complement the surrounding neighborhood with active uses on lower floors.

Moreover, the Proposed Action is not expected to result in any significant adverse impacts on the technical areas related to neighborhood character, including land use, urban design and visual resources, or historic and cultural resources. Therefore, the Proposed Action would not result in a significant adverse impact on neighborhood character.

**APPENDIX A**

**Proposed Zoning Text Amendment**



# Residential Tower Voids

## Text Amendment

December 11, 2018

Draft 1

Matter underlined is new, to be added;

Matter ~~struck out~~ is to be deleted;

Matter within # # is defined in Section 12-10;

\* \* \* indicates where unchanged text appears in the Zoning Resolution.

## Article II

### Residence District Regulations

## Chapter 3

### Residential Bulk Regulations in Residence Districts

\* \* \*

## 23-10

### OPEN SPACE AND FLOOR AREA REGULATIONS

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

\* \* \*

Special #open space# and #floor area# provisions are set forth in Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) for standard tower and tower-on-a-base #buildings# in R9 and R10 Districts, as well as for certain areas in Community District 7 and Community District 9 in the Borough of Manhattan, and Community District 12 in the Borough of Brooklyn. Additional provisions are set forth in Sections 23-17 (Existing Public Amenities for Which Floor Area Bonuses Have Been Received) and 23-18 (Special Provisions for Zoning Lots Divided by District Boundaries or Subject to Different Bulk Regulations).

\* \* \*

## 23-16

### Special Floor Area and Lot Coverage Provisions for Certain Areas

The #floor area ratio# provisions of Sections 23-14 (Open Space and Floor Area Regulations in R1 Through R5 Districts) and 23-15 (Open Space and Floor Area Regulations in R6 Through R10 Districts), inclusive, shall be modified for certain areas, as follows:

- (a) For standard tower and tower-on-a-base #buildings# in R9 and R10 Districts
- (1) In R9 Districts, for #zoning lots# where #buildings# are #developed# or #enlarged# pursuant to the tower-on-a-base provisions of Section 23-651, the maximum #floor area ratio# shall be 7.52, and the maximum #lot coverage# shall be 100 percent on a #corner lot# and 70 percent on an #interior lot#.
- (2) In R9 and R10 Districts, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 23-65 (Tower Regulations), inclusive, any enclosed floor space used for mechanical equipment provided pursuant to paragraph (8) of the definition of #floor area# in Section 12-10 (DEFINITIONS), and any enclosed floor space that is or becomes unused or inaccessible within a #building#, pursuant to paragraph (k) of the definition of #floor area# in Section 12-10, shall be considered #floor area# and calculated in accordance with the provisions of this Section, provided that such floor space:
- (i) occupies the predominant portion of a #story#;
- (ii) is located above the #base plane# or #curb level#, as applicable, and below the highest #story# containing #residential floor area#; and
- (iii) exceeds an aggregate height of 25 feet within any given 75-foot vertical segment of a #building#.

For the purpose of applying this provision, the height of such floor space shall be measured from the finished floor to the height of the structural ceiling. In addition, within a given 75-foot segment, each #story# of floor space, or each increment of 25 feet, rounded to the nearest integer divisible by 25, whichever results in a higher number, shall be counted separately in the #floor area# calculation.

\* \* \*

## Chapter 4

### Bulk Regulations for Community Facilities in Residence Districts

\* \* \*

#### 24-10

#### FLOOR AREA AND LOT COVERAGE REGULATIONS

\* \* \*

#### 24-112

#### Special floor area ratio provisions for certain areas

The #floor area ratio# provisions of Section 24-11 (Maximum Floor Area Ratio and Percentage of Lot Coverage), inclusive, shall be modified for certain areas as follows:

- (a) in R8B Districts within Community District 8, in the Borough of Manhattan, the maximum #floor area ratio# on a #zoning lot# containing #community facility uses# exclusively shall be 5.10; ~~and~~
- (b) in R10 Districts, except R10A or R10X Districts, within Community District 7, in the Borough of Manhattan, all #zoning lots# shall be limited to a maximum #floor area ratio# of 10.0-; and
- (c) in R9 and R10 Districts, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 23-65 (Tower Regulations), inclusive, the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:
  - (1) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and
  - (2) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

\* \* \*

05/14/2019

**Article III**  
**Commercial District Regulations**

**Chapter 5**  
**Bulk Regulations for Mixed Buildings in Commercial Districts**

\* \* \*

**35-35**  
**Special Floor Area Ratio Provisions for Certain Areas**

\* \* \*

**35-352**  
**Special floor area regulations for certain districts**

In C1 or C2 Districts mapped within R9 and R10 Districts, or in #Commercial Districts# with a residential equivalent of an R9 or R10 District, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 35-64 (Special Tower Regulations for Mixed Buildings), the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:

- (a) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and
- (b) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

\* \* \*

**Article IX**  
**Special Purpose Districts**

\* \* \*

**Chapter 6**  
**Special Clinton District**



\* \* \*

**96-20**  
**PERIMETER AREA**

\* \* \*

**96-21**  
**Special Regulations for 42nd Street Perimeter Area**

\* \* \*

(b) #Floor area# regulations

\* \* \*

(2) #Floor area# regulations in Subarea 2

\* \* \*

(3) Additional regulations for Subareas 1 and 2

In Subareas 1 and 2, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 35-64 (Special Tower Regulations for Mixed Buildings), the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:

- (i) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and
- (ii) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

\* \* \*

**Chapter 8**  
**Special West Chelsea District**

\* \* \*

98-20

## FLOOR AREA AND LOT COVERAGE REGULATIONS

\* \* \*

98-22

## Maximum Floor Area Ratio and Lot Coverage in Subareas

\* \* \*

98-221Additional regulations for Subdistrict A

In Subdistrict A, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 98-423 (Special Street wall location, minimum and maximum base heights and maximum building heights), the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:

- (a) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and
- (b) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

\* \* \*

END

**APPENDIX B**

**Waterfront Revitalization Program Consistency Assessment Form**

FOR INTERNAL USE ONLY

Date Received: \_\_\_\_\_

WRP No. \_\_\_\_\_

DOS No. \_\_\_\_\_

**NEW YORK CITY WATERFRONT REVITALIZATION PROGRAM  
Consistency Assessment Form**

Proposed actions that are subject to CEQR, ULURP or other local, state or federal discretionary review procedures, and that are within New York City's Coastal Zone, must be reviewed and assessed for their consistency with the New York City Waterfront Revitalization Program (WRP) which has been approved as part of the State's Coastal Management Program.

This form is intended to assist an applicant in certifying that the proposed activity is consistent with the WRP. It should be completed when the local, state, or federal application is prepared. The completed form and accompanying information will be used by the New York State Department of State, the New York City Department of City Planning, or other city or state agencies in their review of the applicant's certification of consistency.

**A. APPLICANT INFORMATION**Name of Applicant: New York City Department of City PlanningName of Applicant Representative: Frank Ruchala, Deputy Director of Zoning DivisionAddress: 120 Broadway, 31st Floor, New York, NY 10271Telephone: 212-720-3436Email: fruchal@planning,nyc.gov

Project site owner (if different than above): \_\_\_\_\_

**B. PROPOSED ACTIVITY***If more space is needed, include as an attachment.***1. Brief description of activity**

The New York City Department of City Planning (DCP) proposes a zoning text amendment pursuant to Zoning Resolution (ZR) Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) and related sections, to modify floor area regulations for residential tower developments located within non-contextual R9 and R10 Residence Districts, their equivalent Commercial Districts, as well as Special Purpose Districts that rely on underlying floor area and height and setback regulations or that are primarily residential in character. The proposed zoning text amendment (the "Proposed Action") would count mechanical floors in such buildings as zoning floor area when they are taller than 25 feet in height or when they are located within 75 feet in height of each other. Currently, mechanical space does not count towards zoning floor area of a building as permitted by zoning. The Proposed Action is intended to discourage the use of excessive mechanical floors to artificially increase building height by limiting the height and frequency of such spaces incorporated into a building's design.

**2. Purpose of activity**

Excessive structural voids can stand immediately adjacent to neighboring buildings and create vast blank facades where active uses would ordinarily be found. The use of voids has also led to the creation of buildings substantially taller than what was originally intended by underlying zoning. By limiting the size and frequency of voids, the proposed action encourages the development of buildings that engage their surroundings and complement the surrounding neighborhood with active uses on lower floors.



**C. PROJECT LOCATION**Borough: Citywide Tax Block/Lot(s): \_\_\_\_\_

Street Address: \_\_\_\_\_

Name of water body (if located on the waterfront): N/A**D. REQUIRED ACTIONS OR APPROVALS**

Check all that apply.

**City Actions/Approvals/Funding****City Planning Commission**☒ Yes ☐ No☐ City Map Amendment☐ Zoning Map Amendment☒ Zoning Text Amendment☐ Site Selection – Public Facility☐ Housing Plan & Project☐ Special Permit(if appropriate, specify type: ☐ Modification ☐ Renewal ☐ other) Expiration Date: \_\_\_\_\_☐ Zoning Certification☐ Zoning Authorizations☐ Acquisition – Real Property☐ Disposition – Real Property☐ Other, explain: \_\_\_\_\_☐ Concession☐ UDAAP☐ Revocable Consent☐ Franchise**Board of Standards and Appeals**☐ Yes ☒ No☐ Variance (use)☐ Variance (bulk)☐ Special Permit(if appropriate, specify type: ☐ Modification ☐ Renewal ☐ other) Expiration Date: \_\_\_\_\_**Other City Approvals**☐ Legislation☐ Rulemaking☐ Construction of Public Facilities☐ 384 (b) (4) Approval☐ Other, explain: \_\_\_\_\_☐ Funding for Construction, specify: \_\_\_\_\_☐ Policy or Plan, specify: \_\_\_\_\_☐ Funding of Program, specify: \_\_\_\_\_☐ Permits, specify: \_\_\_\_\_**State Actions/Approvals/Funding**☐ State permit or license, specify Agency: \_\_\_\_\_ Permit type and number: \_\_\_\_\_☐ Funding for Construction, specify: \_\_\_\_\_☐ Funding of a Program, specify: \_\_\_\_\_☐ Other, explain: \_\_\_\_\_**Federal Actions/Approvals/Funding**☐ Federal permit or license, specify Agency: \_\_\_\_\_ Permit type and number: \_\_\_\_\_☐ Funding for Construction, specify: \_\_\_\_\_☐ Funding of a Program, specify: \_\_\_\_\_☐ Other, explain: \_\_\_\_\_Is this being reviewed in conjunction with a Joint Application for Permits?☐ Yes☒ No

## E. LOCATION QUESTIONS

1. Does the project require a waterfront site? ☐ Yes ☒ No
2. Would the action result in a physical alteration to a waterfront site, including land along the shoreline, land under water or coastal waters? ☐ Yes ☒ No
3. Is the project located on publicly owned land or receiving public assistance? ☐ Yes ☒ No
4. Is the project located within a FEMA 1% annual chance floodplain? (6.2) ☒ Yes ☐ No
5. Is the project located within a FEMA 0.2% annual chance floodplain? (6.2) ☒ Yes ☐ No
6. Is the project located adjacent to or within a special area designation? See Maps – Part III of the NYC WRP. If so, check appropriate boxes below and evaluate policies noted in parentheses as part of WRP Policy Assessment (Section F).
  - ☐ Significant Maritime and Industrial Area (SMIA) (2.1)
  - ☐ Special Natural Waterfront Area (SNWA) (4.1)
  - ☐ Priority Maritime Activity Zone (PMAZ) (3.5)
  - ☐ Recognized Ecological Complex (REC) (4.4)
  - ☐ West Shore Ecologically Sensitive Maritime and Industrial Area (ESMIA) (2.2, 4.2)

## F. WRP POLICY ASSESSMENT

Review the project or action for consistency with the WRP policies. For each policy, check Promote, Hinder or Not Applicable (N/A). For more information about consistency review process and determination, see **Part I** of the NYC Waterfront Revitalization Program. When assessing each policy, review the full policy language, including all sub-policies, contained within **Part II** of the WRP. The relevance of each applicable policy may vary depending upon the project type and where it is located (i.e. if it is located within one of the special area designations).

For those policies checked Promote or Hinder, provide a written statement on a separate page that assesses the effects of the proposed activity on the relevant policies or standards. If the project or action promotes a policy, explain how the action would be consistent with the goals of the policy. If it hinders a policy, consideration should be given toward any practical means of altering or modifying the project to eliminate the hindrance. Policies that would be advanced by the project should be balanced against those that would be hindered by the project. If reasonable modifications to eliminate the hindrance are not possible, consideration should be given as to whether the hindrance is of such a degree as to be substantial, and if so, those adverse effects should be mitigated to the extent practicable.

		Promote	Hinder	N/A
<b>1</b>	<b>Support and facilitate commercial and residential redevelopment in areas well-suited to such development.</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.1	Encourage commercial and residential redevelopment in appropriate Coastal Zone areas.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.2	Encourage non-industrial development with uses and design features that enliven the waterfront and attract the public.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
1.3	Encourage redevelopment in the Coastal Zone where public facilities and infrastructure are adequate or will be developed.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
1.4	In areas adjacent to SMIA's, ensure new residential development maximizes compatibility with existing adjacent maritime and industrial uses.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
1.5	Integrate consideration of climate change and sea level rise into the planning and design of waterfront residential and commercial development, pursuant to WRP Policy 6.2.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Promote	Hinder	N/A
<b>2 Support water-dependent and industrial uses in New York City coastal areas that are well-suited to their continued operation.</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2.1 Promote water-dependent and industrial uses in Significant Maritime and Industrial Areas.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.2 Encourage a compatible relationship between working waterfront uses, upland development and natural resources within the Ecologically Sensitive Maritime and Industrial Area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.3 Encourage working waterfront uses at appropriate sites outside the Significant Maritime and Industrial Areas or Ecologically Sensitive Maritime Industrial Area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.4 Provide infrastructure improvements necessary to support working waterfront uses.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.5 Incorporate consideration of climate change and sea level rise into the planning and design of waterfront industrial development and infrastructure, pursuant to WRP Policy 6.2.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>3 Promote use of New York City's waterways for commercial and recreational boating and water-dependent transportation.</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3.1. Support and encourage in-water recreational activities in suitable locations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.2 Support and encourage recreational, educational and commercial boating in New York City's maritime centers.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.3 Minimize conflicts between recreational boating and commercial ship operations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.4 Minimize impact of commercial and recreational boating activities on the aquatic environment and surrounding land and water uses.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3.5 In Priority Marine Activity Zones, support the ongoing maintenance of maritime infrastructure for water-dependent uses.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>4 Protect and restore the quality and function of ecological systems within the New York City coastal area.</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4.1 Protect and restore the ecological quality and component habitats and resources within the Special Natural Waterfront Areas.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.2 Protect and restore the ecological quality and component habitats and resources within the Ecologically Sensitive Maritime and Industrial Area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.3 Protect designated Significant Coastal Fish and Wildlife Habitats.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.4 Identify, remediate and restore ecological functions within Recognized Ecological Complexes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.5 Protect and restore tidal and freshwater wetlands.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.6 In addition to wetlands, seek opportunities to create a mosaic of habitats with high ecological value and function that provide environmental and societal benefits. Restoration should strive to incorporate multiple habitat characteristics to achieve the greatest ecological benefit at a single location.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.7 Protect vulnerable plant, fish and wildlife species, and rare ecological communities. Design and develop land and water uses to maximize their integration or compatibility with the identified ecological community.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4.8 Maintain and protect living aquatic resources.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Promote	Hinder	N/A
<b>5 Protect and improve water quality in the New York City coastal area.</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5.1 Manage direct or indirect discharges to waterbodies.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.2 Protect the quality of New York City's waters by managing activities that generate nonpoint source pollution.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.3 Protect water quality when excavating or placing fill in navigable waters and in or near marshes, estuaries, tidal marshes, and wetlands.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.4 Protect the quality and quantity of groundwater, streams, and the sources of water for wetlands.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5.5 Protect and improve water quality through cost-effective grey-infrastructure and in-water ecological strategies.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>6 Minimize loss of life, structures, infrastructure, and natural resources caused by flooding and erosion, and increase resilience to future conditions created by climate change.</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.1 Minimize losses from flooding and erosion by employing non-structural and structural management measures appropriate to the site, the use of the property to be protected, and the surrounding area.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6.2 Integrate consideration of the latest New York City projections of climate change and sea level rise (as published in <i>New York City Panel on Climate Change 2015 Report, Chapter 2: Sea Level Rise and Coastal Storms</i> ) into the planning and design of projects in the city's Coastal Zone.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6.3 Direct public funding for flood prevention or erosion control measures to those locations where the investment will yield significant public benefit.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6.4 Protect and preserve non-renewable sources of sand for beach nourishment.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>7 Minimize environmental degradation and negative impacts on public health from solid waste, toxic pollutants, hazardous materials, and industrial materials that may pose risks to the environment and public health and safety.</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7.1 Manage solid waste material, hazardous wastes, toxic pollutants, substances hazardous to the environment, and the unenclosed storage of industrial materials to protect public health, control pollution and prevent degradation of coastal ecosystems.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.2 Prevent and remediate discharge of petroleum products.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7.3 Transport solid waste and hazardous materials and site solid and hazardous waste facilities in a manner that minimizes potential degradation of coastal resources.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>8 Provide public access to, from, and along New York City's coastal waters.</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8.1 Preserve, protect, maintain, and enhance physical, visual and recreational access to the waterfront.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.2 Incorporate public access into new public and private development where compatible with proposed land use and coastal location.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.3 Provide visual access to the waterfront where physically practical.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.4 Preserve and develop waterfront open space and recreation on publicly owned land at suitable locations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



		Promote	Hinder	N/A
8.5	Preserve the public interest in and use of lands and waters held in public trust by the State and City.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.6	Design waterfront public spaces to encourage the waterfront's identity and encourage stewardship.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	<b>Protect scenic resources that contribute to the visual quality of the New York City coastal area.</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.1	Protect and improve visual quality associated with New York City's urban context and the historic and working waterfront.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.2	Protect and enhance scenic values associated with natural resources.	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10	<b>Protect, preserve, and enhance resources significant to the historical, archaeological, architectural, and cultural legacy of the New York City coastal area.</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10.1	Retain and preserve historic resources, and enhance resources significant to the coastal culture of New York City.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10.2	Protect and preserve archaeological resources and artifacts.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## G. CERTIFICATION

The applicant or agent must certify that the proposed activity is consistent with New York City's approved Local Waterfront Revitalization Program, pursuant to New York State's Coastal Management Program. If this certification cannot be made, the proposed activity shall not be undertaken. If this certification can be made, complete this Section.

"The proposed activity complies with New York State's approved Coastal Management Program as expressed in New York City's approved Local Waterfront Revitalization Program, pursuant to New York State's Coastal Management Program, and will be conducted in a manner consistent with such program."

Applicant/Agent's Name: Frank Ruchala Jr

Address: 120 Broadway, 31st Floor

Telephone: 212-720-3436

Email: fruchala@planning.nyc.gov

Applicant/Agent's Signature: frank ruchala jr

Digitally signed by frank ruchala jr  
Date: 2019.04.09 11:45:04 -04'00'

Date: 4/9/19

## Submission Requirements

For all actions requiring City Planning Commission approval, materials should be submitted to the Department of City Planning.

For local actions not requiring City Planning Commission review, the applicant or agent shall submit materials to the Lead Agency responsible for environmental review. A copy should also be sent to the Department of City Planning.

For State actions or funding, the Lead Agency responsible for environmental review should transmit its WRP consistency assessment to the Department of City Planning.

For Federal direct actions, funding, or permits applications, including Joint Applicants for Permits, the applicant or agent shall also submit a copy of this completed form along with his/her application to the NYS Department of State Office of Planning and Development and other relevant state and federal agencies. A copy of the application should be provided to the NYC Department of City Planning.

The Department of City Planning is also available for consultation and advisement regarding WRP consistency procedural matters.

**New York City Department of City Planning**  
Waterfront and Open Space Division  
120 Broadway, 31<sup>st</sup> Floor  
New York, New York 10271  
212-720-3696  
wrp@planning.nyc.gov  
www.nyc.gov/wrp

**New York State Department of State**  
Office of Planning and Development  
Suite 1010  
One Commerce Place, 99 Washington Avenue  
Albany, New York 12231-0001  
518-474-6000  
www.dos.ny.gov/opd/programs/consistency

## Applicant Checklist

- ☐ Copy of original signed NYC Consistency Assessment Form
- ☐ Attachment with consistency assessment statements for all relevant policies
- ☐ For Joint Applications for Permits, one (1) copy of the complete application package
- ☐ Environmental Review documents
- ☐ Drawings (plans, sections, elevations), surveys, photographs, maps, or other information or materials which would support the certification of consistency and are not included in other documents submitted. All drawings should be clearly labeled and at a scale that is legible.
- ☐ Policy 6.2 Flood Elevation worksheet, if applicable. For guidance on applicability, refer to the WRP Policy 6.2 Guidance document available at [www.nyc.gov/wrp](http://www.nyc.gov/wrp)

**APPENDIX C**

**Historic and Cultural Resources**



1 Centre Street  
9th Floor North  
New York, NY 10007

Voice (212)-669-7700  
Fax (212)-669-7960  
<http://nyc.gov/landmarks>

## ENVIRONMENTAL REVIEW

**Project number:** DEPARTMENT OF CITY PLANNING / 19DCP110Y  
**Project:** RESIDENTIAL TOWER VOIDS TEXT AMENDMENT  
**Address:** 120 BROADWAY, **BBL:** 1000477501  
**Date Received:** 12/13/2018

---

### **Comments:**

The LPC is in receipt of the EAS for the above referenced Generic Citywide Action dated 12/13/18. LPC understands that this action in-and-of-itself is not intended to induce development where it would not have occurred absent the Proposed Action. The language in section III. "Historic and Cultural Resources" in the Technical Assessments Section of the EAS appears acceptable.

A handwritten signature in black ink that reads "Gina Santucci".

12/14/2018

---

SIGNATURE  
Gina Santucci, Environmental Review Coordinator

DATE

**File Name:** 33873\_FSO\_GS\_12142018.doc



**APPENDIX D**

**Technical Memorandum 001**

**TECHNICAL MEMORANDUM 001**  
**POTENTIAL CITY PLANNING COMMISSION MODIFICATIONS**  
**RESIDENTIAL TOWER MECHANICAL VOIDS TEXT AMENDMENT**  
**CEQR No. 19DCP110Y**  
**ULURP No. N 190230 ZRY**  
April 9, 2019

**A. INTRODUCTION**

The purpose of this memorandum is to assess whether proposed modifications by the City Planning Commission (CPC) to the Residential Tower Mechanical Voids Text Amendment as certified by the CPC would result in new or different impacts not disclosed Negative Declaration for the proposal, issued January 28, 2019. As described below, the modifications would not result in such effects.

The Department of City Planning (DCP) proposes a zoning text amendment application (N 190230 ZRY) to discourage the use of excessively tall mechanical floors in high-density residential tower districts. The proposal would require that mechanical floors, typically excluded from zoning floor area calculations, would be counted toward the overall permitted floor area on the zoning lot if they are taller than new specified limits or overly concentrated in portions of the building. The proposed floor area requirements would apply to residential towers in non-contextual R9 and R10 Residence Districts and their equivalent Commercial Districts, as well as Special Purpose Districts that rely on underlying floor area and height and setback regulations or that are primarily residential in character. The provision would also apply to non-residential portions of a mixed-use building if the building contains a limited amount of non-residential floor area.

The Environmental Assessment Statement (EAS) for the Proposed Action was accepted as complete on January 25, 2019, by DCP, acting on behalf of CPC as lead agency. A Negative Declaration was issued on January 28, 2019. A public hearing on the proposal was held on February 27, 2019, pursuant to Uniform Land Use Review Procedure (ULURP).

In response to testimony heard at the public hearing, modifications to the Proposed Action were proposed by the CPC. The Commission proposes to modify the proposed zoning text amendment to increase the 25-foot threshold to 30 feet before counting mechanical space toward floor area. This change will allow appropriate flexibility to meet energy efficient and resiliency standards without requiring a building to equally offset important occupiable space. This technical memorandum examines whether the Potential CPC Modifications would result in any new or different significant adverse environmental impacts not already identified in the EAS. As set forth below, this technical memorandum concludes that the Potential Modifications by the CPC would not alter the conclusions of the EAS and Negative Declaration issued January 28, 2019 and would not result in any significant adverse impacts.

**B. DESCRIPTION OF THE POTENTIAL MODIFICATIONS**

The Potential CPC Modifications would increase the 25-foot threshold to 30 feet before counting mechanical space toward floor area, and provide clarification for the measurement of mechanical floor height. These changes will allow appropriate flexibility to meet energy efficient and resiliency standards without requiring a building to equally offset important occupiable space. The modifications are described

in detail below. The zoning text amendment associated with the Potential CPC Modifications is contained in **Appendix 1**.

During the public hearing, the Commission heard that mechanical equipment needed for energy conservation practices may require more than 25 feet in height and that the engineering industry already competes for mechanical space within buildings. The Commission notes that practitioners do not support the overuse of mechanical space solely to artificially raise building heights, nor do they take issue with the proposed clustering threshold. However, the Commission recognizes the industry's concerns regarding the 25-foot threshold as too constraining for mechanical needs. The Commission also heard suggestions from practitioners and associations that a 30- to 35-foot threshold would allow reasonable flexibility for mechanical needs both today and in the future. The Commission believes that it is important that this text amendment not hinder a resilient or energy efficient building, and recognizes the need to maintain flexibility so that changes to NYC Energy or Building Code requirements are not impeded by this text amendment.

The Commission therefore proposes to modify the proposed zoning text amendment to increase the 25-foot threshold to 30 feet before counting mechanical space toward floor area. This change will allow appropriate flexibility to meet energy efficient and resiliency standards without requiring a building to equally offset important occupiable space. The Commission notes that the zoning text amendment does not prohibit the use of mechanical space beyond 30 feet if necessitated by unique building circumstances. Mechanical space of any height is still permitted, though it will be counted as floor area when exceeding the threshold. The preceding considerations account for this modification from 25 to 30 feet.

The Commission received written testimony and heard from some industry representatives who called for exempting structural support features, such as beams, braces, and trusses, that can be located within mechanical spaces. The Commission notes that these features can vary widely from building to building, and that exempting them could incentivize the use of larger support structures solely to inflate building heights. The Commission also notes that a typical floor height is measured from the top of a floor slab to the top of the floor slab above, whereas the mechanical space height in the proposed text amendment will be measured from the top of a floor slab to the bottom of a floor slab above. This allows for a clear 30-foot (formerly 25-foot) threshold that does not include portions of the floor slab above, which could reduce the amount of space available for mechanical equipment. The Commission therefore believes that the proposed mechanical space height measurement is appropriate and allows for optimal space to incorporate mechanical equipment and support structures without the need to create additional exemptions. Further, in response to suggestions from the Department of Buildings and practitioners, DCP has recommended a series of technical clarifications to the text amendment so that it more clearly meets the stated intent. The Commission agrees these modifications are appropriate.

### **C. ENVIRONMENTAL ASSESSMENT OF THE POTENTIAL CPC MODIFICATIONS**

The Potential CPC Modifications are not expected to alter the conclusions of the EAS issued January 25, 2019 and Negative Declaration issued January 28, 2019, associated with the Proposed Action. As discussed above, the Potential CPC Modifications would modify the proposed zoning text amendment to increase the 25-foot threshold to 30 feet before counting mechanical space toward floor area and provide clarification for the measurement of mechanical floor height. These changes will allow appropriate flexibility to

**APPENDIX 1**

**Proposed Zoning Text Amendment**

**Potential CPC Modifications**



05/14/2019

*Residential Tower Mechanical Voids Text Amendment***CITY WIDE****N 190230 ZRY**

**IN THE MATTER OF** an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter for an amendment of Article II, Chapter 3 and related provisions of the Zoning Resolution of the City of New York, modifying residential tower regulations to require certain mechanical spaces to count toward residential floor area.

Matter underlined is new, to be added;

Matter ~~struck out~~ is to be deleted;

Matter within # # is defined in Section 12-10;

\* \* \* indicates where unchanged text appears in the Zoning Resolution.

**Article II****Residence District Regulations****Chapter 3****Residential Bulk Regulations in Residence Districts**

\* \* \*

**23-10****OPEN SPACE AND FLOOR AREA REGULATIONS**

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

\* \* \*

Special #open space# and #floor area# provisions are set forth in Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) for standard tower and tower-on-a-base #buildings# in R9 and R10 Districts, as well as for certain areas in Community District 7 and Community District 9 in the Borough of Manhattan, and Community District 12 in the Borough of Brooklyn. Additional provisions are set forth in Sections 23-17 (Existing Public Amenities for Which Floor Area Bonuses Have Been Received) and 23-18 (Special Provisions for Zoning Lots Divided by District Boundaries or Subject to Different Bulk Regulations).

\* \* \*

**23-16****Special Floor Area and Lot Coverage Provisions for Certain Areas**

The #floor area ratio# provisions of Sections 23-14 (Open Space and Floor Area Regulations in R1 Through R5 Districts) and 23-15 (Open Space and Floor Area Regulations in R6 Through R10 Districts), inclusive, shall be modified for certain areas, as follows:

- (a) For standard tower and tower-on-a-base #buildings# in R9 and R10 Districts
- (1) In R9 Districts, for #zoning lots# where #buildings# are #developed# or #enlarged# pursuant to the tower-on-a-base provisions of Section 23-651, the maximum #floor area ratio# shall be 7.52, and the maximum #lot coverage# shall be 100 percent on a #corner lot# and 70 percent on an #interior lot#.
- (2) In R9 and R10 Districts, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 23-65 (Tower Regulations), inclusive, any floor space used for mechanical equipment provided pursuant to paragraph (8) of the definition of #floor area# in Section 12-10 (DEFINITIONS), and any floor space that is or becomes unused or inaccessible within a #building#, pursuant to paragraph (k) of the definition of #floor area# in Section 12-10, shall be considered #floor area# and calculated in accordance with the provisions of this Section, provided that such floor space:
- (i) occupies the predominant portion of a #story#;
- (ii) is located above the #base plane# or #curb level#, as applicable, and below the highest #story# containing #residential floor area#; and
- (iii) exceeds an aggregate height of 30 feet in #stories# located within 75 vertical feet of one another within a #building#.

For the purpose of applying this provision, the height of such floor space shall be measured from the top of a structural floor to the bottom of a structural floor directly above such space. In addition, the number of #stories# of #floor area# such space constitutes within the #building# shall be determined by aggregating the total height of such floor spaces, dividing by 30 feet, and rounding to the nearest whole integer.

\* \* \*

**Chapter 4****Bulk Regulations for Community Facilities in Residence Districts**

\* \* \*

**24-10****FLOOR AREA AND LOT COVERAGE REGULATIONS**

\* \* \*

**24-112****Special floor area ratio provisions for certain areas**

The #floor area ratio# provisions of Section 24-11 (Maximum Floor Area Ratio and Percentage of Lot Coverage), inclusive, shall be modified for certain areas as follows:

- (a) in R8B Districts within Community District 8, in the Borough of Manhattan, the maximum #floor area ratio# on a #zoning lot# containing #community facility uses# exclusively shall be 5.10; ~~and~~
- (b) in R10 Districts, except R10A or R10X Districts, within Community District 7, in the Borough of Manhattan, all #zoning lots# shall be limited to a maximum #floor area ratio# of 10.0-; and
- (c) in R9 and R10 Districts, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 23-65 (Tower Regulations), inclusive, the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:
  - (1) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and
  - (2) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

\* \* \*

**Article III****Commercial District Regulations**

**Chapter 5****Bulk Regulations for Mixed Buildings in Commercial Districts**

\* \* \*

**35-35****Special Floor Area Ratio Provisions for Certain Areas**

\* \* \*

**35-352****Special floor area regulations for certain districts**

In C1 or C2 Districts mapped within R9 and R10 Districts, or in #Commercial Districts# with a residential equivalent of an R9 or R10 District, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 35-64 (Special Tower Regulations for Mixed Buildings), the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:

- (a) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and
- (b) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

\* \* \*

**Article IX****Special Purpose Districts**

\* \* \*

**Chapter 6****Special Clinton District**

\* \* \*

**96-20****PERIMETER AREA**

\* \* \*



**96-21****Special Regulations for 42nd Street Perimeter Area**

\* \* \*

(b) #Floor area# regulations

\* \* \*

(2) #Floor area# regulations in Subarea 2

\* \* \*

(3) Additional regulations for Subareas 1 and 2

In Subareas 1 and 2, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 35-64 (Special Tower Regulations for Mixed Buildings), the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:

(i) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and

(ii) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

\* \* \*

**Chapter 8****Special West Chelsea District**

\* \* \*

**98-20****FLOOR AREA AND LOT COVERAGE REGULATIONS**

\* \* \*

98-22

Maximum Floor Area Ratio and Lot Coverage in Subareas

\* \* \*

98-221

Additional regulations for Subdistrict A

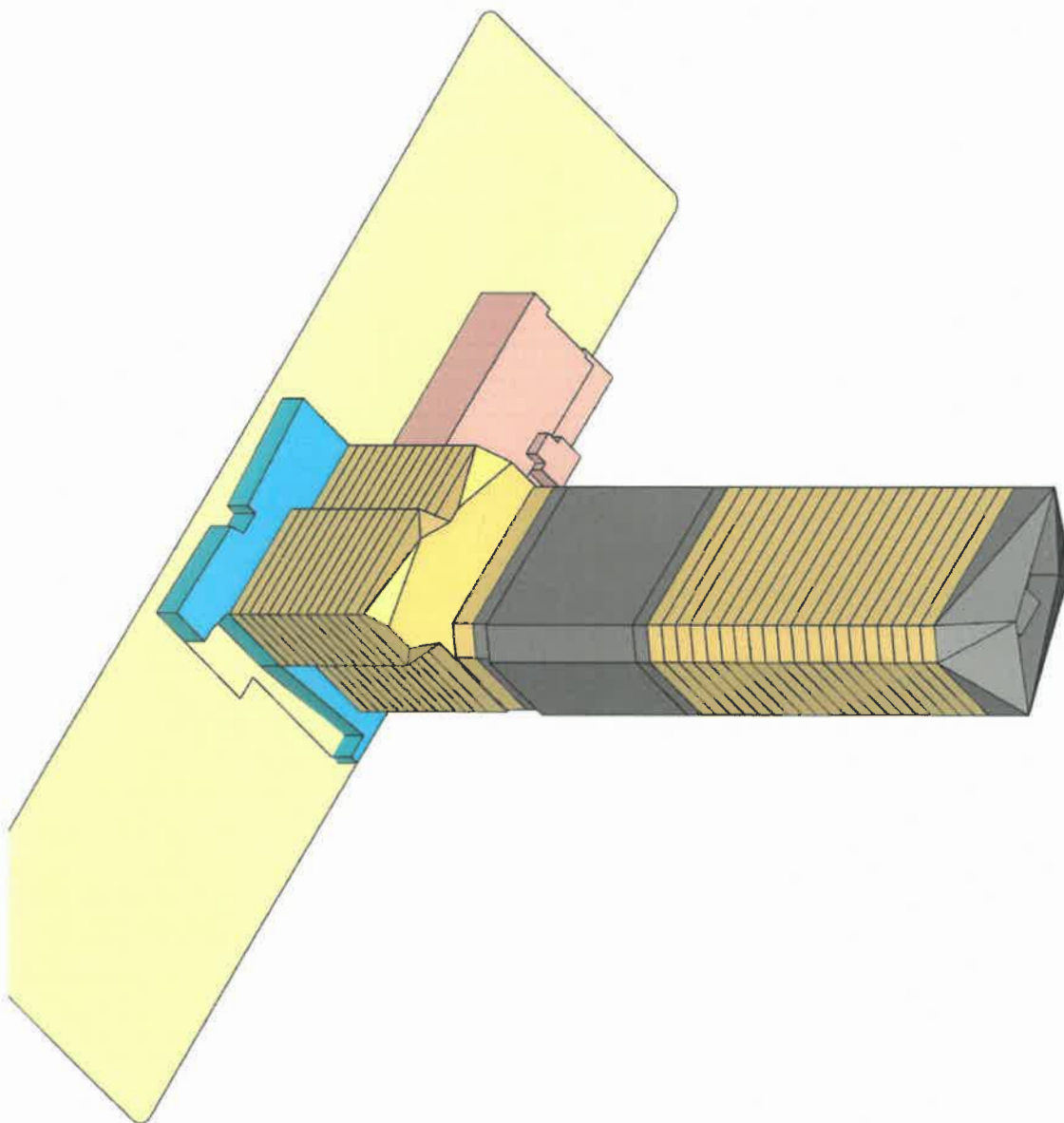
In Subdistrict A, for #zoning lots# containing a #building# that is #developed# or #enlarged# pursuant to the applicable tower regulations of Section 98-423 (Special Street wall location, minimum and maximum base heights and maximum building heights), the provisions of paragraph (a)(2) of Section 23-16 (Special Floor Area and Lot Coverage Provisions for Certain Areas) shall apply:

- (a) to only the #residential# portion of a #building# where less than 75 percent of the total #floor area# of such #building# is allocated to #residential use#; and
- (b) to the entire #building# where 75 percent or more of the total #floor area# of such #building# is allocated to #residential use#.

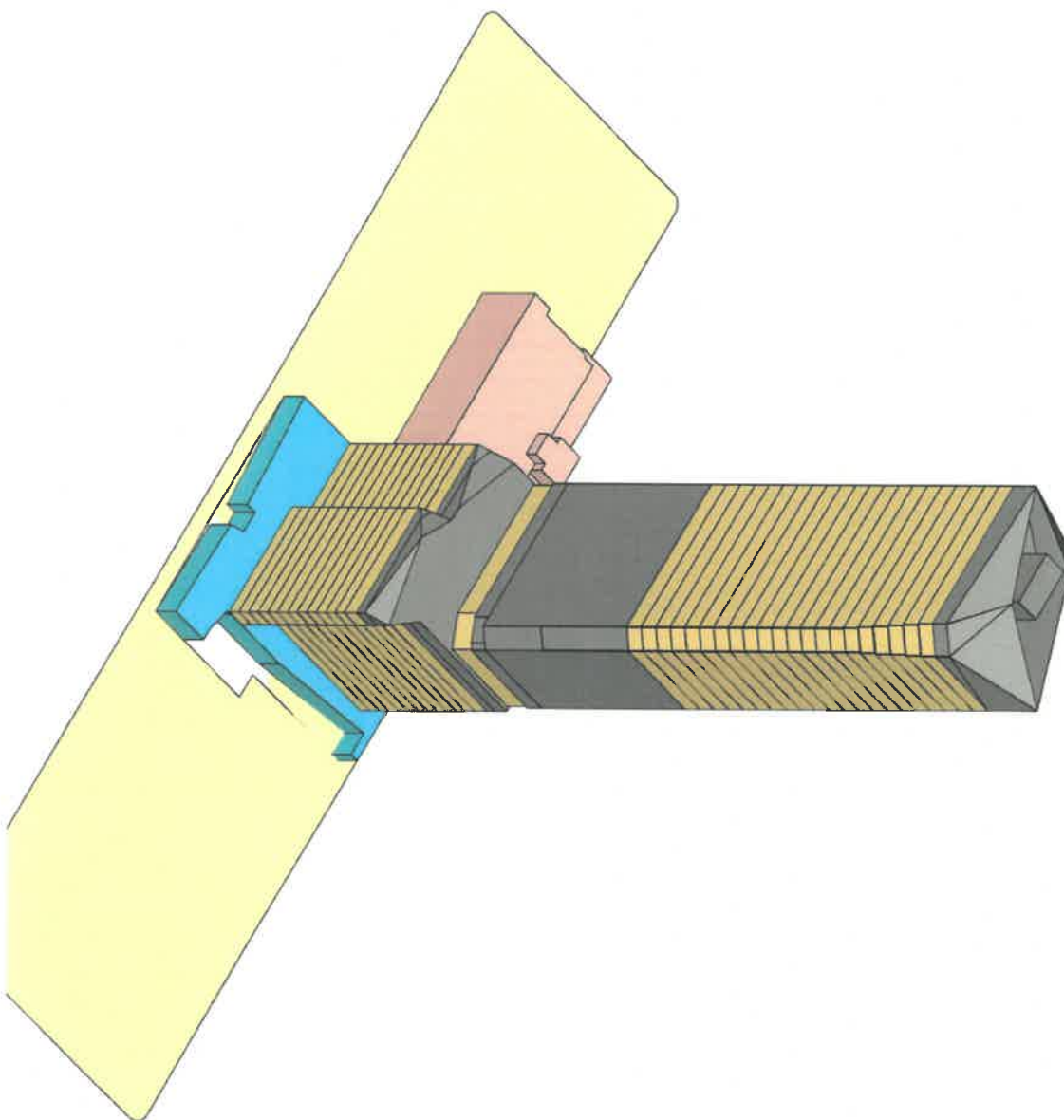
\* \* \*

END

2018 ZD1



2019 ZD1

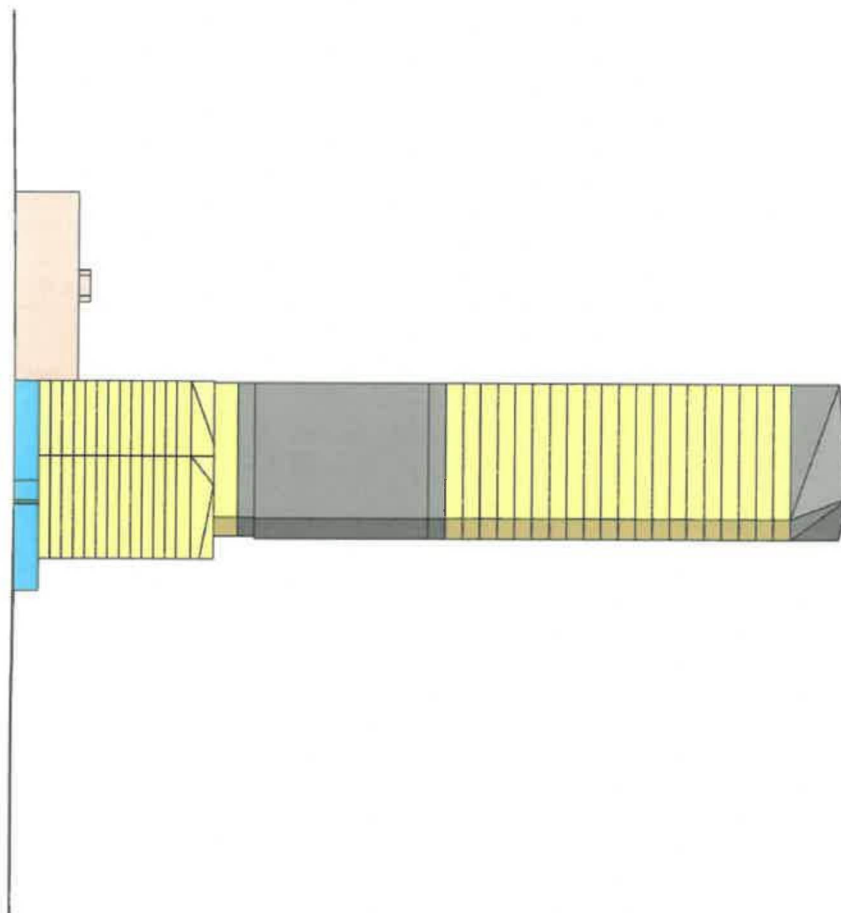




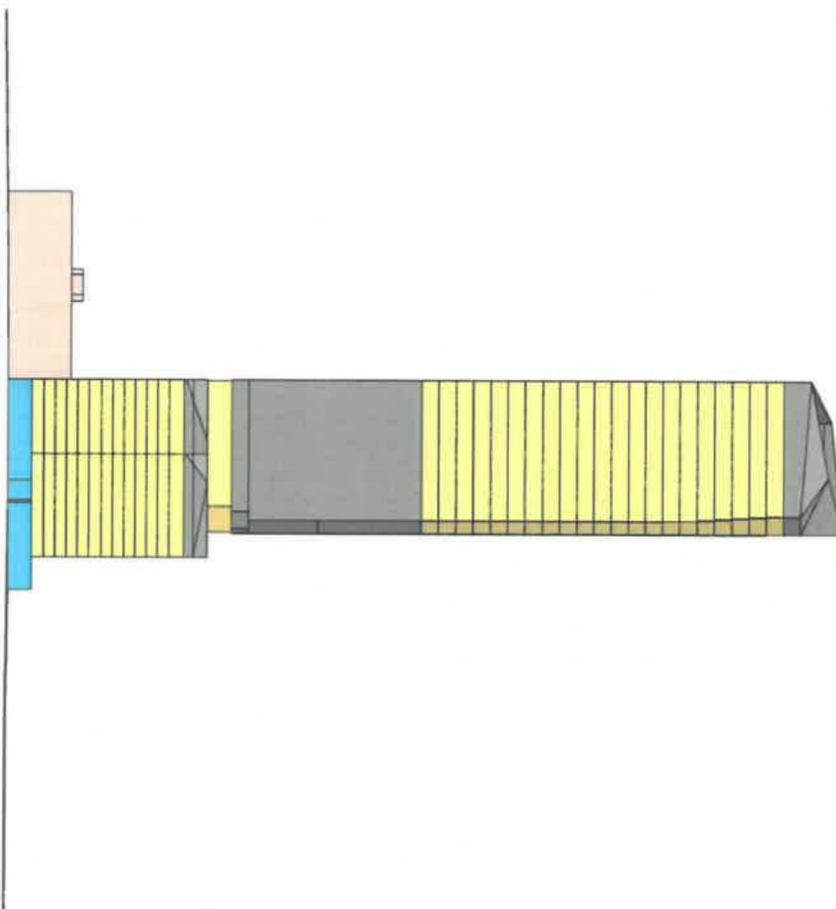
2019-04-A

05/14/2019

2018 ZD1



2019 ZD1



14-11-A

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application February 2, 2011 – Appeal challenging a determination by the Department of Buildings that a proposed cellar to a single family home is contrary to accessory use as defined in §12-10 in the zoning resolution.

R2 zoning district.

PREMISES AFFECTED – 1221 East 22<sup>th</sup> Street, between Avenues K and L, Block 7622, Lot 21, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

**APPEARANCES –**

For Applicant: Hai Blorfmen.

**ACTION OF THE BOARD –** Application Denied.

**THE VOTE TO GRANT –**

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

**THE RESOLUTION –**

WHEREAS, this is an appeal of a Department of Buildings (“DOB”) final determination dated January 7, 2011, issued by the Acting First Deputy Commissioner (the “Final Determination”); and

WHEREAS, the Final Determination reads in pertinent part:

[A] cellar that exceeds 49% of the total floor space of the residence to which it is appurtenant (the principal use) is not considered an “accessory use” as that term is defined by Section 12-10 of the ZR. An accessory use is a use which is “clearly incidental to, and customarily found in connection with” the principal use conducted on the same zoning lot. Here, the proposed principal use is a two-story, single-family dwelling. The proposed accessory use is a storage cellar that extends well beyond the footprint of the dwelling and well below ground. More importantly, the cellar has nearly as much floor space as the dwelling has floor area. In such an arrangement there is nothing “incidental” about the cellar; it is essentially a principal use. As indicated in the August determination, the cellar cannot exceed 49% of the floor space of the residential dwelling.<sup>1</sup> Beyond 49% the cellar use ceases to be “incidental” to the principal use and therefore does not comply with the Section 12-10 definition of accessory use.

1 As used in this determination, “floor space” includes any space in the dwelling, whether or not the space is included in the “floor area” per ZR section 12-10. (original footnote)

Accordingly, the cellar as proposed is not permitted; and

WHEREAS, the appeal was brought on behalf of the owners of 1221 East 22<sup>nd</sup> Street (hereinafter the “Appellant”); and

WHEREAS, a public hearing was held on this application on May 17, 2011 after due notice by publication in *The City Record*, with continued hearings on June 21, 2011 and August 18, 2011, and then to decision on October 18, 2011; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

**THE PROPOSED PLANS**

WHEREAS, the subject site is located on East 22<sup>nd</sup> Street between Avenue K and Avenue L, within an R2 zoning district and is currently occupied by a two-story single-family home (the “Home”); and

WHEREAS, on August 13, 2009, the Appellant submitted Alteration Application No. 320062793 to DOB for the proposed enlargement of the Home pursuant to ZR § 73-622; and

WHEREAS, the proposal includes a total of 6,214.19 sq. ft. of floor area (1.04 FAR) and a cellar with a floor space of 5,100 sq. ft. (the equivalent of approximately 0.85 FAR, if cellar space were included in zoning floor area, and 82 percent of the Home’s above-grade floor space); and

WHEREAS, the proposed cellar extends beyond the footprint of the first floor; includes two levels; and is proposed to contain storage area, a home theater, and a multi-level gymnasium/viewing area, among other uses; and

WHEREAS, on September 3, 2009, DOB issued 23 objections to the plans, the majority of which were later resolved; however, on January 7, 2011, DOB determined that the proposed cellar failed to satisfy the ZR § 12-10 definition of “accessory use” in that it was not “clearly incidental to” and “customarily found in connection with” the principal use of the lot and, thus, the cellar objection remains; and

WHEREAS, DOB states that because the cellar extends beyond the Home’s footprint, its maximum permitted size is 49 percent of the proposed Home’s floor area square footage, which equals 3,043.25 sq. ft.; and

WHEREAS, the Appellant concurrently filed the subject appeal and an application for a special permit (BSA Cal. No. 3-11-BZ) pursuant to ZR § 73-622; at the Appellant’s request, the Board has adjourned the special permit application pending the outcome of the subject appeal; and

**RELEVANT ZONING RESOLUTION PROVISIONS**

WHEREAS, the following provisions are relevant

definitions set forth at ZR § 12-10, which read in pertinent part:

Accessory Use, or accessory

An "accessory use":

- (a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land) . . .; and
- (b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and
- (c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use#.

..

\* \* \*

Dwelling unit

A "dwelling unit" contains at least one #room# in a #residential building#, #residential# portion of a #building#, or #non-profit hospital staff dwelling#, and is arranged, designed, used or intended for use by one or more persons living together and maintaining a common household, and which #dwelling unit# includes lawful cooking space and lawful sanitary facilities reserved for the occupants thereof.

\* \* \*

Residence, or residential

A "residence" is one or more #dwelling units# or #rooming units#, including common spaces such as hallways, lobbies, stairways, laundry facilities, recreation areas or storage areas. A #residence# may, for example, consist of one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels#.

"Residential" means pertaining to a #residence#.

\* \* \*

Residential use

A "residential use" is any #use# listed in Use Group 1 or 2; and

\* \* \*

Rooms

"Rooms" shall consist of "living rooms," as defined in the Multiple Dwelling Law; and

#### THE APPELLANT'S POSITION

WHEREAS, the Appellant makes the following primary arguments: (1) the proposed cellar meets the ZR § 12-10 definition of accessory use; (2) DOB has approved cellars which extend beyond the building footprint, like the proposed, and must approve the proposal to be consistent with its practice; (3) prior Board cases and case law support the contention that the cellar use is accessory;

and (4) DOB cannot impose bulk limitations on a use definition; and

WHEREAS, as to the definition of accessory use, the Appellant asserts that the proposed cellar meets the criteria as it is: (a) located on the same zoning lot as the principal use (the single-family home), (b) the cellar uses are incidental to and customarily found in connection with a single-family home, and (c) the cellar is in the same ownership as the principal use and is proposed for the benefit of the owners of the Home who occupy the upper floors as a single-family home; and

WHEREAS, the Appellant asserts that DOB's interpretation of "accessory use" is erroneous because it is not consistent with the ZR § 12-10 definition and because DOB may not limit a residence's principal use to "habitable rooms" or sleeping rooms as set forth in the Building Code or Housing Maintenance Code ("HMC"); and

WHEREAS, specifically, the Appellant cites to DOB's argument that "all portions of a residence that are not used for sleeping, cooking, or sanitary functions are accessory to the residence and are permitted only to the extent they are customarily found in connection with and clearly incidental to the residence;" and

WHEREAS, the Appellant asserts that the proposed cellar is "incidental" to the primary use as it is "less important than the thing something is connected with or part of;" and

WHEREAS, further, the Appellant asserts that the ZR § 12-10 definition of residence is broad and includes rooms other than those for sleeping and that as per the Multiple Dwelling Law ("MDL"), every room used for sleeping purposes shall be deemed a living room, but rooms other than those used for sleeping shall also be considered living rooms; and

WHEREAS, as to DOB's approvals, the Appellant initially submitted cellar plans for seven homes approved by DOB with cellars that extend beyond the footprint of the building to support the claim that such cellars are customary and that DOB has a history of approving them; and

WHEREAS, the Appellant contends that the examples reflect cellars that extend beyond the footprint of the home and exceed 49 percent of the home's floor area, thus, DOB is arbitrary to now deny this request; and

WHEREAS, as to Board precedent, the Appellant cites to BSA Cal. No. 60-06-A (1824 53<sup>rd</sup> Street, Brooklyn/Viznitz), a case that involved the analysis of whether a catering facility associated with a synagogue and yeshiva was accessory to the primary synagogue and yeshiva use or whether it was a primary use not permitted by zoning district regulations; and

WHEREAS, the Appellant cites the Board's decision for the point that certain accessory uses noted in ZR § 12-10's definition of accessory use could also be

primary uses, but the majority of them are ancillary uses that support the site's primary use; accordingly, the Appellant likens the proposed cellar uses – exercise areas and a home theater - to those on the list of accessory uses in that they are not primary uses; and

WHEREAS, the Appellant also cites to the Board's decision at BSA Cal. No. 202-05-BZ (11-11 131<sup>st</sup> Street, Queens/InSpa) in which the Board, when evaluating whether a small percentage of a physical culture establishment's floor area dedicated to massage in comparison to the large size of the facility made it appropriate for the massage area to establish the primary use; the Appellant notes that the Board stated in its decision that there was not any mention of size limitations in the ZR § 12-10 accessory use definition; and

WHEREAS, the Appellant cites to Mamaroneck Beach & Yacht Club v. Zoning Board of Appeals, 53 A.D.3d 494 (2008), for the determination that proposed seasonal residential use at a yacht club was deemed to be accessory to the primary yacht club use even though it would occupy more than 50 percent of the total building floor area on the site; and

WHEREAS, the Appellant also cites to New York Botanical Garden v. Board of Standards and Appeals, 91 N.Y.2d 413 (1998), in which the court rejected the Botanical Garden's assertion that a radio tower was too large to be considered clearly incidental to or customarily found in connection with the principal use and upheld the Board's determination that the radio tower was accessory to the university use; and

WHEREAS, finally, the Appellant asserts that DOB does not have the authority to impose bulk limitations on a use and to impose a quantitative measurement where the ZR is silent; and

WHEREAS, the Appellant asserts that the ZR does not limit the size of the subject accessory use as it does certain other accessory uses such as home occupation and that the absence of a size limit in the ZR is evidence that there is no such limit; and

WHEREAS, the Appellant asserts that since zoning regulations are in derogation of the common law, they should be construed against the property owner and, thus, DOB should not be permitted to add a limitation not written in the text that imposes a burden on property owners; and

WHEREAS, further, the Appellant asserts that DOB's restriction that residential cellars not exceed 49 percent of the floor area of the home is not fair, consistent, or proportional and cites as an example of inequity the fact that a 1,000 sq. ft. home with one-story could have a cellar with 1,000 sq. ft. if built within the building's footprint, but if that 1,000 sq. ft. home were two stories and had a footprint of 500 sq. ft., the cellar could only be 500 sq. ft.; and

#### DOB'S POSITION

WHEREAS, DOB states that its cellar size limitation is: (1) based on a rational construction of the

definition of accessory use, particularly the phrase "clearly incidental," which furthers the intent of the ZR; (2) a reasonable restriction developed pursuant to the principles of fairness, consistency, and proportionality; (3) applicable only to residences, and based on an assessment of the needs presented by residences; (4) not new but rather, a consistent approach that is challenged for the first time; (5) in accordance with the Board's cases concerning accessory uses; and (6) consistent with the Board's cases regarding DOB's authority to establish measurements that are not clearly stated within the text in order to clarify terms; and

WHEREAS, as to whether or not the proposed use is accessory, DOB asserts that the size of the proposed cellar is neither customary, nor clearly incidental to the home and that its multi-level configuration is not customary; and

WHEREAS, DOB states that the proposed storage, theater, and gymnasium rooms in the cellar are not part of the principal use of the residence and must meet the definition of "accessory use;" and

WHEREAS, DOB's analysis includes that several ZR § 12-10 definitions together define (1) a "residence" as those rooms used for sleeping, cooking and sanitary purposes, (2) a "residence" is a building or part of a building containing dwelling units, (3) a "dwelling unit" consists of one or more "rooms" plus lawful cooking space and lawful sanitary facilities, and (4) a "room" is a room used for sleeping purposes in accordance with the definition of a "living room" as defined by MDL § 4.18; and

WHEREAS, DOB states that sleeping rooms are the essential component of a dwelling unit and the principal use and the rooms in the Home's cellar, none of which are sleeping rooms, must be accessory to the residence; and

WHEREAS, DOB asserts that all portions of a residence that are not for used for sleeping, cooking, or sanitary functions are accessory to the residence and are permitted only to the extent that they are customarily found in connection with and clearly incidental to the residence and, further, cellar floor space that exceeds 49 percent of a residence's floor area is not accessory where the cellar walls extend below or beyond the footprint of the superstructure; and

WHEREAS, DOB states that its restriction on residential cellar size is appropriate since limiting the size beyond the perimeter of the cellar walls, results in cellars of a size that are customarily found, because historically, the cellar walls were directly below the above-grade walls—and may be considered clearly incidental because its size is no greater than is required for the utilitarian purpose of carrying the loads imposed by the superstructure; and

WHEREAS, DOB notes that the proposed cellar extends beyond the Home's footprint and extends so far



below grade that another staircase must be installed to access the lower portion of it, thus the proposed cellar is undeniably different than cellars traditionally found in connection with detached, single-family homes and, further that the proposed cellar is not clearly incidental to the home above it; and

WHEREAS, DOB finds that the proposed cellar is simply too large and too significant in comparison to the home to be clearly incidental to it; and

WHEREAS, as to the 49 percent measure, DOB states that it is appropriate because it is its reasoned determination that something cannot be clearly incidental to something else and be fully half as large as it and that (1) the size limitation furthers the intent of the ZR to allow such spaces that normally accompany residential rooms to remain secondary in nature, (2) the percentage is an appropriate measure since it allows for proportionality based on different home sizes, (3) the limitation is only for these residential uses and not for other types of uses, and (4) its restriction on cellar size is not new and that it has required it in the past; and

WHEREAS, DOB articulates the following two-step process for measuring the permissible cellar size: (1) if the cellar matches the footprint of the superstructure, it is permitted regardless of how much floor space it has in comparison to the floor area of the building, and (2) if the cellar extends beyond the footprint of the superstructure, the cellar may not exceed 49 percent of the floor area of the building; and

WHEREAS, DOB states that the 49 percent parameter ensures that, for a typical two-story, single-family home, the cellar floor space does not eclipse an entire story of floor area and that in a three-story home, somewhat more than one story's worth of floor area would be permitted for the cellar; and

WHEREAS, DOB asserts that the size of the permitted accessory use directly corresponds to the size of the principal use at a constant rate and follows the plain text of the ZR, gives meaning to the undefined terms, and is consistent with the policy of allowing certain accessory uses to exist, to an appropriate degree, in connection with certain principal uses; and

WHEREAS, as to the Appellant's assertion that DOB's prior approvals require it to approve the plans submitted as precedent are incomplete and cannot be verified and that most of the buildings depicted (Drawings 1, 3, 4, 5 and 7) appear to be three stories in height, which might allow for an extension beyond the footprint; and

WHEREAS, however, DOB states that to the extent that any of the plans show applications that were approved with accessory cellars extending beyond the footprint of the building and having more than 49 percent of the total floor area of the homes, such approvals were issued in error; and

WHEREAS, DOB asserts that the Board has

recognized that size limitation is appropriate in two prior cases BSA Cal. No. 45-96-A (27-01 Jackson Avenue, Queens) and BSA Cal. No. 748-85-A (35-04 Bell Boulevard, Queens); and that the Board has recognized DOB's authority to impose size limits which are not stated in the ZR see BSA Cal. No. 320-06-A (4368 Furman Avenue, Bronx), 189-10-A (127-131 West 25th Street, Manhattan), and 247-07-A (246 Spring Street, Manhattan); and

WHEREAS, as to the case law, DOB asserts that neither Mamaroneck nor Botanical Garden can be read to include a limit on the cellar size in a single-family home; DOB asserts that Mamaroneck is distinguishable and Botanical Garden supports its position, rather than Appellant's; and

WHEREAS, specifically, DOB notes that the seasonality of the residences, which were specifically permitted by Mamaroneck's zoning, was the limitation imposed by the plain text of the Mamaroneck Zoning Code, and the zoning board went beyond the plain text to impose a size limitation; and

WHEREAS, by contrast, DOB asserts that cellars are only permitted if they are accessory and size is relevant to the analysis of whether or not they are accessory; and

WHEREAS, DOB finds support for its position in Botanical Garden in that it finds that the court's holding is limited to stating that a size analysis is not appropriate for a radio tower, but does not extend to whether a size analysis may be appropriate in other situations with accessory uses; specifically it cites to the court decision: "the fact that the definition of accessory radio towers (in Section 12-10) contains no [size restrictions such as a "home occupation" or "living or sleeping accommodations for caretakers"] supports the conclusion that the size and scope of these structures must be based upon an individualized assessment of the need;" and

WHEREAS, DOB asserts that Botanical Garden supports the position that where the ZR does not provide a size limitation, the appropriate limitation is based on an "individualized assessment of the need" for the accessory use and its two-part test follows the Botanical Garden "assessment of the need" analysis, in that it was developed by balancing the historical and practical purpose of accessory cellars (the "need") with the policy considerations within the definition of accessory use; and  
THE DRAFT BULLETIN

WHEREAS, during the course of the hearing and at the Board's request, DOB drafted a proposed bulletin (the "Bulletin"), which sets forth the restrictions on cellar space and a version of which DOB proposes to issue after the Board's decision in the subject appeal; and

WHEREAS, the Bulletin has the defined purpose of "clarifying size of non-habitable accessory cellar space in residences," and includes the following:

. . . Within a residence, all rooms are either

habitable or non-habitable. Habitable rooms, in contrast to non-habitable rooms, are rooms in which sleeping is permitted. The ZR classifies uses on a zoning lot as either principal or accessory. Where habitable rooms are the principal use on a zoning lot, non-habitable rooms are not part of the principal use; they are accessory to the principal use, and are permitted pursuant to subsection (b) of the ZR definition of "accessory use" only to the extent that they are clearly incidental to and customarily found in connection with such habitable rooms. Thus, the definition of "accessory use" contains a limitation on the size of residential cellars containing non-habitable rooms . . .; and

WHEREAS, the Appellant made the following supplemental arguments in response to the Bulletin; and

WHEREAS, the Appellant asserts that the Bulletin is not a logical interpretation of the relevant regulations; and

WHEREAS, specifically, the Appellant asserts DOB's comparison of habitable space to the HMC definition is flawed because the HMC definition of "dwelling" does not address "living rooms," but defines a dwelling as "any building or other structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings;" and

WHEREAS, the Appellant asserts that the HMC definition does not limit a dwelling to the specific rooms used for sleeping and thus is not comparable to DOB's definition of habitable space; and

WHEREAS, the Appellant adds that the HMC definition of "living room" is broader than DOB suggests and that DOB fails to provide support for equating a space's habitability to its status as a principal or accessory use; and

WHEREAS, the Appellant asserts that the cellar size limit of 49 percent of a home's floor area when it extends beyond the building footprint is arbitrary and that DOB cannot enact additional limitations not written in the text and cannot make a rule limiting cellar size that applies to certain (residential) and not all uses; and

CONCLUSION

WHEREAS, the Board has determined that DOB is reasonable to restrict the size of residential cellars and that (1) its position is supported by the Zoning Resolution, (2) it has the authority to set forth and apply parameters for limiting the size of residential cellars and its parameters are reasonable, and (3) all of the authorities the Appellant cites can be distinguished from the subject application and do not support its position; and

WHEREAS, as to the Zoning Resolution, the Board refers to the ZR § 12-10 definitions of dwelling unit, residence or residential, residential use, and rooms cited above; and

WHEREAS, the Board first notes that a residence is

one or more "dwelling units" including common spaces (which also addresses multiple dwellings) such as (but not limited to) hallways, lobbies, stairways, laundry facilities, recreation areas, or storage areas; and

WHEREAS, the Board notes that residences include single-family or two-family homes, thus the proposed single-family home is a "dwelling unit;" and

WHEREAS, the Board notes that the proposed enlargement is for a single-family home which is (1) a "residence" and therefore a "dwelling unit," and (2) as a dwelling unit, it must contain at least one "room," and includes lawful cooking space and lawful sanitary facilities; and

WHEREAS, further, the Board notes that a dwelling unit comprises "rooms" (defined in the ZR as the same as "living rooms" in the MDL) and cooking and sanitary facilities; therefore, a residential use (such as the proposed single-family home) is a "dwelling unit" which contains "rooms" (ZR or MDL "living rooms") and cooking and sanitary facilities; and

WHEREAS, the Board finds that the primary use of a residence is limited to living rooms (which DOB refers to as "habitable" in this context), and cooking and sanitary facilities; all other uses become accessory; and

WHEREAS, the Board notes that its proffered zoning interpretation establishes that (1) spaces above grade that are habitable including recreation spaces, libraries, studies, attic space, are all considered "rooms" and part of the primary use and also counted as floor area and (2) below grade space that is habitable and may be used as a sleeping room is also part of the primary use and would be considered as floor area and should be not included in the accessory calculation; the Board notes that below grade space that is not habitable is not included in zoning floor area calculations; and

WHEREAS, the Board notes that DOB does not need to rely on the Building Code definition of habitable space, as the Appellant suggests, but rather chooses "habitable" as a shorthand way to encompass the living rooms which constitute a dwelling unit; and

WHEREAS, the Board notes that the ZR directly references the MDL and therefore reflects an expected link between ZR "rooms" and MDL "living rooms" acknowledged by the ZR; the Board also finds that the Appellant's concern about there potentially being above-grade space that would be deemed accessory rather than primary is unavailing because the above grade space (1) counts towards floor area, is within the anticipated volume of the building, and is covered by the relevant restrictions on floor area and (2) could potentially be converted to primary use as it can become habitable space; and

WHEREAS, the second part of the Board's analysis considers whether DOB may appropriately put a quantitative measure on cellar size; and

WHEREAS, the Board finds that DOB may place a

quantitative measure to ensure that the accessory use remains incidental to the primary use; and

WHEREAS, the Board acknowledges that size may not always be a relevant factor when establishing accessory use but when cellars go beyond the customary boundary of the building's footprint, it is appropriate to restrict the size in order to maintain its incidental relationship to the primary use; and

WHEREAS, the Board does not find DOB's application of the restriction only to residential uses to be arbitrary since it stems from the ZR definition of residential uses and the distinction between habitable and non-habitable space which does not arise for nonresidential uses; and

WHEREAS, the Board distinguishes its two prior cases that the Appellant cites; and

WHEREAS, first the Board notes that in *Viznitz*, the Board clearly stated that "a determination of whether a particular use is accessory to another use requires a review of the specific facts of each situation" and quoted the Court of Appeals in *Botanical Garden* for the theory that "[w]hether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use . . . taking into consideration the over-all character of the particular area in question" when determining whether a catering use was primary or accessory to the synagogue or yeshiva; and

WHEREAS, the Board also distinguishes *InSpa* in that it involved a PCE special permit application, not an interpretive appeal and, thus the decision in that case is limited to the unique circumstances of a PCE special permit; if the Board had agreed that the small amount of massage space in comparison to the large size of the overall facility would make such use accessory, it would follow that the remaining uses could have existed as-of-right (for example as a Use Group 13 commercial pool with accessory massage); and

WHEREAS, the Board notes that the *InSpa* case was before the Board because DOB has taken a conservative approach that any amount of space dedicated to a defined PCE, no matter how small in proportion to the whole use, triggers the requirement for a PCE special permit rather than allowing small PCE uses to be subsumed by a larger as of right use and sidestep the special permit; this furthers the intent of the ZR to have City oversight, including conditional approval and term limits, of certain specific physical improvement uses; and

WHEREAS, the Board finds that the intent and the purpose of the analysis in the *InSpa* case cannot be applied to the subject case; and

WHEREAS, as to the case law, the Board does not find that either Mamaroneck or Botanical Garden supports the Appellant's position; and

WHEREAS, as to Mamaroneck, the Board distinguishes the facts since Mamaroneck is within a different jurisdiction subject to a different zoning code and

seasonal residences were explicitly permitted under zoning without a restriction on size; and

WHEREAS, as to Botanical Garden, the Board finds that the court did not prohibit size as a consideration across the board but rather said to employ an individualized assessment of need and a consideration of the facts, as cited above; and

WHEREAS, the Board finds it inappropriate to compare the assessment of need for a radio tower, which has technical requirements, and a home's cellar, which is based on a homeowner's preferences; and

WHEREAS, the Board upheld DOB's authority to interpret and impose quantitative guidelines not found in the ZR in BSA Cal. No. 320-06-A (4368 Furman Avenue, Bronx) and also upheld DOB's authority to fill in gaps not set forth in relevant statutes in BSA Cal. No. 121-10-A (25-50 Francis Lewis Boulevard, Queens); the Board notes that the court recently upheld its decision in *Francis Lewis Boulevard at 25-50 FLB v. Board of Standards and Appeals*, 2011 NY Slip Op 51615(U) (S. Ct. 2011); and

WHEREAS, in 25-50 FLB, the Supreme Court recognized DOB's authority to fill in gaps in instances where specific procedures are not codified and upheld the Board's decision based on its recognition of that authority; and

WHEREAS, the Board finds that size can be a rational and consistent form of establishing the accessory nature of certain uses such as home occupations, caretaker's apartments, and convenience stores on sites with automotive use, but may not be relevant for other uses like radio towers or massage rooms; and

WHEREAS, the Board does not find that any of the prior cases the Appellant relies on include any recognition of the distinction between above grade and below grade space and the associated questions of habitability; and

WHEREAS, as to the Appellant's assertion that DOB has been inconsistent and has a history of approving cellars like the proposed, the Board notes that the drawings the applicant submitted lack sufficient detail to make such a conclusion; the Appellant submitted only one case which has a certificate of occupancy and zoning calculations, which shows that DOB has allowed cellars greater than 49 percent of the building's floor area; and

WHEREAS, the Board notes that the other six examples which show larger cellars do not provide any analysis regarding the 49 percent standard; and

WHEREAS, the Board notes that (1) even if the examples do support the Appellant's claim that DOB approved cellars with area in excess or 49 percent of the homes' floor area, seven examples do not establish a compelling established practice, (2) it is possible that DOB did not have sufficient information to perform the analysis, and (3) DOB has the authority to correct erroneous approvals; and

WHEREAS, the Board has determined that DOB has the authority to issue the Bulletin and that it is appropriate to do so immediately following the Board's decision since this zoning issue has emerged and its regulation requires memorialization; and

WHEREAS, the Board does not find DOB's discrete application of the rule to be arbitrary as the distinction between habitable and non-habitable use is not relevant or applicable to the non-targeted uses; and

WHEREAS, the Board also notes the following considerations, which support limiting the size of residential cellars: (1) there is a distinction between above grade habitable space, which provides access to light and air, and below grade space, which does not, and yet homes function as a whole so there is a public interest in distinguishing between the primary habitable space and the accessory non-habitable space and limiting the amount of non-habitable space; (2) the ZR intends to limit, and there is a public interest in limiting, the volume of homes; and (3) the ZR sets limits on above grade floor area, which counts towards zoning floor area and so it is reasonable to limit the below grade floor space, which is not addressed within bulk regulations as it does not count towards bulk, but does contribute to the home's overall occupation of space; and

WHEREAS, as to the Appellant's concern that the cellar limitation is inequitable and disproportionate, the Board considered the effect the Bulletin (with the variation that a cellar built beyond the footprint may not exceed 50 percent of the home's floor area) would have on homes within an R3-2 zoning district; for example a 6,000 sq. ft. lot built out could choose from the following parameters: (1) a home with a maximum floor area of 3,600 sq. ft. (0.6 FAR) and a maximum footprint of 2,585 sq. ft., which would permit a cellar of either 2,585 sq. ft. or 1,800 sq. ft., if built to a smaller footprint and multiple stories, or (2) if a property owner obtains a special permit pursuant to ZR § 73-622, it may potentially build to a floor area of 6,000 sq. ft. (1.0 FAR), a maximum footprint of 3,055 sq. ft., and provide a cellar of either 3,055 sq. ft. or 3,000 sq. ft., if the built to a smaller footprint; and

WHEREAS, the Board finds that the results are not inequitable or disproportionate in that a property owner, like the subject property owner seeking a special permit, would be permitted virtually the same size cellar 3,055 sq. ft. vs. 3,000 sq. ft. whether it builds to the maximum footprint size or not; and

WHEREAS, based on the applicant's actual special permit proposal for 1.04 FAR, a 50 percent limit on the size of the cellar would result in 3,107 sq. ft., which the Board deems to be a reasonable outcome; and

WHEREAS, as to the Bulletin, the Board finds 50

percent to be a more appropriate guideline and, thus, the Board respectfully requests that DOB modify the Bulletin to replace "should not be greater than 49%" with "should be less than 50% of the total FAR," with regard to the size of the cellar, and to include a provision that exceptions must be reviewed and approved by its technical affairs division or by another DOB authority with inter borough oversight to ensure a consistent application in all five boroughs; and

WHEREAS, based on the above, the Board has determined, the Final Determination must be upheld and this appeal must be denied; and

*Therefore it is Resolved* that this appeal, which challenges a Department of Buildings final determination dated January 7, 2011, is denied.

Adopted by the Board of Standards and Appeals, October 18, 2011.

**A true copy of resolution adopted by the Board of Standards and Appeals, October 18, 2011.**

**Printed in Bulletin Nos. 41-43, Vol. 96.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**



67-07-A

APPLICANT – Kevin Finnegan, Esq., for Benjamin Shaul, Magnum Mgmt., owner.

SUBJECT – Application July 17, 2007 – An appeal seeking to revoke permits and approvals that allow the construction of a penthouse that exceeds the permitted height limitations governed by ZR 23-692 (Sliver Law). R7-2 Zoning District.

PREMISES AFFECTED – 515 East 5<sup>th</sup> Street, between Avenue A and Avenue B, Block 401, Lot 56, Borough of Manhattan.

### COMMUNITY BOARD #3M

#### APPEARANCES –

For Applicant: Kevin Finnegan.

For Opposition: Marivin Mitzner.

**ACTION OF THE BOARD** – Appeal granted.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Hinkson.....4

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a Final Determination letter dated February 15, 2007 by the Manhattan Borough Commissioner of the NYC Department of Buildings (“DOB”) (the “Final Determination”) addressed to Manhattan Borough President Stringer, Councilmember Mendez, and District Manager of Community Board 3 Stetzer, with respect to Alteration Application No. 104368845; and

WHEREAS, the Final Determination states, in pertinent part:

“This letter is in reference to your correspondence to me, dated September 18, 2006, regarding the Department’s interpretation of NYC Zoning Resolution (ZR) § 23-692 (Sliver Law) in relation to the above referenced alteration application. Specifically, you requested that the Department reconsider, in light of ZR § 11-22, its approval of the applicant’s exclusion of a penthouse from the calculation of building height under the Sliver Law.

“Although your letter refers to ZR § 11-22 as a provision that provides guidance in the calculation of building height under the Sliver Law, this statutory section is not applicable. Section 11-22 addresses the application of overlapping or contradictory regulations. Here, there is neither overlap nor contradiction.

“It has been the Department’s practice to allow building height (which is not a defined term in the Zoning Resolution) of penthouses to exceed the width of the street for buildings covered by the Sliver Law in instances similar to the project in question, particularly in cases such as this where the penthouse is not visible from the

street. It would be inconsistent with these prior decisions to overturn the approval of the penthouse here. It is the Department’s position that the addition of a penthouse at the building in question does not violate the Sliver Law as the continuity of the street wall has been maintained.

In accordance with this interpretation, the penthouse, as constructed with a twenty foot setback from the street wall, complies with ZR § 23-692.

“Please accept this letter as a final determination by the Department, appealable to the Board of Standards and Appeals”; and

WHEREAS, a public hearing was held on this appeal on July 17, 2007, after due notice by publication in *The City Record*, and then to decision on September 11, 2007; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins and Commissioners Hinkson and Ottley-Brown; and

WHEREAS, a representative from Borough President Stringer’s Office testified at hearing in support of the instant appeal; and

WHEREAS, a representative of Council Member Mendez’ Office testified at hearing in support of the instant appeal; and

WHEREAS, a representative of State Senator Connor’s Office testified at hearing in support of the instant appeal; and

WHEREAS, a representative of State Assembly Speaker Silver’s Office testified at hearing in support of the instant appeal; and

WHEREAS, representatives of several civic associations testified at hearing in support of the instant appeal; and

WHEREAS, DOB, Appellant Tenants Association of 515 East 5<sup>th</sup> Street, and the owner of 515 East 5<sup>th</sup> Street (the “Owner” and the “Building”) have been represented by counsel throughout this Appeal; and

#### PROCEDURAL HISTORY

WHEREAS, the instant appeal concerns the addition of a new sixth floor and penthouse, to be occupied by four duplex apartments, to the Building, a five-story “old law” tenement, which is located in an R7-2 zoning district; and

WHEREAS, an alteration permit application was filed under DOB’s professional certification program, and the initial work permit was issued on March 31, 2006; and

WHEREAS DOB subsequently conducted a special audit of the approved plans, and on May 8, 2006 issued an Intent to Revoke Approval(s) based on nineteen Building Code and zoning objections; and

WHEREAS, Objection No. 6 in the May 8, 2006

67-07-A

RECEIVED NYSCEF: 02/16/2021

Intent to Revoke Approval(s) stated, in pertinent part;  
 “ZR 23-692: Sliver Law: Height Regulation  
 Narrow Building:

- a. Proposed vertical enlargement is higher than 60’ which is width of narrow street, and it is contrary to Resolution 23-692, hence not permitted.

Indicate compliance in height and setback diagram”; and

WHEREAS, the plans were revised to correct various violations and were approved on June 29, 2006; and

WHEREAS, the plans approved on June 29, 2006 still showed a building exceeding the 60-foot maximum height that Appellant argues is imposed by Z.R. § 23-692 (the “Sliver Law”); and

WHEREAS, on July 26, 2006, Manhattan Borough President Stringer, Council Member Mendez and Community Board 3 District Manager Stetzer wrote to the Manhattan Borough Commissioner requesting reconsideration of its approval of the revised plans; and

WHEREAS, although the Manhattan Borough Commissioner responded on August 25, 2006 and issued a second Intent to Revoke Approval(s) and Permit(s) and a Partial Order to Stop Work Immediately, he maintained that the amended plans did not violate the Sliver Law; and

WHEREAS, on September 18, Manhattan Borough President Stringer, Council Member Mendez and Community Board 3 District Manager Stetzer requested that the Manhattan Borough Commissioner reconsider his application of the Sliver Law in light of Z.R. §23-62, which does not include penthouses among “permitted obstructions”; and

WHEREAS, on February 15, 2007 the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and  
PROVISIONS OF THE ZONING RESOLUTION AND BUILDING CODE RELEVANT TO THIS APPEAL

WHEREAS, the Sliver Law (comprised of Z.R. §§ 23-691 and 692, enacted in 1983, established limited height districts and regulates the height of new buildings and enlargements of existing buildings that have street walls of 45 feet or less in width), reads, in pertinent part:

“Subject to applicable front height and setback regulations, or any height limitations of the underlying district, no such new or *enlarged building* shall exceed a height equal to the width of the abutting *street* on which it fronts or 100 feet, whichever is less. When the *street walls* of a new *building* or *enlargement* front on two *streets* on a *corner lot*, the height of the *building* shall not exceed the width of the abutting *wide street* or 100 feet, whichever is less.

“However, if the *street wall* of the new or *enlarged building* abuts a contiguous and fully

attached existing *building street wall* that exceeds the height permitted above, such new or enlarged building street wall may reach the height of:

- (a) the tallest of such abutting building walls if it fronts on a *wide street*;
- (b) the lowest of such abutting building walls if it fronts on a *narrow street* provided that:
  - (1) there shall be no penetration of the *sky exposure plane* required by the underlying districts for any portion of such new or *enlarged buildings*; and
  - (2) such height does not exceed any height limitation of the underlying district”; and

WHEREAS, Z.R. § 23-62 (titled “Permitted Obstructions”), relied upon by Appellant, reads, in pertinent part:

“In all *Residence Districts*, except as provided in Section 23-621 (Permitted obstructions in certain districts), the following shall not be considered obstructions and may thus penetrate a maximum height limit or *front* or *rear sky exposure planes* set forth in Sections 23-63 (Maximum Height or Walls and Required Setbacks), 23-64 (Alternate Front Setbacks) or 23-69 (Special Height Limitations):

- (a) Balconies, unenclosed subject to the provisions of Section 23-13;
- (b) Chimneys or flues, with a total width not exceeding 10 percent of the *aggregate width of street walls* of a *building* at any level;
- (c) Dormers having an *aggregate width of street walls* equal to not more than 50 percent of the width of the *street wall* of a *detached* or *semi-detached single- or two-family residence*;
- (d) Elevators or stair bulkhead, roof water tanks or cooling towers (including enclosures), each having an *aggregate width of street walls* equal to not more than 30 feet. However, the product, in square feet, of the *aggregate width of street walls* of such obstructions facing each *street* frontage, times their average height, in feet, shall not exceed a figure equal to four times the width, in feet, of the *street wall* of the *building* facing such frontage;
- (e) Flagpoles or aials;
- (f) Parapet walls, not more than four feet high;
- (g) Wire, chain link or other transparent fences.

Building columns having an aggregate width equal to not more than 20 percent of the *aggregate width of street walls* of a building are a permitted obstruction, to a depth not exceeding 12 inches, in an *initial setback distance*, optional front open area, or any other required setback distance or open area set forth in Sections 23-63, 23-64, or 23-65 (Tower Regulations)”; and

WHEREAS, § 27-306(c) of the Building Code, relied upon by DOB in interpreting Z.R. § 23-692, reads, in pertinent part:

“In applying the provisions of this code governing height limits, the following appurtenant structures shall not be included in the height of the building unless the aggregate area of all such structures exceeds thirty-three and one-third percent of the area of the roof of the building upon which they are erected:

\* \* \*

(c) Roof structures, bulkheads, and penthouses”; and

#### DISCUSSION

##### A. The Basis of the Appeal – The Plain Meaning of the Zoning Resolution

WHEREAS, Appellant, citing Raritan Development Corp. v. Silva, 91 N.Y.2d 98, 107 (1997), argues that the plain language of the Sliver Law is unambiguous, and that under applicable New York decisional law on statutory interpretation, DOB may not go outside the zoning text, as it has by referring to the Building Code, to interpret the Sliver Law’s unambiguous language; and

WHEREAS, the Sliver Law regulates new buildings or enlargements of existing buildings such that “no such new or *enlarged building* shall exceed a height equal to the width of the abutting *street* on which it fronts or 100 feet, whichever is less”; and

WHEREAS, it is undisputed that the width of East 5<sup>th</sup> Street is sixty (60) feet; and

WHEREAS, Appellant argues that the height of the Building is therefore limited to sixty (60) feet; and

WHEREAS, it is also undisputed that the height of the Building, *including the penthouse*, exceeds sixty (60) feet; and

WHEREAS, Appellant therefore concludes that DOB erred in permitting the enlargement of the Building; and

WHEREAS, Appellant notes that the term “height” (although not defined) appears in the Zoning Resolution’s chapter titled “Bulk Regulations for Residential Buildings in Residential Districts” over 200 times; and

WHEREAS, Appellant further cites Majewski v. Broadalbin-Perth Cent. Sch. Dist., 91 N.Y.2d 577, 583 (1998) for the proposition that, “In construing statutes, it is a well-established rule that resort must be had to the natural significance of the words employed, and if they

have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning”; and

WHEREAS, Appellant concludes that DOB acted unreasonably in looking beyond the plain language of the Zoning Resolution to the language of the Building Code in order to construe the meaning of the Sliver Law; and

WHEREAS, Appellant also argues that even if DOB were justified in looking beyond the Zoning Resolution to determine the height of the building, DOB’s application of the Penthouse Rule (described below) is arbitrary and capricious when viewed in the context of the September 24, 2003 report of the DOB Professional Technical Forum, which indicates that there is no exception for penthouses under the Sliver Law and the position adopted by DOB in BSA Cal. No. 15-05-A, in which DOB objected to a new building application on the basis that the “Proposed Penthouse penetrates special height limitation of 60’ (width of abutting street) contrary to Resolution 23-692”; and

WHEREAS, finally, Appellant states that DOB’s interpretation of the Sliver Law is the equivalent of an act of legislation, which requires action by the City Planning Commission and the City Council, or the equivalent of the grant of a variance, which requires action by the Board, and as such is outside DOB’s authority; and

##### B. The Department of City Planning’s Submission

WHEREAS, the Department of City Planning (“DCP”), although not a party, submitted a letter to the Board in connection with the instant appeal; and

WHEREAS, DCP states that zoning rules have been frequently applied without the need for a special definition of “height”; and

WHEREAS, DCP, referring to the definition of “building” as “any structure which (a) is permanently affixed to the land; (b) has one or more floors and a roof; and (c) is bounded by either open area or the *lot lines* of a *zoning lot*,” states that the “height of a building” is therefore “the height measured up to the roof level, exclusive of permitted obstructions”; and

WHEREAS, DCP notes that “building height” and “*building height*” are used 73 times in the Zoning Resolution without being defined; and

WHEREAS, DCP further observes that the terms “building height” and “*building height*” are customarily applied to govern permissible heights of Quality Housing buildings and buildings in contextual districts, limited height districts, special purpose districts, and on the waterfront; and

WHEREAS, DCP concludes that in a case “where the abutting street is a narrow street (60 feet) and the provisions of the third paragraph of Z.R. § 23-692

67-07-A

RECEIVED NYSCEF: 02/16/2021

[which allows the street wall of the building to reach the height of an adjacent building] do not apply, the maximum permitted height of the “sliver” building, or enlargement thereof, is 60 feet, as measured from the curb level to the highest roof level, and only the items listed in the Zoning Resolution as permitted obstructions may exceed that height”; and

C. DOB’s Analysis of the Zoning Resolution and its Interpretive Authority

WHEREAS, DOB argues that “the Zoning Resolution rarely contains plain language,” and that therefore DOB must attempt to construe the Zoning Resolution in accordance with the intent of the City Planning Commission in adopting the Sliver Law; and

WHEREAS, DOB argues that because “height” is not defined within the Zoning Resolution, it is within DOB’s authority to construe the meaning of “height” in interpreting the Zoning Resolution in a way that gives effect to the legislative intent of its drafters; and

WHEREAS, DOB contends that the legislative intent in enacting the Sliver Law was not to restrict density but was aesthetic in nature; and

WHEREAS, DOB reiterates the rationale of the Final Determination that it is permissible for a penthouse to exceed the height limitations of Z.R. § 23-692 if it complies with the Penthouse Rule, particularly when the penthouse is not visible from the street and the penthouse is set back; and

WHEREAS, pursuant to the Penthouse Rule, codified in Building Code § 27-306(c), DOB does not include a penthouse in the calculation of the height of a building unless its area exceeds one-third of the area of the roof; and

WHEREAS, DOB also asserts that the intent of the Sliver Law is to regulate the fronts of buildings and to encourage contextual buildings, and not to prevent building owners from constructing penthouses; and

WHEREAS, DOB further contends that it is within DOB’s authority to turn to the Building Code in an effort to define “height”; and

WHEREAS, DOB also argues that its interpretation of “height” is similarly consistent with the Multiple Dwelling Law; and

WHEREAS, DOB therefore concludes that it properly excluded the penthouse in its calculation of the height of the Building; and

D. Owner’s Interpretations of Applicable Sections of the Zoning Resolution and the Board’s Authority

1. The Penthouse is not Part of the Building and Therefore Should not be Included in Measuring the Height of the Building

WHEREAS, the Building’s Owner, through counsel, contends that while the words of the Zoning

Resolution are generally “plain English words,” that within the framework of the Zoning Resolution as a whole they are ambiguous and require interpretation to give effect to the legislative intent of the City Planning Commission; and

WHEREAS, the Owner notes that “penthouse” is not defined within the Zoning Resolution; and

WHEREAS, Owner notes also that Z.R. § 23-691 regulates “buildings or other structures,” and that Z.R. § 23-692 regulates only the height of “buildings”; and

WHEREAS, Owner also observes that Building Code § 27-232 defines a penthouse as “an enclosed structure on or above the roof of any part of a building” and that therefore a penthouse must be distinct from the building itself; and

WHEREAS, based on the foregoing, Owner contends that penthouses are not part of the buildings to which they are attached, but are rather “other structures,” and are therefore not regulated under Z.R. § 23-692, the applicable section of the Sliver Law, which regulates “buildings” only; and

WHEREAS, Owner further argues that the Zoning Resolution acknowledges that such “other structures” are different from buildings by describing under what circumstances penthouses are deemed to contain floor area; and

WHEREAS, Owner concludes that because a penthouse is an “other structure” distinct from a building, that the height of a penthouse cannot be included in the height of a building in applying Z.R. § 23-692, and that therefore the Building does not violate the Sliver Law; and

2. Equitable and Other Relief

WHEREAS, Owner, relying on the Board’s resolution in BSA Cal. No. 152-97-A (the “Travelers Umbrella”), also argues that if the Board does grant the instant appeal, it has the jurisdiction to fashion equitable relief so as to make its rule prospective only and not to require the Owner either to remove the existing penthouse or to apply for relief in the form of a variance from the Board; and

WHEREAS, alternatively, relying on BSA Cal. Nos. 330-03-A and 132-03-A, Owner argues that the Board should, within the context of the instant appeal, pursuant to City Charter § 666(7) grant the equivalent of a variance to permit the penthouse that has been constructed; and

E. Appellant’s Response to DOB’s and Owner’s Arguments

WHEREAS, Appellant argues that even if the language of the Sliver Law were deemed to be ambiguous, DOB exceeded its authority by going beyond the text of the Zoning Resolution to interpret Sliver Law such that the penthouse should not be included in the “height of the building,” and that the Zoning Resolution itself sets standards for measuring building height; and



WHEREAS, Appellant argues that assuming, *arguendo*, that the Sliver Law were ambiguous, DOB should have relied on Z.R. § 23-62 (“Permitted Obstructions”), which lists permitted obstructions that “may thus penetrate a maximum height limit” and which does *not* list penthouses among such permitted obstructions; and

WHEREAS, Appellant concludes that the penthouse must be included in the “height of the building,” and that the Building therefore violates the provisions of the Sliver Law; and

WHEREAS, furthermore, Appellant argues that where the language of the Zoning Resolution is unambiguous, DOB’s past practice in applying the “Penthouse Rule” is not relevant and should carry no weight in the Board’s resolution of the instant appeal, and that even if it were permissible for DOB to have created the Penthouse Rule for the purpose of interpreting Z.R. § 23-692, DOB has not applied the Penthouse Rule consistently and has applied the Penthouse Rule inconsistently within the context of the events that form the basis of the instant appeal; and

WHEREAS, Appellant observes that because the definition of a building’s “floor area” in Z.R. § 12-10 specifically includes “floor space used in penthouses,” Owner’s argument that a penthouse is an “other structure” and not part of a building is incorrect; and

WHEREAS, Appellant further observes that the Building Code, relied upon by DOB in the Penthouse Rule, also defines a building so as to include appurtenant structures such as penthouses; and

WHEREAS, Appellant observes that with respect to Owner’s request that the Board exercise its authority pursuant to City Charter § 666(7) to fashion a resolution that does “substantial justice” to Owner, the proper procedure for such relief is an application for a variance pursuant to Z.R. § 72-21; and

WHEREAS, Appellant further notes that Owner’s argument that it justifiably relied on DOB’s policy in applying the Penthouse Rule to interpret the Sliver Law is weak because DOB’s interpretations of the Sliver Law have been inconsistent, even as applied to the events giving rise to the instant appeal, and therefore could not have created any justifiable expectation about the application of the Sliver Law to the Building; and

WHEREAS, with respect to Owner’s request that the Board exercise its alleged equitable powers to protect Owner from having to demolish the penthouse it constructed atop the Building, Appellant notes that it has pursued the instant appeal at considerable expense, and that it would be unfair to Appellant for the Board to issue a merely advisory opinion, rather than to grant appellant the specific relief to which it is entitled; and

#### CONCLUSION

WHEREAS, the Board agrees with Appellant and

DCP that the language of Z.R. § 23-692 is unambiguous with respect to the meaning of “height of the building” and its limitation to the width of the abutting street; and

WHEREAS, the Board further agrees that merely because “height” is not defined in the Zoning Resolution does not mean that the word is ambiguous, but rather that “height,” which, as both Appellant and DCP have observed, is used repeatedly throughout the Zoning Resolution, has a commonly accepted meaning and does not require definition in the Zoning Resolution; and

WHEREAS, the Board is unpersuaded by DOB’s and Owner’s attempts to create ambiguity in the Zoning Resolution where none exists; and

WHEREAS, specifically, the distinction between the use of “building or other structure” in Z.R. § 23-691 and “building” in Z.R. § 23-692 does not render ambiguous the meaning of “building” or “building height” or justify turning to the Building Code to clarify an ambiguity that does not exist; and

WHEREAS, the Board agrees with DCP that the definition of “building” as “any structure which (a) is permanently affixed to the land; (b) has one or more floors and a roof; and (c) is bounded by either open area or the *lot lines* of a *zoning lot*,” reinforces the plain meaning of height as measured to the highest roof level, excluding any specifically designated “permitted obstructions”; and

WHEREAS, even if the Board credited DOB’s argument that the language of the Sliver Law is ambiguous, DOB has not established that the text was not intended to restrict the overall heights of buildings or to give DOB the authority to establish its own exemptions to the requirements of the Sliver Law, such as DOB’s Penthouse Rule; and

WHEREAS, the Board finds that the fact that the Sliver Law establishes exceptions to the general height limitation by permitting the street wall of the new or enlarged building to match the street wall of an adjacent building in certain circumstances argues against DOB’s position that CPC intended for DOB to create the exceptions to the Sliver Law; and

WHEREAS, as to DOB’s argument, the Board notes that DOB provides no support from the CPC Report for its argument that the Sliver Law was intended to be limited to serving an aesthetic purpose and to regulating front walls only, and therefore the Board is unconvinced that the Sliver Law should be so narrowly read; and

WHEREAS, the Board agrees with Appellant that the Building Code cannot override the Zoning Resolution and the limitations it establishes on the heights of buildings; and

WHEREAS, the Board agrees with Appellant that a penthouse is part of a building for the purpose of

67-07-A

applying the Sliver Law, and that therefore the penthouse must be included in measuring the height of the Building; and

WHEREAS, the Board further agrees that, in the absence of action by the Board or by the City Planning Commission and City Council, DOB has exceeded its authority both in applying the Penthouse Rule and in limiting its application to instances in which the penthouse is set back and not visible from the street, such action being equivalent to a legislative act; and

WHEREAS, as to Owner's arguments with respect to equitable considerations, the Board disagrees that any hardship that may be imposed on the Owner is relevant to its disposition of the instant appeal; and

WHEREAS, with respect to Owner's argument that if the Board grants the appeal it should exercise equitable powers so that its determination only applies prospectively and would not apply to the Building, the Board does not have the authority simultaneously to determine that the building permits for the expansion of the Building were issued unlawfully and to permit DOB to ignore that fundamental fact; and

WHEREAS, furthermore, as an administrative body, the Board does not have the equitable powers of a court to address any alleged unfairness to the Owner that may result from its decision in the instant appeal; and

WHEREAS, the Board rejects Owner's argument that the Board should exercise its jurisdiction under § 666(7) of the City Charter to create a variance to permit the penthouse addition to the Building to remain despite its noncompliance with zoning; and

WHEREAS, the proper procedure to request such relief from zoning is a variance application in which, after public notice and hearing, the Board could grant such variance pursuant to Z.R. § 72-01(b) and other applicable provisions of Article VII, Chapter 2 of the Zoning Resolution, which define the procedures and standards pursuant to which the Board can vary the Zoning Resolution; and

WHEREAS, the Board will not act on Owner's suggestion that it could fashion relief for Owner from its decision in the instant appeal in the absence of a demonstration on the record that Owner can meet the five findings required for a variance pursuant to Z.R. § 72-21; and

WHEREAS, further with respect to the Board's authority to vary the Zoning Resolution for the Building in the instant appeal, the Board disagrees that the prior Board resolutions cited by Owner are applicable: in

**A true copy of resolution adopted by the Board of Standards and Appeals, September 11, 2007.  
Corrected and Printed in Bulletin No. 38, Vol. 92.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

BSA Cal. No. 330-03-A the Board required a demonstration of the required statutory findings under the MDL and furthermore limited the applicability of its resolution of that appeal to its specific and unique facts, and BSA Cal. No. 132-03-A was denied, so that the language relied upon by Owner is essentially equivalent to *dicta* and has no precedential value; and

WHEREAS, finally, with respect to the "Travelers Umbrella" case (BSA Cal. No. 152-97-A), the Board agrees with Appellant that the instant appeal is clearly distinguishable in that DOB's policy with respect to the sign at issue had been formalized in guidance documents whereas, in the instant appeal, DOB's standards were never formalized or uniformly applied even to the facts giving rise to the instant appeal; and

*Therefore it is Resolved* that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated February 15, 2007, determining that the Building's expansion complies with the Sliver Law, is hereby granted.

Adopted by the Board of Standards and Appeals, September 11, 2007.

February 06, 2018 11:00 PM

# City wants to cut down supertalls

JOE ANUTA 



Michael Korfage

Agencies look to stop builders from using stilts to jack up heights—and prices  
The de Blasio administration is taking aim at developers' practice of stacking luxury condos atop multistory hollow spaces to achieve greater heights and more lucrative sales.

Marisa Lago, chairwoman of the City Planning Commission, said at a town hall meeting last month that her office is working to change how it treats such large voids, which do not count against a building's density limit. Limiting their size could shrink the height of future towers.

"The notion that there are empty spaces for the sole purpose of making the building taller for the views at the top is not what was intended" by the zoning code, she said. "We are already working under the mayor's direction with the Department of Buildings to see how we can make sure that the intent of the rules is followed."

Putting a **building on stilts** is a common gambit used by developers of very tall luxury condo towers to boost a project's height yet comply with existing zoning. It works because floors for mechanical equipment are exempt from the limits. By stretching the ceiling of one or more mechanical floors to dizzying heights, developers can essentially create a pedestal upon which to stack the priciest units.

R. 000882

How the city will close the loophole remains unclear. The Buildings Department repeatedly has signed off on the voids, ruling that they do not violate the zoning code. To change things, staff members could alter their interpretation of the code, or the city could simply rewrite the rules.

**Source URL:** [https://www.crainsnewyork.com/article/20180207/REAL\\_ESTATE/180209904/new-york-city-seeks-to-stop-developers-from-putting-buildings-on-stilts](https://www.crainsnewyork.com/article/20180207/REAL_ESTATE/180209904/new-york-city-seeks-to-stop-developers-from-putting-buildings-on-stilts)