



Melanie E. La Rocca
Commissioner

August 21, 2019

Michael J. Zoltan
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Honorable Members of the Board
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**RE: Cal. Nos. 2019- 89-A and 2019-94-A
Premises: 36 West 66th Street, Manhattan
Block: 1118; Lot: 45**

Dear Honorable Members of the Board:

The Department of Buildings (the “Department”) respectfully submits this second statement in response to the referenced appeals by John Low-Beer on behalf of The City Club of New York, James C.P Berry, Jan Constantine, Victor A. Kovner, Agnes C. McKeon, and Arlene Simon (collectively “City Club Appellants”) and by Klein Slowick, PLLC on behalf of Landmark West! (“Landmark West Appellants”) (collectively, the “Appellants”), challenging the Department’s April 4, 2019 approval of a post-approval amendment application (the “PAA”) which changed the scope of permit 121190200-01-NB (the “Permit”) authorizing construction of a new building located at 36 West 66th Street New York, New York (the “Proposed Building”). Appellants allege that the Department’s approval of the PAA is inconsistent with the New York City Zoning Resolution (the “ZR”).

On July 23, 2019, the Department submitted a letter statement explaining why the Department acted appropriately in approving the PAA. In response to that submission, on August 1, 2019, City Club Appellants submitted a pre-hearing “Reply Statement” to the Board. Subsequently, on August 6, 2019, the Board heard statements from the Appellants, the Department, West 66th Sponsor LLC, (the “Owner”), and members of the public regarding the referenced appeals. This statement is in response to issues raised during the August 6, 2019 hearing, City Club Appellants’ August 1, 2019 “Reply Statement,” and arguments by the Appellants generally.

For the reasons explained below, the Department respectfully requests that the Board affirm the Department’s determination to approve the PAA and uphold the underlying Permit.



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I. ZR § 82-34 (BULK DISTRIBUTION) APPLIES TO THE ENTIRE SPECIAL LINCOLN SQUARE DISTRICT

A. The Plain Reading of ZR § 82-34 (Bulk Distribution) Shows It’s Applicability to the Entire Special Lincoln Square District

The Appellants allege that ZR § 82-34 applies solely to the C4-7 (R10 equivalent) portion of the Special Lincoln Square District and not the R8 portion. However, this is contrary to the plain reading of the provision. The plain language of ZR § 82-34 is unambiguous—it clearly applies to the entire Special Lincoln Square District. In fact, the provision states, in relevant part, that “[w]ithin the Special [Lincoln Square] District, at least 60 percent of the total *floor area* permitted on a *zoning lot* shall be within *stories* located partially or entirely below a height of 150 feet from *curb level*...” It should be noted that not only does the provision specifically state that it applies “within the Special District,” the provision contains no indication that it only applies to part of the Special District.

B. Zoning District Applicability is Written in the Zoning Resolution

Every section of the ZR specifically indicates to which zoning district it applies. In fact, ZR § 12-02 (Rules for Interpretation of District Designation) explains how a reader of the ZR can determine to which zoning districts each provision in the ZR applies. ZR § 12-02 instructs,

“District designations, where applicable, are listed within a ruled bar below the number and title of each section...

...When no district designations are listed for a specific section, the provisions of such section shall be construed to apply to all districts under consideration in the Article in which the section appears or, if specified, only to those districts referred to directly within the section itself. For this purpose, Article II applies to all Residence Districts, Article III applies to all Commercial Districts, and Article IV applies to all Manufacturing Districts. All other articles apply to all districts, unless otherwise provided.”

As an illustration of how zoning district applicability is indicated in the ZR, this submission will reference ZR provisions cited by the Appellants. When discussing how the ZR governs split lots, the Appellants cite ZR § 33-48.¹ As explained in ZR § 12-02, this provision specifically states that it applies to C1 - C8 Zoning Districts in the ruled bar below the number and title of the section. Appellants also reference ZR § 82-36, which only applies to the C4-7 special district. ZR § 82-36 is a supplemental provision, tailoring the specificities of another provision to fit the unique nature of the Special Lincoln Square District. It begins by saying that, “[t]he requirements set forth in Sections 33-45 (Tower Regulations) or 35-64 (Special Tower Regulations for Mixed Buildings) for any *building*, or portion thereof, that qualifies as a “tower” shall be modified as

¹ See City Club Appellants’ May 7, 2019 submission to the Board, page 7 and Landmark West Appellants’ May 13, 2019 submission to the Board, page 12.



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follows...” While the underlying provisions of ZR §§ 33-45 and 35-64 enumerate the zoning districts to which the tower regulations are generally applicable,² ZR § 82-36 specifically modifies the requirements of ZR §§ 33-45 and 35-64 when applied in the Special Lincoln Square District. As such, ZR § 82-36 clearly tells a reader of the ZR that the tower regulations only apply to certain zoning districts. In contrast, there is no comparable language that limits the applicability of ZR § 82-34.

Appellants argue that the ZR implies the applicability of ZR § 82-34 bulk regulations to districts which typically house “towers” (notwithstanding the fact that the word “tower” is not mentioned in the provision at all). Appellants request that readers of the ZR infer the tower regulation applicability to this bulk regulation provision even though no other provision requires such a reading. Specifically, in their reply statement, City Club Appellants cite ZR § 23-651(a)(3) as evidence that ZR § 82-34 only applies to the C4-7 (R10 equivalent) portion of the Special Lincoln Square District. ZR § 23-651(a)(3) (Tower-on-a-Base) is a subsection of ZR § 23-65 (Tower Regulations). ZR § 23-65 specifically states that it applies to R9 and R10 Zoning Districts. As a subsection of ZR § 23-65, ZR § 23-651(a)(3) applies to R9 and R10 Zoning Districts as well. City Club Appellants state that ZR § 23-651(a)(3) is the “general rule” of bulk distribution whereas ZR § 82-34 is the Special Lincoln Square District’s equivalent rule governing bulk distribution. Since ZR § 82-34 is performing a similar function as the “general rule,” City Club Appellants argue, readers of the ZR should infer the same zoning district applicability to the Special Lincoln Square District version. However, ZR § 82-34 does not reference ZR § 23-651(a)(3) in any manner and therefore there is no reason for a reader of the ZR to import the zoning district applicability of ZR § 23-651(a)(3) into the applicability of ZR § 82-34.

In their August 1st reply papers, City Club Appellants cite one lone example, ZR § 82-22 (“Location of Floors Occupied by Commercial Uses), as an example of a provision which requires readers to infer district applicability. This example does not provide any such evidence. ZR § 82-22 states that,

“[t]he provisions of Section 32-422 (Location of floors occupied by commercial uses) shall not apply to any *commercial use* located in a portion of a *mixed building* that has separate direct access to the *street* and has no access within the *building* to the *residential* portion of the *building* at any *story*. In no event shall such *commercial use* be located directly over any *dwelling units*.

Like ZR § 82-36 above, ZR § 82-22 is merely modifying an underlying provision for the sake of the Special Lincoln Square District. Essentially, it tells the reader to look at ZR § 32-422 first, and then see certain modifications of applicability for the Special Lincoln Square District. ZR § 32-422 specifically enumerates its applicability to C4 - C6 Zoning Districts. Readers of the ZR

² ZR § 33-45 applies to C4-7, C5-2, C5-3, C5-4, C5-5, C6-4, C6-5, C6-6, C6-7, C6-8, and C6-9 whereas ZR § 35-64 applies to C1, C2, C4, C5, and C6.



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are not required to infer anything to understand the applicability of ZR § 82-22—they are merely required to read the plain reading. Therefore, Appellants’ reading of ZR § 82-34, in a manner which requires readers of the ZR to infer that it only applies to the C4-7 (R10 equivalent) portion of the Special Lincoln Square District, is incorrect.

Notwithstanding the fact that the plain language of the ZR is clear and unambiguous, Appellants ask that the Board review the legislative intent behind the drafting of ZR § 82-34. However, in the presence of clear unambiguous language, the Board need not look to legislative intent when interpreting a statute.

II. CONCLUSION

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

Respectfully submitted,


Michael J. Zoltan

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

Date: 8/21/19

Examiner's Name: Toni Matias

BSA Calendar #: 2019-89-A and 2019-94-A

Electronic Submission: Email CD

Subject Property/
Address: 36 West 66th Street, MN

Applicant Name John Low-Beer on behalf of City Club of New York and Klein Slowick, PLLC on behalf of Landmark West!

Submitted by (Full Name): Michael Zoltan, Assistant General Counsel, Department of Buildings

- A) The material I am submitting is for a case currently **IN HEARING**, scheduled for _____.
- The reason I am submitting this material:
- Response to issues/questions raised by the Board at prior hearing
 - Response to request made by Examiner
 - Other: _____

Brief Description of submitted material: Letter statement on behalf of the Department of Buildings in response to Appellants' August 1, 2019 "Reply" Submission to the Board and in response to issues discussed during the 8/6/19 public hearing

List of items that are being voided/superseded: _____

- B) The material I am submitting is for a **PENDING** case. The reason I am submitting this material:
- Response to BSA Notice of Comments
 - Response to request made by Examiner
 - Dismissal Warning Letter

Brief Description of submitted material: _____

List of items that are being voided/superseded: _____

MASTER CASE FILE INSTRUCTIONS

- *Bind one set of new materials in the master case file*
- *Keep master case file in reverse chronological order (all new materials on top)*
- *Be sure to VOID any superseded materials (no stapling!)*
- *Handwritten revisions to any material are unacceptable*



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During the August 6, 2019 hearing, the Board requested that the Department respond to City Club Appellants’ August 1, 2019 reply statement to the Board. This submission is in reply to that August 1, 2019 reply statement and the Appellants’ arguments generally.

Respectfully submitted,


Michael J. Zoltan

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