



# **BSA SUBMISSION NOTICE**

Date: November 16

Examiner's Name: \_\_\_\_\_

BSA Calendar #: 2019-94-AElectronic Submission: ☒ Email ☐ CD

Subject Property/

Address: 36 West 66th Street, a.k.a 50 West 66th Street, New York, New YorkApplicant Name Stuart A. Klein, Esq./LandmarkWest!

Submitted by (Full Name): \_\_\_\_\_

A) The material I am submitting is for a case currently **IN HEARING**, scheduled for December 17, 2016.  
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: Supplemental Response to DOB Submission

Brief Description of submitted material: Notice of Submission, Supplemental Statement of Mikhail Sh

List of items that are being voided/superseded: \_\_\_\_\_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List of items that are being voided/superseded: \_\_\_\_\_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- ***Be sure to VOID any superseded materials (no stapling!)***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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### **SUPPLEMENTAL STATEMENT OF FACTS**

**BSA Calendar No:** 2019-94-A

**Premises:** 36 West 66th Street, a/k/a 50 West 66th Street, Manhattan  
Block 1118, Lot 45 (“the Parcel”)

**Determination**

**Challenged:** Issuance of Permit No. 121190200-01-NB (“the Permit”)

Appellant LandMark West! (“LW!”) submits this supplemental statement of facts to address the FAR deductions taken on the April 4, 2019 Zoning Diagram (ZD1 form) for the mechanical equipment on the 15<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> floors.

At the outset, LW! wishes to address the rather peculiar path that the DOB and Developer took with respect to the supplemental submissions. On September 17, 2019, the Board stated that it would be severing and continuing review of the issue of FAR deductions for mechanical equipment areas. To that end, the Board requested additional analysis from the DOB, LW! and Developer according to a particular schedule. The Developer was supposed to have provided all the relevant plans and equipment specifications in time to enable the DOB to produce complete analysis on or before October 16, 2019. Commissioner Scibetta also requested from Developer the mechanical plans for the original building, developed prior to the PAA. These are critical for any sober analysis of the mechanical deductions.<sup>1</sup>

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<sup>1</sup> Developer has apparently ignored this request.

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Mikhail Sheynker, Esq.  
November 6, 2019

Then, it would be LW!'s turn to submit a response to the DOB's analysis by November 6, 2019. Developer specifically requested that it have an opportunity to review LW!'s submission before submitting its own response. Therefore, the Board set November 27 as the deadline for Developer's submission. The continued hearing is currently scheduled for December 17.

On October 16, 2019, the DOB submitted what it purported to be its analysis. It annexed certain mechanical plans, including the composite plans that Developer prepared on the DOB's request and turned over to the DOB on October 11, 2019. At the present time, it is not necessary to flesh out the woeful deficiency of the October 16 submission. Suffice it to say that the DOB submitted a hollow and superficial statement, with no supporting analysis from a single engineer. On top of that, the attached exhibits were quite minimal, as they contained no specifications on the equipment to be used in claimed mechanical spaces. Without such specifications, it is simply not possible to determine that the foot print and service area for the equipment marked on the plans matches the equipment's operational requirements.

Apparently realizing the extent of deficiency of the DOB's October 16<sup>th</sup> submission, Developer volunteered, out of turn and without BSA's prior permission, a statement with annexed schedules of plans and list of equipment on October 21, 2019. Not surprisingly, the October 21 plans did not completely match the plans submitted by the DOB on October 16. For example, the following additional plans were added: M-307.00, M-316.00, M-319.00, M-320.00, M-321.00. The equipment schedule was completely new and something that LW! had not seen before and was not able to obtain earlier: M-501.00, M-502.00, M-503.00, M-504.00.

Upon receipt of the October 21<sup>st</sup> submission, the undersigned reached out to the DOB's counsel, Mr. Michael Zoltan, on October 23, 2019 to confirm if the DOB's October 16<sup>th</sup> analysis

Mikhail Sheynker, Esq.  
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was based on review of the additional drawings disclosed by Developer on October 21. The following day Mr. Zoltan responded:

The Department's October 16, 2019 analysis was based on a review of all the plans approved prior to permit issuance. The "composite drawings" are based on the approved plans.

Finding this answer to be underwhelming to say the least, the undersigned sent another email on October 24, 2019, asking for clarity and specificity as to the discrepancy between the plans that DOB and submitted separately. This clarification was important simply because at the September 17, 2019, the Board instructed Developer to first provide the DOB with all necessary documentation and for the DOB to then analyze it. If there was something that DOB missed or failed to analyze, it could certainly impact its analysis. LW!'s obligation to respond should be triggered only after the DOB prepares its final, not intermediary, analysis.

Mr. Zoltan did not respond to the October 24, 2019 email. On October 29, 2019, the undersigned emailed Mr. Zoltan yet again, asking for the response. The silence from Mr. Zoltan was denser than the London fog in Conan Doyle's stories. (Relevant emails are annexed hereto as Exhibit A). On November 1, the undersigned reached to the BSA to seek guidance, as LW!'s engineers were simply not certain as to what weight to give to Developer's October 21 submission without confirmation from Mr. Zoltan. (Email of Stuart A. Klein is annexed hereto as Exhibit B).

On November 4, mere two days before the November 6<sup>th</sup> deadline, and 11 days after the initial request for clarification, Mr. Zoltan submitted a formal response where he addressed the discrepancy and for the first time confirmed that the additional plans were filed and approved by the DOB and that the DOB had them at its disposal prior to submitting its statement on October 16. (Exhibit C). The November 4<sup>th</sup> statement made no mention of whether these plans were ever

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reviewed. Given the history of DOB's delays, obfuscations and incomplete responses, that these plans were overlooked. After all, they were not included in the October 16<sup>th</sup> exhibits. Otherwise, the DOB should provide greater detail of the review process from any and every engineer who performed such review.

This has left LW! only two days to prepare its response. It would not be beyond the pale to characterize what the DOB and Developer jointly did as sandbagging. Appellant now finds itself responding to an avalanche of half-facts and misleading arguments in two days' time. Nonetheless, the instructions that the undersigned received from the Board is to submit what appellant currently can, and request additional time for a more thorough submission. Annexed to this letter, the Board will find affidavits of Michael Ambrosino and George Janes, with relevant exhibits supporting the fact that the mechanical deductions are simply illusory and solely meant to artificially increase the sellable floor area.

Sadly and fortunately, their detailed analysis exposes Developer's rarely transparent scheme, a scheme that should have been exposed in the first instance had the DOB diligently examined the plans as per its own protocol. They provide a partial analysis – based on the information supplied to date – explaining the extent of unjustified mechanical FAR deductions that the DOB has credited for the floors 15<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup>. Spreading the equipment as thin as possible to take up unnecessary space, Developer is attempting to get the entire area of the four mechanical floors excluded from the FAR calculations.

In order to illustrate this and the amount of equipment, the “footprint” and spatial organization, Mr. Ambrosino color-coded all of the differing components of the MEP system. The attached color-coded Existing Conditions Drawings, D-15, D-17, D-18, and D-19 of each major mechanical floor identifying the area of the equipment, the access/service space required

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for each, as well as other uses on the floor and the unassigned or “white space.” As designed, the equipment and service area requirements are approximately as follows:

- 15th floor..... 18 %
- 17th floor..... 20 %
- 18th floor..... 27 %
- 19th floor..... 28 %

Via the example of the 17<sup>th</sup> floor, Mr. Ambrosino shows how the mechanical equipment can be more efficiently positioned without negatively impacting on its operability, exposing substantial amounts of empty space that Developer is simply electing not to use. Such marked inefficiency in the outlay of the equipment appears to be intended to mask the empty space.<sup>2</sup> Mr. Ambrosino identifies a mean 60% deduction that should be made from the claimed deductible floor area. Simply put, most of the area on the subject mechanical floors is empty space. Further analysis is currently being conducted as to the physical dimensions of the scheduled equipment and the possible incongruence between the actual dimensions and the scaled demarcation on the plans corresponding to the equipment.

Mr. Ambrosino is also working on preparing additional efficient arrangement plans for the remaining floors to show just how little space on the mechanical floors is dedicated to the mechanical equipment and the requisite service area. Supplemental affidavits and argument will be submitted as soon as they become available.

Mr. Janes, on his part, analyzes the impact that the improper deductions for unused space and the firefighter access, refuge and storage areas have on the overall FAR calculations on the

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<sup>2</sup> As Mr. Ambrosino states in his affidavit, he was not able to review the mechanical equipment outlay for energy efficiency, code conformance or system performance. This is partly because these documents, typically included as part of the DOB filing set, were not provided. LW! requests that the Board compel the DOB and Developer to disclose them for a more thorough review.

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ZD1. Further, if Developer cannot show that the mechanical equipment and requisite service areas occupy at least 90% of the floor area, the area occupied by stairs, elevators and other points of access is also not deductible as per the draft Buildings Bulletin 2013-xxx (“the Bulletin”), authored by Thomas Fariello, R.A., to which both experts refer.

While the Bulletin is in a draft form, the DOB examiners routinely follow the instructions it contains for reviewing claims of mechanical equipment FAR deductions as it stands for a collection of the DOB’s then-existing and currently continuing policies. If the DOB flippantly disowns the Bulletin, then it should offer any alternative writing that sets forth its relevant policy, especially as the Zoning Resolution is silent on the mechanics of reviewing such FAR deductions. While the DOB represented in the *Skyhouse* that its review of the mechanical equipment deductions is done on a case-by-case basis, its examiners must follow some common criteria and protocol. Otherwise, there will be no rhyme or reason to the DOB’s decision making, which is a basic due process requirement applicable to all governmental actions. Therefore, the Bulletin, absent another, *approved* writing, has to be applied here.

To sum up, unlike in the *Skyhouse* case, appellant here has submitted affidavits of professionals that have evaluated whether the, “[a]mount of floor space used for mechanical equipment in the Proposed Building is excessive or irregular....” (2016-4327-A, page 4). It is evident that aside from height voids, Developer here has floor area voids that it is trying to dress up as necessary for operation of mechanical equipment. It cannot have it both ways. Developer has already abused floor height. Now it is trying to get away with FAR deductions to which it is not entitled.

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November 6, 2019

Accordingly, Landmark West requests that the Board grant it additional time of two weeks to complete its submission in view of the concerted dilatory practices deployed by the DOB and Developer and, in the interim, accept the partial response included herein.

Further, the principal of Developer, Gary Burnett, has on numerous occasions represented that the rationale behind the peculiar arrangement of the mechanical space was motivated by a desire to artificially increase the bulk of the building to generate greater sales. The Board must exercise its subpoena power and have him personally appear to explain these statements.

Dated: Nov 6, 2019  
New York, New York

KLEIN SLOWIK PLLC

M. Sheynker  
Mikhail Sheynker, Esq.

# Fwd: 36 West 66th Street--Landmark West! BSA Appeal Cal No. 2019-94-A

Mikhail Sheynker

Tue 10/29/2019 1:55 PM

To: Michael Zoltan (Buildings) <MZoltan@buildings.nyc.gov>;

Cc: Stuart A. Klein <SKlein@buildinglawnyc.com>;

Mr. Zoltan, My prior email must've gotten lost; could you please advise.

Sincerely,

Mikhail Sheynker, Esq.

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----- Forwarded message -----

From: "**Mikhail Sheynker**" <MSheynker@buildinglawnyc.com>

Date: Thu, Oct 24, 2019 at 9:49 AM -0400

Subject: Re: 36 West 66th Street--Landmark West! BSA Appeal Cal No. 2019-94-A

To: "Michael Zoltan (Buildings)" <mzoltan@buildings.nyc.gov>

Cc: "Stuart A. Klein" <SKlein@buildinglawnyc.com>, "Mona Sehgal (Buildings)" <msehgal@buildings.nyc.gov>, "Felicia Miller (Buildings)" <femiller@buildings.nyc.gov>

I'm sorry my question was specific to the October 21 exhibits from the developer. They contain additional, not composite, plans that DOB exhibits do not. Hence my question. Could you please check with your engineer and give me a straight yes or no.

Sincerely,

Mikhail Sheynker, Esq.

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On Thu, Oct 24, 2019 at 9:35 AM -0400, "Michael Zoltan (Buildings)" <MZoltan@buildings.nyc.gov> wrote:

Good morning, Mr. Sheynker,

The Department's October 16, 2019 analysis was based on a review of all the plans approved prior to permit

issuance. The “composite drawings” are based on the approved plans.

Best,

**Michael Zoltan**

Assistant General Counsel  
NYC Department of Buildings  
280 Broadway, 7th Floor  
New York, NY 10007  
(212) 393-2642  
mzoltan@buildings.nyc.gov

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**From:** Mikhail Sheynker [mailto:MSheynker@buildinglawnyc.com]  
**Sent:** Wednesday, October 23, 2019 3:13 PM  
**To:** Michael Zoltan (Buildings)  
**Cc:** Stuart A. Klein  
**Subject:** 36 West 66th Street--Landmark West! BSA Appeal Cal No. 2019-94-A

Mr. Zoltan,

Could you please confirm if the DOB's October 16, 2019 analysis was based on the review of the additional drawings and certifications disclosed by Developer as an enclosure to its October 21, 2019 letter.

Sincerely,

Mikhail Sheynker, Esq.

**Mikhail Sheynker, Esq.**  
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## Untitled

Stuart A. Klein

Fri 11/1/2019 1:15 PM

To: Toni Matias (BSA) <tmatias@bsa.nyc.gov>; Mikhail Sheynker <MSheynker@buildinglawnyc.com>; Michael Zoltan (Buildings) <MZoltan@buildings.nyc.gov>;

Cc: Sean Khorsandi LANDMARKWEST! <seankhorsandi@landmarkwest.org>;

Toni: I'm in Europe right on and will not be back until 11/20. Sadly, last week, we received a response from DOB regarding the west 66th street case that is, to be kind, grossly deficient and misleading. I do not think it important to comment on whether this lack of candor was intentional or not. But my associate, Misha, who was to respond in my stead—has repeatedly asked DOB, via email—to clarify certain elements of its response, which simply do not make any sense, is grossly deficient in detail and not responsive to the Board's requests for certain information and comparables.

In the greater context of what dob has done and not done in this case, I must admit i am neither surprised by its lack of clarity. But i am at a loss as to how to put together a response to such a glaringly deficient and irresolute submission.

Stu

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**Melanie E. La Rocca**  
Commissioner

**Michael J. Zoltan**  
Assistant General Counsel  
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November 4, 2019

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

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

Dear Honorable Members of the Board:

The Department of Buildings (the “Department”) respectfully submits this statement to confirm that the additional drawings and clarifications regarding the proposed new building located at 36 West 66<sup>th</sup> Street New York, New York (the “Proposed Building”), submitted on October 21, 2019 by West 66th Sponsor LLC, (the “Owner”) are an accurate representation of Department records. The Department submits that these additional plans supplement the Department’s submission dated October 16, 2019 and provide further support for 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 the Proposed Building, and specifically the deduction of mechanical floor area.

**I. THE PLANS SUBMITTED AS “SCHEDULE 1” AND “SCHEDULE 3” ARE TRUE COPIES OF APPROVED MECHANICAL PLANS**

In the Owner’s October 21, 2019 submission, the owner attached drawings depicting the Proposed Building’s mechanical piping system (drawing numbers M-307.00, M-316.00, M-319.00, M-320.00, and M.321.00.) These drawings are true copies of plans stamped approved by the Department on April 5, 2019. Additionally, within the “Schedule 1” attachment, the Owner submitted SP/SD-216.00 to replace SP/SD-217.00. While both drawings were approved by the Department, the Owner’s description of SP/SD-217.00 as the sprinkler plans for the pool crawl space is correct. SP/SD-216.00 is the proper depiction of the sprinkler/standpipe plans for the full 15<sup>th</sup> Floor.



Cal. No. 2019-94-A

Premises: 36 West 66<sup>th</sup> Street, Manhattan

November 4, 2019

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Similarly, the Owner submitted the mechanical schedules (M-501.01, M-502.00, M-503.00, and M-504.00) for the mechanical equipment. These schedules provide additional details of the proposed mechanical equipment. They too are true copies of plans stamped approved by the Department on April 5, 2019.

Lastly, in the Owner's letter, the Owner added additional verbal descriptions of the mechanical equipment—supplementing the listed descriptions in the Department's October 16, 2019 letter. The listed items are an accurate representation of the mechanical equipment in the Proposed Building. The Department's October 16, 2019 list was not meant to be exhaustive, but rather illustrative.

**II. THE COMPOSITE DRAWINGS OF THE INTERSTITIAL MECHANICAL FLOORS HELP ILLUSTRATE THE COMPLETE LAYOUT OF THE MECHANICAL EQUIPMENT IN THE PROPOSED BUILDING**

In the Department's October 16, 2019 submission to the Board, for the sake of clarity, the Department submitted "composite" drawings of the approved mechanical plans. As explained in footnote 6 of that submission, the composite drawings themselves were not approved drawings by the Department but were rather a compilation of approved drawings overlaid for illustrative purposes.

In the Owner's October 21, 2019 letter, the Owner clarified that the composite drawings included architectural plans and did not include all of the mechanical systems from Department approved plans. The Owner attached "Schedule 2" which contains a compilation of approved Department plans depicting mechanical equipment overlaid one over the other with the addition of electrical fixtures shown on Department approved plans.



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Premises: 36 West 66<sup>th</sup> Street, Manhattan  
November 4, 2019  
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### III. CONCLUSION

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

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "M. J. Zoltan", written over a horizontal line.

Michael J. Zoltan

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

11/07/2019

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

November 5, 2019

**RE: Cal. No. 2019-94-A**  
**50 West 66<sup>th</sup> Street (AKA 36 West 66<sup>th</sup> Street), Manhattan**  
**Block: 1118 Lots: 14,45,46,47,48& 52**

**Report on the Analysis of the Floor Area on 15th, 17th, 18th and 19<sup>th</sup> Floors**  
**Existing Mechanical, Electrical and Plumbing Equipment**

**Introduction**

My name is Michael Ambrosino, a licensed professional Engineer in the State of New York and a founding partner of Ambrosino, DePinto & Schmieder, DPC, Engineers. My experience spans more than forty years of engineering design and research in institutional, commercial and residential facilities. I have recently retired from the firm I founded and now consult on special projects.

I was actively involved in advancing the HVAC industry through lectures and published papers, and have served on the Board of Governors for the New York Chapter of ASHRAE. As a national lecturer, I have spoken for New York University on "Energy Management in Buildings", for the Association for the Advancement of Medical Instrumentation on "Energy Savings in Hospitals", for ASHRAE on the "Application of Computerized Energy Management Systems", for CBS on "Mechanical System Basics and Optimization," as well as conducting a seminar to architects on HVAC systems, entitled "What is Air Conditioning?"

I have a Bachelor of Science in Mechanical Engineering from The Polytechnic Institute of Brooklyn with Graduate Studies in Energy Policy Issues and Energy Resources and Technology, completed at The Polytechnic Institute of Brooklyn. My affiliations have included: National Society of Professional Engineers, The American Society of Heating, Refrigerating and Air conditioning Engineers, The American Society of Mechanical Engineers, The American Association of Museums and The Architectural League of New York.

I have been retained by Landmark West! to review the plans submitted by the owner as part of BSA Docket # 2019-94-A. My analysis follows:

This report has been compiled from information obtained from the study of the Mechanical, Electrical and Plumbing (MEP) drawings for the above project dated August 17, 2018, on file at the Department of Buildings (DOB).

Mechanical, Electrical & Plumbing (MEP) design is typically based on design principles determined at the start of a project, by the Owner/Developer, the Architect, and Engineer of Record. For 50 West 66<sup>th</sup> Street, the project team consists of Snohetta, Design Architect and SLCE, Architect of Record, along with ICOR, MEP Engineers for the project. The design criteria can range from most sustainable, least capital cost, and best comfort performance to a host of other criteria, which can vary depending on the size, layout and budget of the project. I am not privy to the original design principles for the HVAC systems for this building nor have I reviewed the filed documents for energy efficiency, code conformance or system performance. This is partly because these documents, typically included as part of the DOB filing set, were not provided. I would like to state for the record that the Engineer of Record, ICOR, is a reputable firm with a portfolio of successful projects. This review and report only focuses on the use of the space on the mechanical floor levels (15,17,18 and 19) in the aforementioned project site.

The reference material that I used includes the 2014 NYC Building and Construction Codes, and various Bulletins including but not limited to NYC Buildings Bulletin 2013-XXX, approved 1/14/2019 (Appendix A) relating to approved with conditions dated 01/14/19 (Control No. 56035). The purpose of this document is to “clarify the extent to which floor space used for mechanical space may be excluded from the sum of a building’s zoning for area as defined by Zoning Resolution (ZR) Section 12-10,” attached hereto. In summary, this states that ONLY if the mechanical equipment and corresponding service space exceeds 90% of the room area, then can the entire floor area can be deducted. This document provided the criteria for determining floor area deductions, which we have called Method 1.

In order to illustrate this and the amount of equipment, the “footprint” and spatial organization, I color-coded all of the differing components of the MEP system. The attached color-coded Exhibit Drawing Nos. 15, 17, 18, and 19 of each major mechanical floor identifies the area of the equipment, the access/service space required for each, as well as other uses on the floor and the unassigned or “white space.” **As designed, the equipment and service area requirements are approximately** as follows (see attached Existing Conditions Drawings for respective calculations):

- 15th floor..... 18 %
- 17th floor..... 20 %
- 18th floor..... 27 %
- 19th floor..... 28 %

These percentages are all well below the threshold of the cited requirements in the DOB Bulletin 2013-XXX, which requires ninety percent (90%) floor coverage with MEP equipment installed for the entire floor to be deducted as a “mechanical floor area deduction.” If we use an average of twenty-three percent (23%) for the four mechanical levels cited above, the total deduction for mechanical equipment is reduced from 51,851 sq. ft. to a mere 8,814 sq. ft.

The present design clearly attempts to use up all the available space on each of the four floors: noting that service areas are not overlapped and that there are large expanses of open “white space” with no actual equipment assigned within these areas. For Method 2, I selected one of the floors to determine how the equipment placement could be laid out if the design principle was to

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be a more efficient use of the floor area. The 17th floor zoning calculations claim complete use of the spaces for MEP use. I laid out the equipment using a more typical approach of sharing access aisles and service space. As shown on the attached Comparison Diagrams, expressly 17.1 17.2, two of the four major mechanical spaces could be eliminated if a more aggressive design concept and philosophy was followed. The existing design shows overall mechanical rooms of 8,481 sq. ft. of space; the revised design would be 4,122 sq. ft. of overall mechanical space.

Since the space is not all used for MEP and is partly shared with the FDNY, the mechanical deduction for the entire floor, 10,216 sq. ft. would now become 4,122 sq. ft.; a reduction of sixty percent (60%). If this percentage were applied across the four main mechanical floors, the mechanical deduction would be reduced from 51,851 sq. ft. to 24,740 sq. ft.

I believe that the placement and distribution of the mechanical and electrical equipment does not follow the intent of the NYC Zoning Resolution. These calculations, provided herein, speak directly to the misappropriating of deductible space by a factor of at least 50%.

Clearly both the applicant's design layout and our methods of calculation require the BSA to consider the validity the applicant's mechanical deductions.

Sincerely,



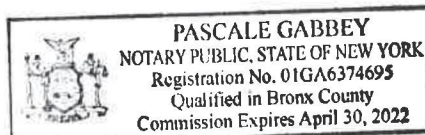
Michael Ambrosino, P.E.

AFFIDAVIT OF MICHAEL AMBROSINO

STATE OF NEW YORK )

) SS:

COUNTY OF NEW YORK.)



Pascale Gabbey.

11.5.2019



NYC Buildings Department  
280 Broadway, New York, NY 10007

Robert D. LiMandri, Commissioner



## BUILDINGS BULLETIN 2013-XXX

### Zoning Interpretation

#### Supersedes:

**Issuer:** Thomas Fariello, R.A.  
First Deputy Commissioner

**Issuance Date:** XXX, 2013

**Purpose:** This document is to clarify the extent to which floor space used for mechanical equipment may be excluded from the sum of a building's zoning floor area as defined by Zoning Resolution (ZR) Section 12-10.

**Related Code** ZR 12-10 "floor area" (8)  
**Section(s):** BSA Cal. No. 315-08-A

**Subject(s):** Zoning, floor area,  
Zoning, mechanical equipment  
Zoning, mechanical deductions

"Floor Area" is defined within Zoning Resolution (ZR) Section 12-10 as "...the sum of the gross area of the several floors of a building or buildings, measured from the exterior faces of exterior walls or from the center lines of walls separating two buildings...." The definition also provides items that shall not be included as "floor area." Floor space devoted to mechanical equipment, as specified by ZR 12-10 (8) of "floor area," shall not be included as "floor area."

The purpose of this Bulletin is to clarify what types of equipment qualify as "mechanical equipment" as well as establishing size criteria for "floor area" deduction. In doing so, the Department shall interpret that in order for floor space devoted to mechanical equipment to be excluded from "floor area," such equipment must be necessary for the operation of a building or portion thereof and not only to support a particular type of occupancy or use within the building. Please note that this Bulletin does not address ZR 12-10 (2) of "floor area" related to bulkheads, water tanks and cooling towers.

#### A. Limitations on "floor area" deductions

(1) Floor spaces occupied by the following mechanical equipment may be excluded from "floor area"

- a) Heating, ventilation, air conditioning equipment including, but not limited, to chillers, pumps and heating exchange equipment (HX) except those specified within Part B(1);
- b) Boilers and domestic hot water heating equipment;

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APPROVED  
WITH CONDITIONS

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R. 002498

- c) Domestic water pumps and equipment;
- d) Emergency generators and related equipment including automatic transfer switches provided such equipment is used in connection with the occupancy, components, equipment or systems specified in BC Chapter 27, whether required or voluntary;
- e) Uninterrupted power supply (UPS) system supplying emergency back-up power to essential building systems including fire alarm and egress lighting systems;
- f) Fire sprinkler pump and system;
- g) Mechanical shafts including enclosure;
- h) Plumbing and gas pipe risers and chases including enclosure: \*
- i) Horizontal piping and ducts lower than 6'-0" above the floor level; \*
- j) Chimneys and boiler flues;\*
- k) Electrical service panels, conduits, risers, chases and related equipment;
- l) Refuse chutes\* (in addition to "refuse disposal room" exclusion where ZR 28-23 is applicable);
- m) Refuse compactor rooms; ~~when not located in the cellar [removed as superfluous]~~
- n) Tanks including fuel tanks, water storage tanks and storm water retention tanks;
- o) Cogeneration equipment; and
- p) Elevator machine rooms not above roof in a bulkhead.

\*See paragraph 2 below

- (2) Floor space directly adjacent to mechanical equipment necessary for the purpose of access and servicing of such equipment (except as otherwise noted in Part C). Such areas shall be determined in accordance with either (a) or (b), unless an asterisk appears after equipment listed above signifying that no adjacent service area can be deducted:
  - a) 1 : 1 ratio of equipment area-to-adjacent service area; or
  - b) Manufacturer's recommendation for accessing and servicing area for a particular equipment item or clearance specified by NYC construction and electrical codes.

**B. Floor spaces that must be included as "floor area"**

The following items are examples of floor spaces that cannot be deducted from "floor area" and is by no means an exhaustive list. Such examples are provided so that similar instances or circumstances of like kind or character are also included in "floor area."

- (1) Spaces containing individual radiators, convectors and air conditioning units (including portable, window box, in-wall or packaged terminal air conditioning units);
- (2) Rooms and/or spaces containing computer servers and related equipment;



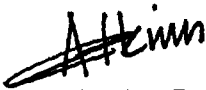
- (3) Rooms and/or spaces containing telecommunication equipment except where such equipment only supports a required emergency voice/alarm communication system (i.e. fire command station) pursuant to BC 907.2.12.2; and
- (4) Rooms and/or spaces containing cable television / broadband equipment.

**C. Criteria for excluding incidental, non-occupied floor space from "floor area" for rooms and floors**

Notwithstanding floor space that is identified in Paragraph B, if rooms or portions of an open floor layout meet the criteria set forth below, then such rooms or spaces may be excluded from "floor area including interior walls and exterior walls"

- (1) If 90 percent of a room contains floor space that may be excluded by applying Part A(1) and Part A(2) and the remainder of such room is non-occupied, then the entirety of such room, including interior walls, may be excluded from "floor area";
- (2) If 90 percent of an open floor layout (i.e. no partitions) contains floor space that may be excluded by applying Part A(1) and Part A(2) and the remainder of such floor is non-occupied, then the entirety of such open floor, including exterior walls, may be excluded from "floor area"; and
- (3) When a floor is wholly devoted to mechanical space either by applying C(1) or C(2), then the stairwell and elevator shaft at that floor may also be excluded from "floor area" pursuant to BSA Cal. No. 315-08-A.

REVIEWED BY  
Azmi Zahed-Atkins, RA  
Code & Zoning Specialist



APPROVED  
WITH CONDITIONS

01/14/19  
Page 7 of 11  
Control No. 56035

3. 15 FEET INTERNAL LINING ON SUPPLY

CARBON PARTICLES WILL BUILD UP IN THE DPF ELEMENTS AND WILL INCREASE BACKPRESSURE IN THE EXHAUST. TO HELP MANAGE THIS, A DIFFERENTIAL PRESSURE SWITCH AND MONITORING DEVICE IS RECOMMENDED TO BE UTILIZED. A PASSIVE DPF SYSTEM TO ALERT THE OPERATOR, OR TO TRIGGER AN ALARM IF A SPECIFIED LIMIT OF BACK PRESSURE HAS BEEN REACHED. WHEN THAT OCCURS, SUFFICIENT LOAD MUST BE APPLIED TO THE ENGINE IN ORDER TO REACH AND MAINTAIN THE LIGHT OFF TEMPERATURE OF THE DPF'S.

## R. 00



## GENERAL NOTES:

- ALL DUCTWORK SERVING FANS (EXCEPT DRYER EXHAUST DUCTWORK) AND/OR HVAC UNITS ON ROOF OR MER ARE TO BE ACoustically LINED ON THAT FLOOR.
- FURNISH AND INSTALL ALL NEUTRALIZATION TANKS AT BOILER ROOM AND AS REQUIRED BY CODE OR SPECIFICATIONS. PIPING FROM FLUE TO EACH NEUTRALIZATION TANK SHALL BE BY MECHANICAL CONTRACTOR.
- PROVIDE DRAIN CONNECTION AT THE BOTTOM OF FLUE RISER AS WELL AS DRAIN CONNECTIONS AT EVERY 15 FEET WITH HIGH TEMPERATURE STAINLESS STEEL HOSE PIPE ON THE FLUE'S HORIZONTAL RUN IN BOILER ROOM. CONDENSATE DRAIN PIPE SHALL BE SCHEDULE 80 CPVC. ALL BREACHING CONNECTIONS TO DRAIN SHALL BE PLASTIC HOSE LOOPEd TO CREATE TRAP.

# EXHIBIT DRAWING NO: 17

## EXISTING MECHANICAL EQUIPMENT DIAGRAM 17TH FLOOR

11-06-2019

### LEGEND

- EQUIPMENT
- REQUIRED CLEARANCES
- FDNY ACCESS
- ELECTRICAL
- CIRCULATION
- WHITE SPACE

### 17TH FLOOR AREA CALCULATIONS

MECHANICAL EQUIPMENT	412.2 SF
REQUIRED CLEARANCES	1,308 SF
FDNY ACCESS	563 SF
ELECTRICAL	372 SF
CIRCULATION	1,171 SF
WHITE SPACE	6,418.8 SF
<b>TOTAL FLOOR AREA</b>	<b>10,216 SF</b>

### TOTAL ALLOWABLE DEDUCTIONS MECHANICAL/ ELECTRICAL

412.2 + 1,308 + 372 = 2,092.2 SF

PERCENTAGE OF FLOOR AREA

2,092.2 / 10,216 = 20%

WEST 66TH STREET  
36 WEST 66TH STREET, NEW YORK, NY

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Delivering Vertical Transportation

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INTERIOR DESIGNER:

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TEL: (484) 674-0133

AUDIO VISUAL & TELECOMMUNICATIONS:

Cosmo

404 FIFTH AVENUE, 8TH FL

NEW YORK, NY 10018

TEL: (212) 370-1776

DATE: 08/17/2018

ISSUED TO DOB

08/17/2018 8:00M CD

08/24/2018 CD PROGRESS SET

08/24/2018 5:00M CD SET

08/27/2018 DOOR RINGS

08/19/2018 CD PROGRESS SET

11/13/2017 DOOR RINGS

11/14/2017 10:00M DO

08/23/2017 5:00M CD SET

DATE: 08/17/2018

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DATE: 08/17/2018

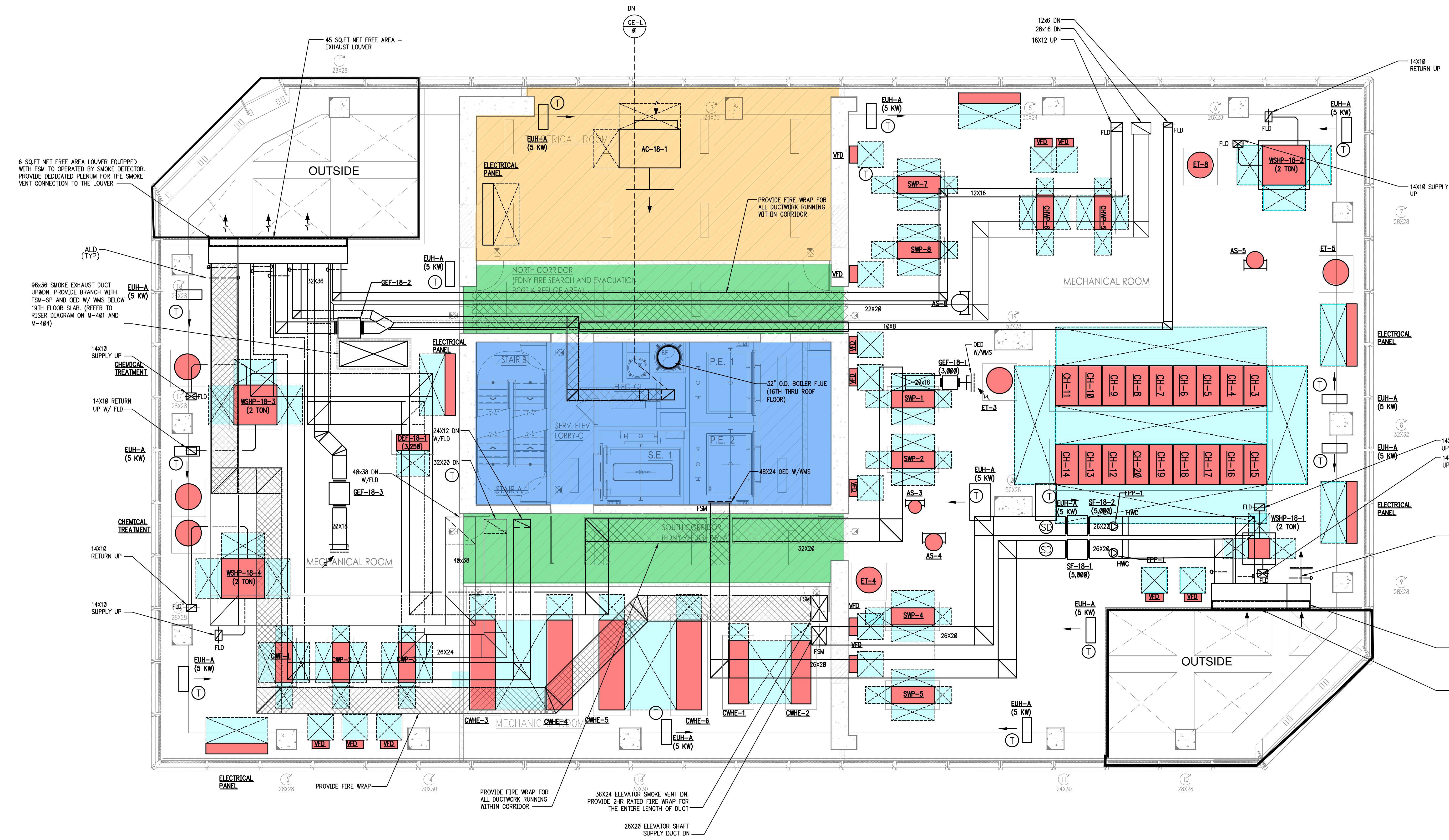
# EXHIBIT DRAWING NO: 18

## EXISTING MECHANICAL EQUIPMENT DIAGRAM

### 18TH FLOOR

11-06-2019

GENERAL NOTES:  
1. ALL DUCTWORK SERVING FANS (EXCEPT DRYER EXHAUST DUCTWORK) AND/OR HVAC UNITS ON ROOF OR MECH ARE TO BE ACOUSTICALLY LINED ON THAT FLOOR.



#### LEGEND

- EQUIPMENT
- REQUIRED CLEARANCES
- FDNY ACCESS
- ELECTRICAL
- CIRCULATION
- WHITE SPACE

#### 18TH FLOOR AREA CALCULATIONS

MECHANICAL EQUIPMENT	619.6 SF
REQUIRED CLEARANCES	1,351.9 SF
FDNY ACCESS	678 SF
ELECTRICAL	810 SF
CIRCULATION	782 SF
WHITE SPACE	5,998.5 SF
TOTAL FLOOR AREA	10,240 SF

TOTAL ALLOWABLE DEDUCTIONS  
MECHANICAL/ELECTRICAL  
 $619.6 + 1,351.9 + 810 = 2,781.5$  SF  
PERCENTAGE OF FLOOR AREA  
 $2,781.5 / 10,240 = 27\%$

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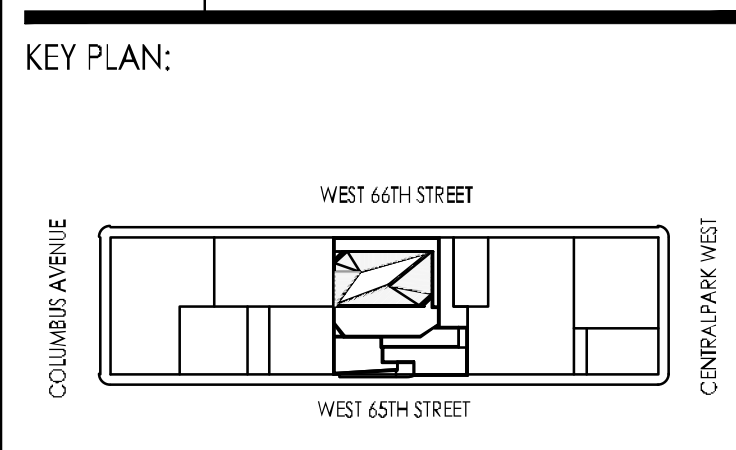
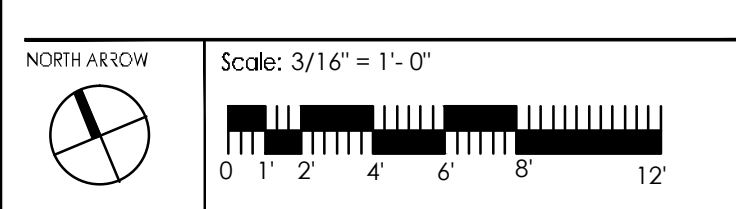
LIGHTING DESIGNER:  
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17/15/2017 DOB HENG
11/14/2017 100% DO
26/23/2017 50% CD SET

NO. 1 Date: Revision:

DOB NUMBER: NB#121190200



PROJECT:  
WEST 66TH STREET  
NEW YORK, NEW YORK

DRAWING TITLE:  
18TH FLOOR  
MECHANICAL HVAC PLAN

SEAL & SIGNATURE:  
Roxane Tsirigotis RA  
R. Tsirigotis  
APPROVED  
NYC Development Hub

DATE: 06-12-2019  
PROJECT NO: 2015-05  
DRAWN BY: CHENGEI WY  
CHECKED BY:  
DRAWING NO: M-221.00  
DOB NO: 2015-05-00000  
21 OF 78

GENERAL NOTES:

- ALL DUCTWORK SERVING FANS (EXCEPT DRYER EXHAUST DUCTWORK) AND OR HVAC UNITS ON ROOF OR MECH ARE TO BE ACOUSTICALLY LINED ON THAT FLOOR.
- ALL DUCTWORK SHALL BE PROVIDED WITH 2-HR RATED FIRE WRAP.
- MAU-19-1 & MAU-19-2:
  - OUTSIDE AIR INTAKE DUCT - PROVIDE 15 FEET OF ACOUSTICAL LINING.
  - SUPPLY AIR DUCT - PROVIDE 28 FEET OF ACOUSTICAL LINING.

# EXHIBIT DRAWING NO: 19

## EXISTING MECHANICAL EQUIPMENT DIAGRAM 19TH FLOOR

11-06-2019

LEGEND

- EQUIPMENT
- REQUIRED CLEARANCES
- FDNY ACCESS
- ELECTRICAL/PLUMBING
- CIRCULATION
- WHITE SPACE

19TH FLOOR AREA CALCULATIONS

MECHANICAL EQUIPMENT	361 SF
REQUIRED CLEARANCES	365.12 SF
FDNY ACCESS	830.5 SF
ELECTRICAL	903.25 SF
PLUMBING	1,393.13 SF
CIRCULATION	960 SF
WHITE SPACE	6,104 SF
<b>TOTAL FLOOR AREA</b>	<b>10,917 SF</b>
<b>TOTAL ALLOWABLE DEDUCTIONS MECHANICAL/ELECTRICAL</b>	<b>361 + 365.12 + 903.25 + 1,393.13 = 3,022.5 SF</b>
<b>PERCENTAGE OF FLOOR AREA</b>	<b>3,022.5 / 10,917 = 28%</b>

1 19TH FLOOR MECHANICAL HVAC PLAN

SCALE: 3/16" = 1'-0"

2 19TH FLOOR FDNY ACCESS 7 MECHANICAL HVAC PLAN

SCALE: 3/16" = 1'-0"

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INTERIOR DESIGNER:

AB CONCEPT

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DATE: 06-17-2018

PROJECT NO: 2015-05

DRAWN BY: MFP

CHECKED BY: VJP

DRAWING NO:

M-222.00

DATE: 06-17-2018

PROJECT NO: 2015-05

DRAWN BY: MFP

CHECKED BY: VJP

DRAWING NO:

M-222.00

DATE: 06-17-2018

PROJECT NO: 2015-05

DRAWN BY: MFP

CHECKED BY: VJP

DRAWING NO:

M-222.00

DATE: 06-17-2018

PROJECT NO: 2015-05

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CHECKED BY: VJP

DRAWING NO:

M-222.00

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DRAWN BY: MFP

CHECKED BY: VJP

DRAWING NO:

M-222.00

DATE: 06-17-2018

PROJECT NO: 2015-05

DRAWN BY: MFP

CHECKED BY: VJP

DRAWING NO:

M-222.00

DATE: 06-17-2018

PROJECT NO: 2015-05

DRAWN BY: MFP

CHECKED BY: VJP

DRAWING NO:

M-222.00

DATE: 06-17-2018

PROJECT NO: 2015-05

DRAWN BY: MFP

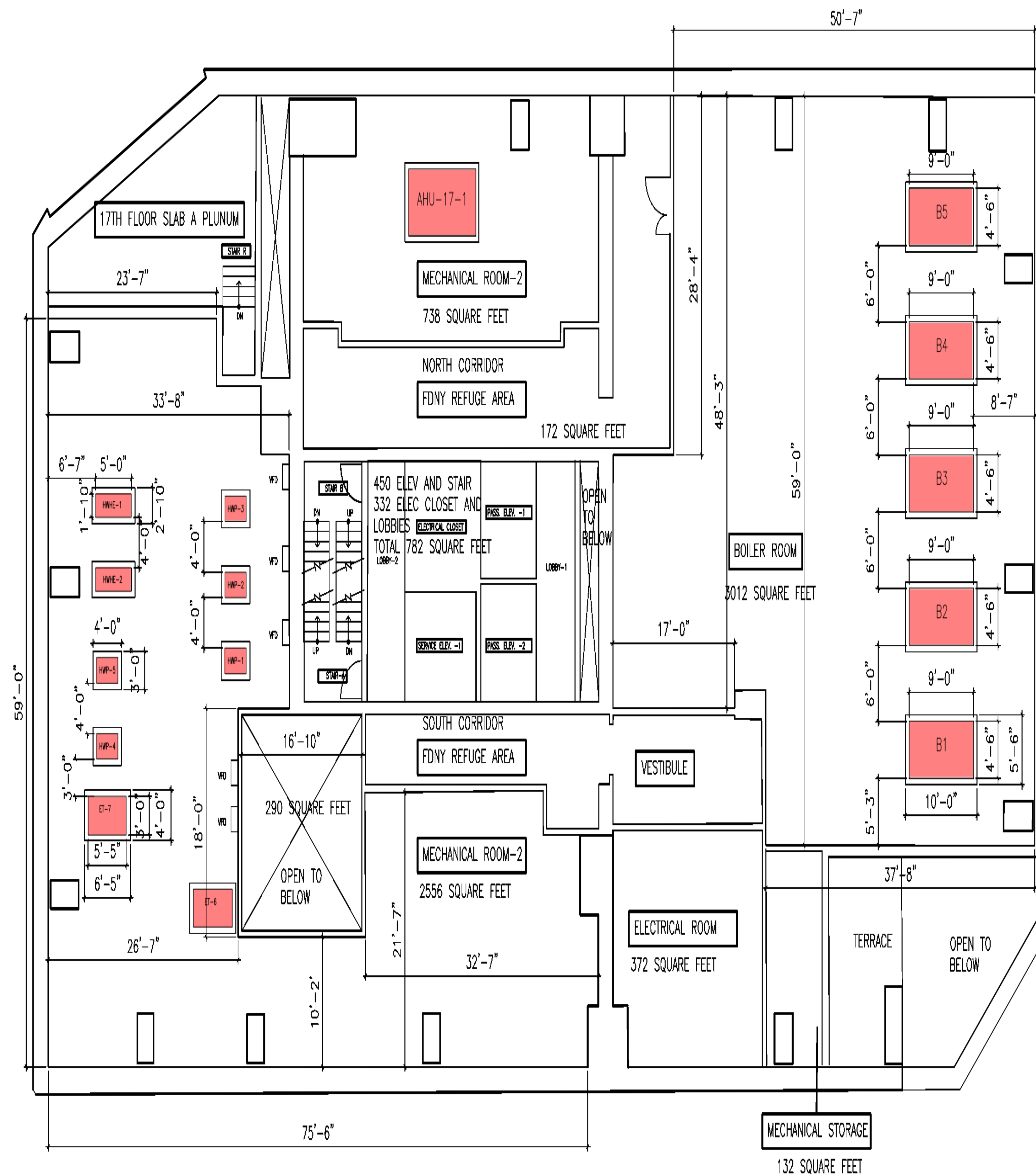
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M-222.00

## 11-06-2019

## EQUIPMENT

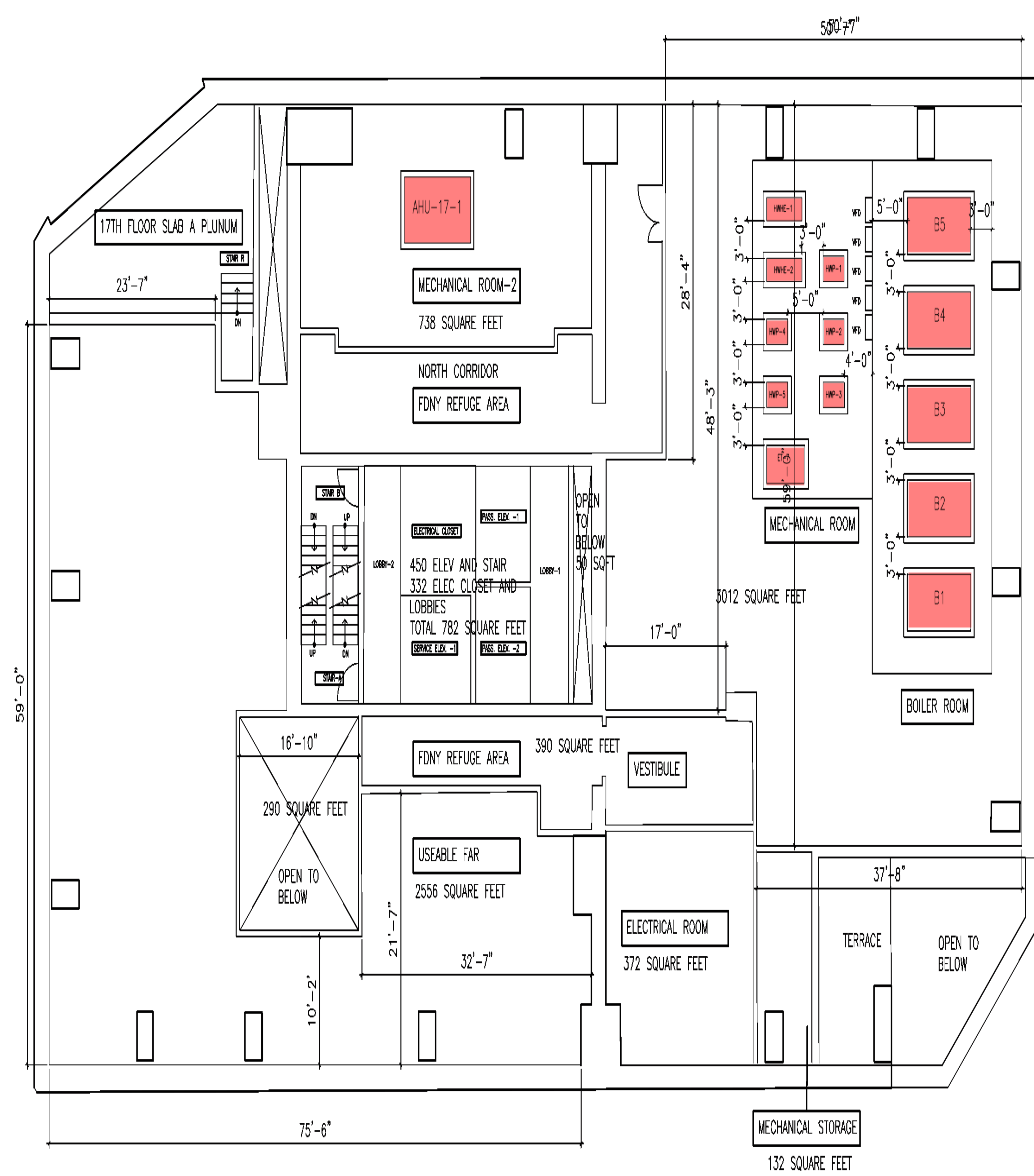


# COMPARISON DIAGRAM: 17.2

CONSOLIDATED MECHANICAL EQUIPMENT LAYOUT ONLY  
17TH FLOOR  
11-06-2019

LEGEND

EQUIPMENT



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

RE: Cal. No. 2019-94-A

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

AFFIDAVIT OF GEORGE M. JANES, AICP

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

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

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

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

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

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

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

#### **Floor Area in ZR 12-10**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

  
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GEORGE M. JANES, AICP

Sworn to before me this November 6, 2019

  
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NOTARY PUBLIC

MOHAMMED ASHIK  
Notary Public - State of New York  
NO. 01AS6334832  
Qualified in Queens County  
My Commission Expires Dec 21, 2019

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