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April 8, 2021

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Melanie De La Rocca
Commissioner
Department of Buildings
280 Broadway
New York, NY 10007

RE: Zoning Challenge
1299 Third Avenue
Block 1429, Lot 4
Job No: 121187964

Dear Commissioner De La Rocca:

I have reviewed the following drawings for the building proposed at 1299 Third Avenue:

- [ZD1](#) posted on 2/22/2021;
- An [AI](#) stamped 2/22/2021;
- [Building plans](#) stamped 3/3/2021;

There are serious problems with the plans and the Department's approvals, which I have detailed herein at the request of the Friends of the Upper East Side Historic Districts (FRIENDS), a community-based organization that promotes responsible development on the Upper East Side. FRIENDS' concern is shared by the neighborhood, as this project has garnered tremendous attention over the past several years.¹

The plans filed by the applicant are internally inconsistent and do not demonstrate compliance. Attempts to segment the building into separate zoning approvals to facilitate permitting are a blatant attempt to game the system and avoid zoning regulations. In the past, this applicant sought approval for a 6-story building on this site that they had no intention of building, which allowed them to obtain excavation and foundation permits. At the same time, the applicant represented completely different plans to another city agency, the Board of Standards and Appeals.

¹ A presentation by the applicant regarding a Board of Standards and Appeals application in 2018 attracted overflow crowds at Community Board 8 meetings. Around the same time, over 150 concerned neighbors showed up to a community meeting about this building organized by FRIENDS.

For the reasons demonstrated below, the Department should rescind its zoning approval and work with the applicant to address all concerns detailed herein, as well as those that I have missed, of which I am sure there are many.

Summary of findings

This challenge addresses:

- 1) The tower-on-base calculations (tower coverage/bulk packing), which are incorrect, leading to non-compliances;
- 2) The non-compliance of the 75th Street portion of the building (23-692);
- 3) Non-compliance of the building base (23-651);
- 4) Quality Housing deductions for the tower, which is not a Quality Housing building;
- 5) Green wall deductions for which the building does not qualify; and
- 6) Irregularities and inconsistencies with the drawings and submission.

Project summary

The building is proposed on the east side of Third Avenue between East 74th and East 75th Street on Block 1429, Lot 4 (formerly lots 3, 4 and 44). The zoning lot includes lot 48 directly to the north and lots 1, 2 and 103 to the south.



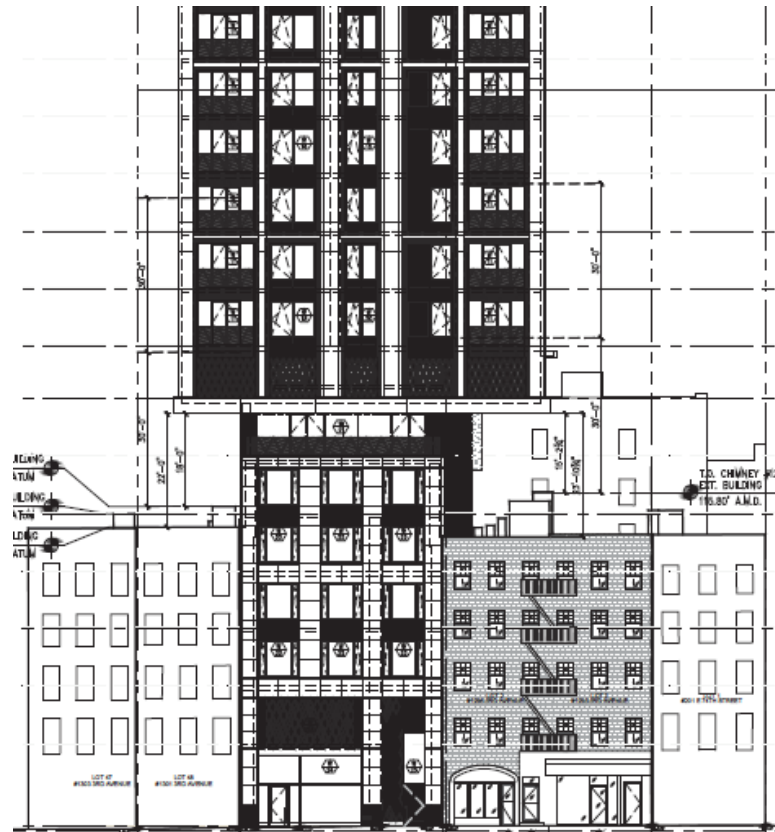
Preconstruction photograph of the development site. The “Lot 4” buildings have been demolished and the new building will be located here. Other buildings to stay on the zoning lot are numbered with their lot number.

The zoning lot is mostly in the C1-9 zoning district and is mostly a corner lot. The remainder beyond 100 feet from Third Avenue is in the R8B district. The C1-9 district allows residential or mixed-use development up to 12.0 FAR with the as-of-right affordable housing bonus, while the R8B district allows residential development up to 4.0 FAR. The corner portion of the lot allows for 100% coverage and requires no yards. The interior portion and through portions of the lot in the R8B district require a 30-foot rear yard and a rear yard equivalent, respectively.

There is only one building proposed on the lot, which has three portions. The main portion along Third Avenue is a tower-on-base (23-651). The portion that faces 75th Street is a contextual building that follows the Quality Housing program, but which has a 5-foot portion in the C1-9 district that extends to the main portion. The final portion is a narrow one-story structure that connects 74th Street to the main portion of the building. This portion is proposed in the rear of lots 1 and 2. While on the same zoning lot, lots 1 and 2 remain separate tax lots, which means that the one-story portion that connects to 74th Street is built on three different tax lots.

Lots 1, 2, 48 and 103 have existing buildings that will stay on the zoning lot, which are pictured above. Lots 1, 2 and 48 retained no development rights, but lot 103 has retained 150 SF. The proposed building is constructed with two large

cantilevers to the north and south.



Elevation illustrating the size of the cantilever relative to the base and the neighbors

The northern one extends 12 feet over lot 48 and the southern one extends 19.17 feet over lot 2. The building's base fronts Third Avenue for 40 feet. The cantilevers extend the width of the tower portion of the building to 71.17 feet, which allows the tower to be about 78% wider than it could be without the cantilever. This is the largest cantilever on the Upper East Side and one of the largest in New York City.

The proposed form is tower-on-base (23-651). According to the applicant's plans, the new building is proposed at 112,005 SF. With existing buildings to stay on the lot, the zoning lot will be built to 11.91 FAR in the C1-9 portion and 3.26 FAR in the R8B portion of the lot.

The split between the C1-9 portion of the lot and the R8B portion of the lot is shown in the following table:

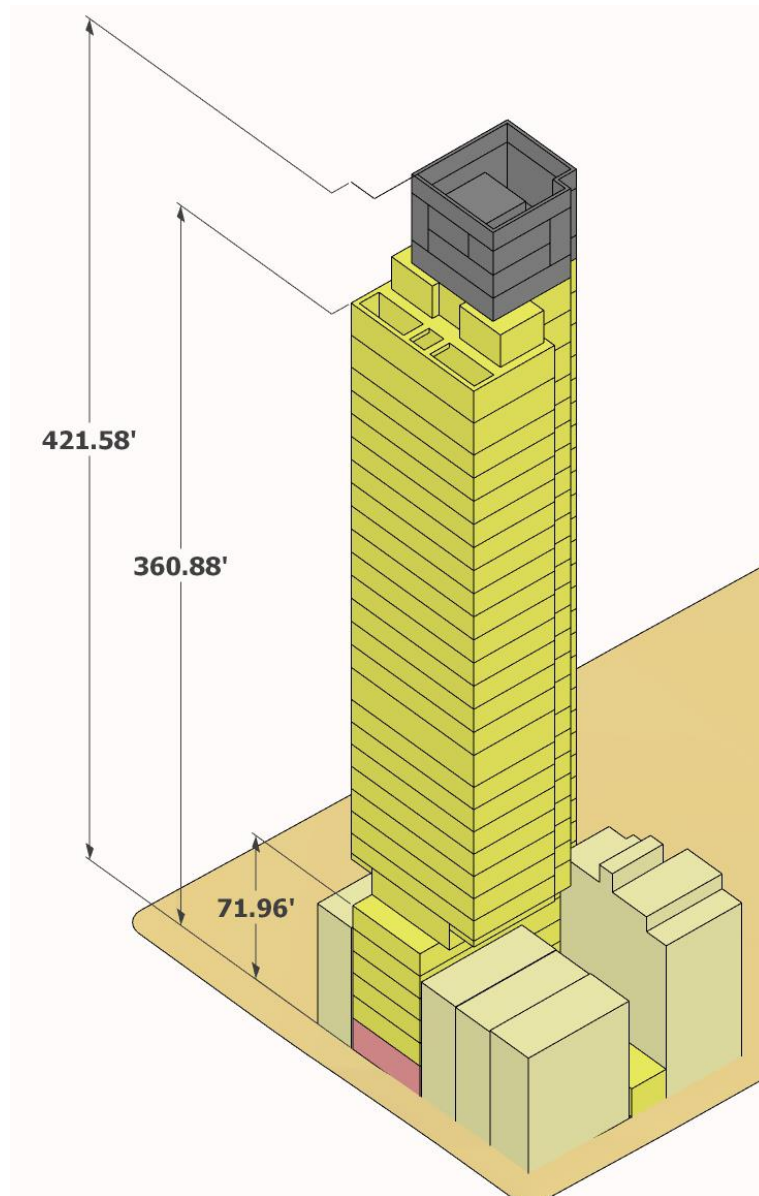
Floor	C1-9/R10						R8B				Total					
	Residential Gross Area	Commercial Gross Area	Deduction	QH Deduction	Residential Zoning Floor Area	Commercial Zoning Floor Area	Residential Gross Area	Deduction	QH Deduction	Residential Zoning Floor Area	Residential Gross Area	Commercial Gross Area	Deduction	QH Deduction	Residential Zoning Floor Area	Commercial Zoning Floor Area
Cellar	4,430.6						1,733.83				6164.4					
1	3,447.4	876.4	47.0		3400.4	876.4	927.1	7.0	0.0	920.1	4374.5	876.4	54.0	0.0	4320.5	876.4
2	3,414.0	0.0	381.5	146.0	2886.5	0.0	926.8	24.0	67.0	835.8	4340.8	0.0	405.5	213.0	3722.3	0.0
3	3,429.6	0.0	247.5	114.5	3067.6	0.0	926.8	24.0	67.0	835.8	4356.3	0.0	271.5	181.5	3903.3	0.0
4	3,443.8	0.0	279.5	136.5	3027.8	0.0	926.8	26.6	67.0	833.3	4370.7	0.0	306.1	203.5	3861.1	0.0
5	3,483.4	0.0	279.5	130.5	3073.4	0.0	986.7	26.6	28.0	932.1	4470.1	0.0	306.1	158.5	4005.5	0.0
6	3,253.4	0.0	257.5	68.0	2927.9	0.0	277.0	228.0	0.0	49.0	3530.4	0.0	485.5	68.0	2976.9	0.0
7	3,118.1	0.0	188.6	68.0	2861.6	0.0	0.0	0.0	0.0	0.0	3118.1	0.0	188.6	68.0	2861.6	0.0
8	4,295.3	0.0	4295.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	4295.3	0.0	0.0	0.0
9	4,295.3	0.0	241.7	68.0	3985.6	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	241.7	68.0	3985.6	0.0
10	4,295.3	0.0	260.5	68.0	3966.8	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	260.5	68.0	3966.8	0.0
11	4,295.3	0.0	260.5	68.0	3966.8	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	260.5	68.0	3966.8	0.0
12	4,295.3	0.0	260.5	68.0	3966.8	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	260.5	68.0	3966.8	0.0
13	4,295.3	0.0	260.5	68.0	3966.8	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	260.5	68.0	3966.8	0.0
14	4,295.3	0.0	260.5	68.0	3966.8	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	260.5	68.0	3966.8	0.0
15	4,295.3	0.0	260.5	68.0	3966.8	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	260.5	68.0	3966.8	0.0
16	4,295.3	0.0	73.8	3111.6	1109.9	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	73.8	3111.6	1109.9	0.0
17	4,295.3	0.0	300.3	68.0	3927.0	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	300.3	68.0	3927.0	0.0
18	4,295.3	0.0	300.3	68.0	3927.0	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	300.3	68.0	3927.0	0.0
19	4,295.3	0.0	300.3	68.0	3927.0	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	300.3	68.0	3927.0	0.0
20	4,295.3	0.0	300.3	68.0	3927.0	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	300.3	68.0	3927.0	0.0
21	4,295.3	0.0	300.3	68.0	3927.0	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	300.3	68.0	3927.0	0.0
22	4,295.3	0.0	300.3	68.0	3927.0	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	300.3	68.0	3927.0	0.0
23	4,295.3	0.0	300.3	68.0	3927.0	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	300.3	68.0	3927.0	0.0
24	4,295.3	0.0	301.9	68.0	3925.4	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	301.9	68.0	3925.4	0.0
25	4,295.3	0.0	301.9	69.5	3923.9	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	301.9	69.5	3923.9	0.0
26	4,295.3	0.0	301.9	69.5	3923.9	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	301.9	69.5	3923.9	0.0
27	4,295.3	0.0	301.9	69.5	3923.9	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	301.9	69.5	3923.9	0.0
28	4,295.3	0.0	301.9	69.5	3923.9	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	301.9	69.5	3923.9	0.0
29	4,295.3	0.0	301.9	69.5	3923.9	0.0	0.0	0.0	0.0	0.0	4295.3	0.0	301.9	69.5	3923.9	0.0
30	3,418.5	0.0	236.4	78.5	3103.6	0.0	0.0	0.0	0.0	0.0	3418.5	0.0	236.4	78.5	3103.6	0.0
31	2,710.8	0.0	213.8	53.0	2444.1	0.0	0.0	0.0	0.0	0.0	2710.8	0.0	213.8	53.0	2444.1	0.0
32	2,199.6	0.0	2199.6	0.0	0.0	0.0	0.0	0.0	0.0	0.0	2199.6	0.0	2199.6	0.0	0.0	0.0
Roof Bulkhead	1,103.5	0.0	1103.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	1103.5	0.0	1103.5	0.0	0.0	0.0
EMR	687.9	0.0	687.9	0.0	0.0	0.0	0.0	0.0	0.0	0.0	687.9	0.0	687.9	0.0	0.0	0.0
	0.0	0.0					0.0									
Total	128,206.3	876.4	16209.8	5274.1	106722.5	876.4	4971.2	336.1	229.0	4406.1	133177.6	876.4	16545.9	5503.1	111128.6	876.4

Floor area table from Z-001

The amount of lot area in the C1-9 portion of the lot is 12,270 SF. Tower-on-a-base regulations require that tower coverage be between 30% and 48%² of the C1-9 portion of a zoning lot of this size.

My office modeled a massing of the building as proposed, shown below. Yellow areas are residential floor area, gray areas are mechanical spaces and red areas are commercial.

² The top four floors may be less than 30% under certain conditions.



Axonometric view of 1299 Third Avenue, color coded using traditional land use colors and other buildings to stay on the same zoning lot

1) The tower-on-base calculations (tower coverage/bulk packing) are incorrect leading to non-compliances.

There are two problems with the applicant's tower-on-base calculations:

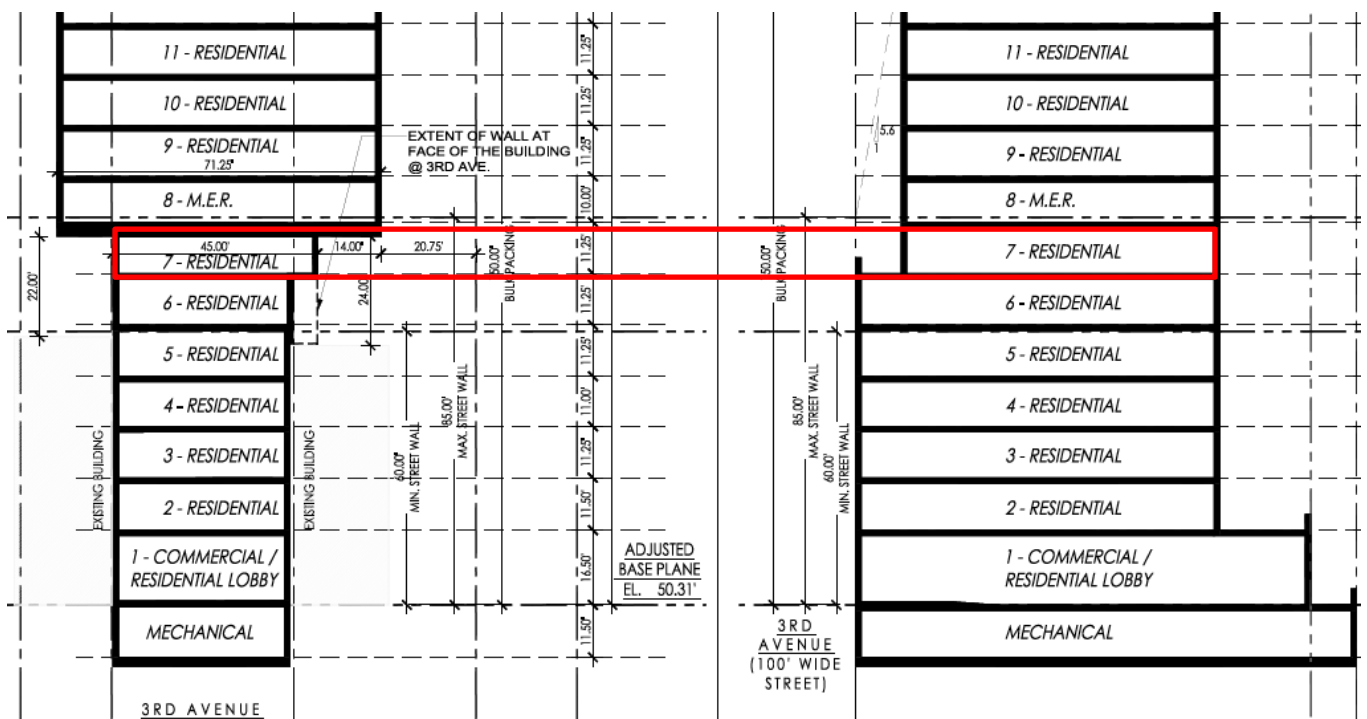
The seventh floor

Under 23-651, the sky exposure plane does not define where the tower starts. Instead, a tower-on-a-base building is broken into two components, the base and

the portion over the base, which is the tower.³ The base needs to be located at the street line. While ZR 23-651(b)(1)(i) does allow for recesses, it also instructs:

At any height, at least 70 percent of the width of such #street wall# shall be located within eight feet of the #street line#, and the remaining 30 percent of such #street wall# may be recessed beyond eight feet

All of the seventh floor of the proposed building is setback 10 feet from the street line, so it does not qualify as being part of the base. The base rises up from the streetline to the sixth floor and entirely sets back at the seventh floor. The seventh floor, therefore, is a tower floor, as defined by 23-651.



Detail of North-South and East/West Sections from Z-006. The seventh floor is highlighted.

Tower-on-a-base requires that tower floors have a minimum tower coverage of 30% (23-652). The C1-9 portion of the lot is 12,270 SF. Thirty percent of that is 3,681 SF, but the 7th floor is 3,118 SF, or just 25.4%. This tower floor is too small and does not comply with the requirements of a tower floor that is not located at the top of the building.

³“At any level above a #building# base (referred to hereinafter as a "base"), any portion or portions of a #building# (referred to hereinafter as a "tower")” ZR 23-651(a)(1)

The 32nd floor

ZR 23-651(a)(1)(ii) allows for the highest four stories of a tower to cover less than 30% of the lot area, if the gross area of each story does not exceed 80% of the gross area of the story directly beneath it.

From the ZD1, the 32nd floor is 2,200 SF. The floor beneath it (the 31st floor) is 2,711 SF. Eighty percent of 2,711 is 2,169 SF. The 32nd floor is 42 SF too large.

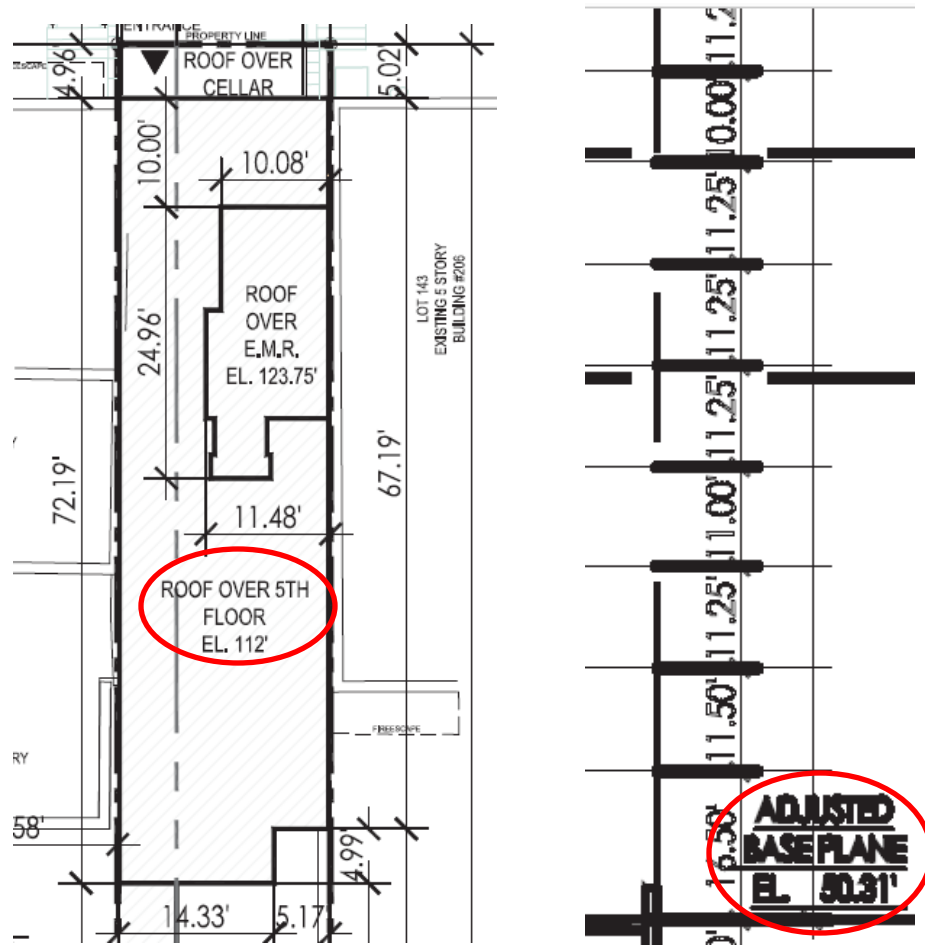
The applicant ignored this floor in sheet Z-006 where compliance is shown for this provision. They might be thinking that the 32nd floor -- which is identified as such on the ZD -- is not a story. However, the definition of "story" in the Zoning Resolution is extremely broad:

A "story" is that part of a #building# between the surface of a floor (whether or not counted for purposes of computing #floor area ratio#) and the ceiling immediately above. However, a #cellar# shall not be considered a #story#. Furthermore, attic space that is not #floor area# pursuant to Section 12-10 (DEFINITIONS) shall not be considered a #story#.

The 32nd floor is clearly a story and is too large to comply with ZR 23-651(a)(1)(ii).

2) The 75th Street portion of the building does not comply with the Sliver Law (ZR 23-692).

The new building that faces 75th Street is shown in the ZD1 at elevation 112 feet. The adjusted base plane for this building is at elevation 50.31 feet. The following details from the ZD1 show these data:



Detail of the ZD1 Plan showing the roof height facing 75th Street and the base plane from the ZD1 Section

If the elevation of this building is 112 feet, and the base plane is 50.31 feet, subtraction tells us that this building is 61.69 feet tall. ZR 23-692 limits residential buildings less than 45 feet wide to the height of adjacent buildings or the width of the street it faces. The street (75th Street) is 60 feet wide and the neighboring buildings are each less than 60 feet tall, which means a building at this location is limited to 60 feet in height. Yet the building is proposed at 61.69 feet. The approval should be revoked.

3) The building base does not comply with the requirements for a base, as defined by 23-651.

ZR 35-64(a) requires that a tower in the C1-9 zoning district within 100 feet of a wide street follow the bulk regulations of 23-651, with some modifications of the base regulations detailed in ZR 35-64(a)(1 through 4). ZR 23-651 requires that developments that include a tower “shall be constructed as a tower-on-a-base,” and ZR 23-65(a) -- which contains the location requirements for buildings that qualify for ZR 23-651 -- states that “the entire #zoning lot# shall be subject to the provisions of Section 23-651.”

ZR 23-651 is clear: the entire zoning lot (that is in the C1-9 district) must comply with both the tower and base portions of the regulations. The base height of such a building must rise to at least 60 feet, but no more than 85 feet. The base of the building that fronts Third Avenue meets these height requirements. The C1-9 portion that fronts 75th Street almost meets this requirement, and if it is corrected for being slightly too tall, will meet this requirement.

The problem is with the one-story portion that fronts 74th Street. While 23-651 makes some allowances for recesses, under no circumstances can a base height be 14 feet tall, as is the base height of the portion that fronts 74th Street.

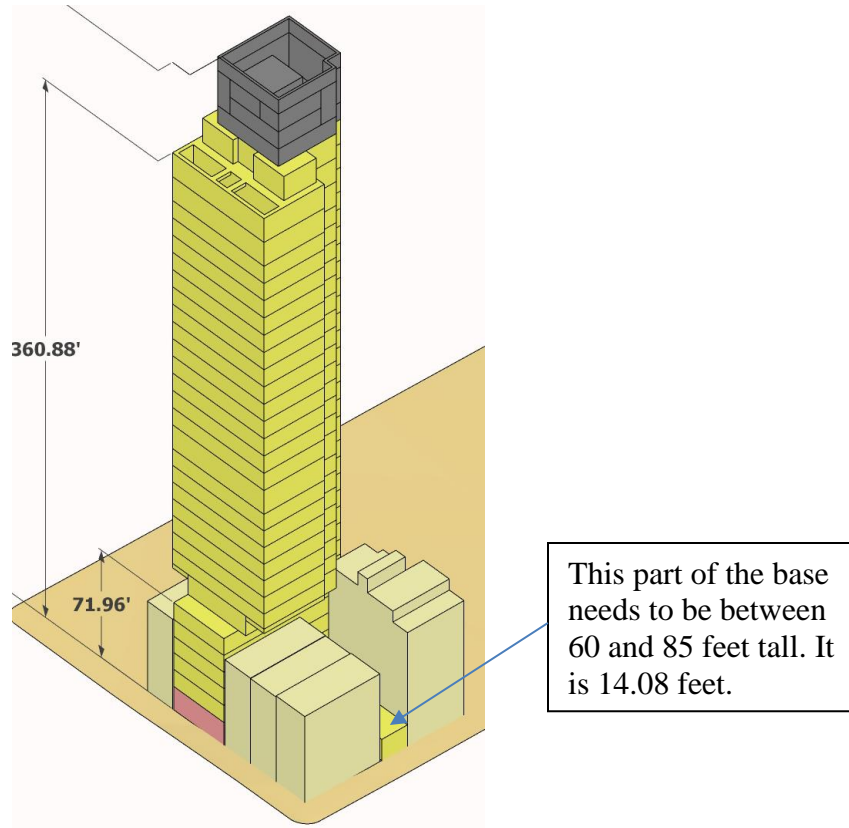
ZR 35-64(a)(4), which provides additional requirements for a base in a C1-9 district, states in full:

On a #narrow street#, recesses are permitted at any level in the #street wall# of a base for #outer courts# or balconies. The aggregate width of such recesses shall not exceed 50 percent of the width of the entire #street wall# at any level.

However, not more than 30 percent of the aggregate width of such recesses shall exceed a depth of eight feet.

Furthermore, no recesses shall be permitted below a height of 12 feet within 20 feet of an adjacent #building#, or within 30 feet of the intersection of two #street lines#, except for corner articulation as provided for in paragraph (a) (1) of this Section. [Emphasis added.]

The 17.85 foot wide base that fronts 74th Street is 14.08 feet tall and 100 percent of the aggregate width exceeds a depth of eight feet. The following axonometric image illustrates where there is a problem with the base:



The purpose of the tower-on-a-base regulations is to create a continuous streetwall in a base that is of similar size as historic five-story tenements. The proposed building base is not only contrary to the letter of the law, but also the spirit of it. The approval should be revoked.

The Alt 1 filings and mismatched plans

In 2018, the applicant received zoning approval for one-story additions in the rear of the existing buildings on lots 1 and 2. This appears to be an attempt to avoid the letter and spirit of the tower-on-a-base regulations by sequencing and permitting the development so that it did not have to comply with 23-651.

Since the zoning approvals for these tiny additions to lots 1 and 2 were granted, the applicant has 1) formed a zoning lot that includes lots 1 and 2 with the new lot 4, 48 and 103, and 2) filed stamped and approved building plans for a development that shows the one-story portion as a part of the new tower-on-a-base building. An example of one of the several pages showing this portion as a part of the plans for the tower is shown below:

Since this one-story portion is on the same zoning lot as the tower and 23-651 requires that the regulations apply to “any #development# or #enlargement#,” on the zoning lot, and since these additions are not built or permitted, the Department’s approval is in error. ZR 23-651 requires a base of at least 60 feet here and the plans the Department have stamped and approved should be internally consistent.

If the applicant wanted to use such a loophole to construct a building that is contrary to both the spirit and letter of the law, they would have had to construct and occupy the one-story additions on lots 1 and 2 prior to the filing of the tower on the same zoning lot, build their tower, and then file alteration permits to alter the one-story additions to the new tower. Since the one-story additions are not constructed, or even permitted, and since they are a part of the current filing for the new building, the new building approval needs to show that the entire building, even the one-story portion facing 74th Street, complies with the tower-on-a-base regulations. It clearly doesn’t so the approval should be rescinded.

4) The tower takes over 5,000 SF of Quality Housing deductions but it is not a Quality Housing building (ZR 28-00, 77-40).

Page Z-001 shows that the applicant is taking over 5,000 SF of Quality Housing (QH) deductions in the tower and base portions of the building. The applicant has chosen not to follow the QH bulk program, yet believes that ZR 77-40 allows this building to claim the benefits of QH without having to follow the bulk requirements. This interpretation is incorrect.

First developed in the 1980s, most New York City rezonings since then have required Quality Housing buildings, as its bulk provisions produce a predictable building form that is compatible with “neighborhood scale and character” (28-00). As a reward for desirable design elements, buildings are rewarded with zoning floor area deductions that are not otherwise available. So, while QH buildings are often shorter than their non-QH counterparts, they usually have more floor area available.

ZR 77-40 states when it applies:

For #buildings developed# or #enlarged# on #zoning lots# in which a district boundary divides the #building# **such that the Quality Housing Program applies in one portion of the #building# but not the other**, the following [elements of the Quality Housing program] shall apply to the entire #building# or #zoning lot#, . . .

QH is mandatory in the R8B district. QH is optional in the C1-9 district and the applicant has elected not to use it. Since QH applies in both districts, 77-40 is not applicable to this development and should not be used.

This is the only interpretation that is logical and follows the legislative purpose of the Quality Housing program. Otherwise, this building gets the benefits of the QH program without having to follow the bulk requirements of Quality Housing buildings. To provide an optional zoning benefit without paying the corresponding cost is an absurd result and our courts have consistently found that interpretations of regulations that produce absurd results are in error.

In a recent New York State Supreme Court decision,⁴ where another zoning lot split by a zoning district boundary produced a more favorable result than either zoning district would independent of split lot conditions, Justice Engoron found that this was “an absurd result, and courts should not approve absurd results.” And neither should the Department. Justice Engoron went on to write: “A split-lot is not alchemy that turns base metals into gold; there is no discernible reason that what would be illegal in either zone becomes legal because it is in both zones.” In this case, the absurdity of the Department’s interpretation is even more evident because the applicant could use the Quality Housing program in the C1-9 District but has chosen not to, but then receives the benefits without paying the costs. That result is absurd, which means that the interpretation cannot be correct. This applicant has decided not to follow the program, so they should not qualify for the bonuses.

5) The building takes green wall deductions for which it does not qualify.

In 2012, New York City amended the definition of floor area to exclude portions of exterior walls, if the walls are greater than eight inches thick and they allow the building to meet certain energy efficiency standards. ZR 12-10 “Floor Area” describes the area that can be excluded, in relevant part, as:

“exterior wall thickness, up to eight inches . . . where such wall thickness is part of an exterior wall constructed after April 30, 2012, **equal to the number of inches by which the wall’s total thickness exceeds eight inches . . .**” (Emphasis added)

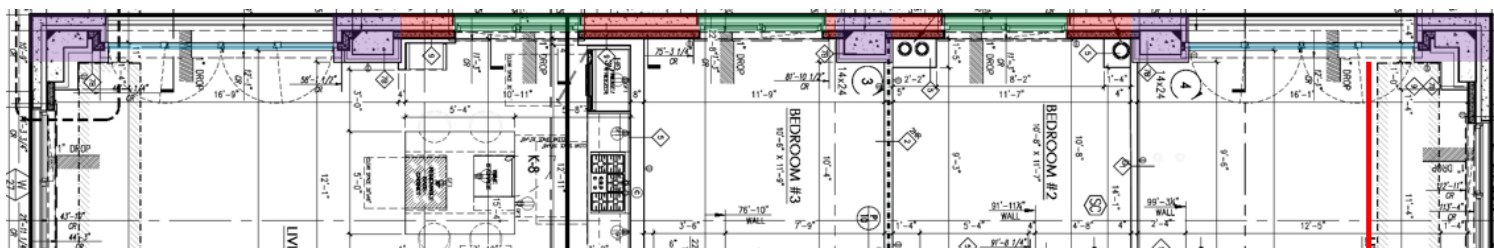
This building makes liberal use of the wall deduction, with most walls taking the full eight-inch exemption that zoning makes available for walls that are at least 16 inches and which exceed the minimum energy efficiency standards. This building does appear to meet those standards, but wall thickness varies and it is taking eight-inch deductions for walls that are not 16 inches thick.

It is not clear how the applicant is determining wall thickness. There are some very thick wall segments, columns well over 16 inches thick, while there are other sections of wall that are much thinner. Perhaps the applicant is measuring wall thickness at its widest point? Zoning would not permit such an interpretation as it

⁴ THE CITY CLUB OF NEW YORK v. NEW YORK CITY BOARD OF STANDARDS AND APPEALS, NEW YORK CITY DEPARTMENT OF BUILDINGS, EXTELL DEVELOPMENT COMPANY, WEST 66TH SPONSOR LLC. September 22, 2020.

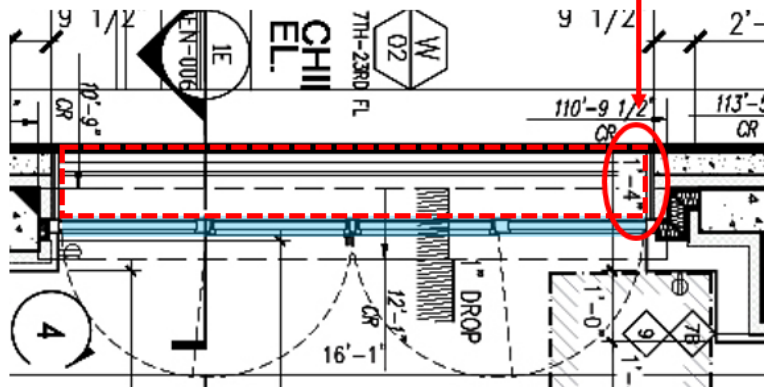
requires that the “provision which is more restrictive or imposes higher standards or requirements shall govern.” (ZR 11-22).

What follows is a floor plan detail for floors 17 through 23 taken from A-125. My office has colored the exterior walls by their thickness. The walls range from 27.5 inches thick (the purple columns) to just 3.4 inches thick (the floor-to-ceiling French doors).



Wall Thickness

- Exterior Walls - Thickness 13.75" / Width 15'
- Window Type 2 - Thickness 3.4" / Width 22.33'
- Exterior Walls (Columns) - Thickness 27.5" / Width 14'
- Window Type 1 - Thickness 9.1" / Width 18.5'



AREA CALCULATION			
WALL DEDUCTION - CI-9 (R-10)			AREA (S.F.)
NUMBER	LENGTH	WIDTH	
W01	8"	69'-10"	46.56 SF
W02	5 3/4"	44'-11 1/4"	21.56 SF
W03	5 3/4"	12'-2"	5.83 SF

A plan view of floors 17 through 23 with walls facing Third Avenue, color coded by width (top) and a legend for the color and the amount of green wall deduction taken by this one wall segment (bottom left). A detail of the French door wall on the right. Most of this wall is open air.

The purple portions of the wall are thick and easily qualify. The red portions of the wall are 13.75 feet, which means 5.75 inches can be deducted. The green portions of the wall are 9.1 inches, which means 1.1 inches can be deducted. The blue portions of the wall note a floor-to-ceiling French door which is just 3.4 inches wide. Since it is less than 8 inches, none of it can be deducted.

The applicant is claiming 46.56 SF deduction for this one wall for this one floor, taking the full eight inches, even though most of this wall does not qualify for the full deduction. When the math is done on the wall thickness calculated by segment, just 18.21 SF can be deducted, a 61% reduction in the floor area exempted. If other floors are similarly overstated, this building is easily out of compliance with the maximum floor area for the lot, considering the thousands of square feet taken in green wall deduction.

The applicant needs to properly take deductions for actual wall thickness. The green wall deduction is not a bonus to compensate for energy efficient walls, the walls actually have to exist at their required thickness. The Department should rescind the approval.

6) Irregularities with the drawings and submission have impacted the review.

The ZD1

In addition to the irregularities with the 74th Street portion of the building that has already been discussed, the ZD1 approved in February 2021 is incomplete, as it is missing a part of the plan. The southern part of the zoning lot, the part containing the 74th Street portion, was cut off. This is contrary to the Department's own rules regarding the completion of such documents,⁵ which requires showing the entire zoning lot. Knowing the zoning lot is fundamental; it is impossible to determine zoning compliance without knowing the entire zoning lot.

I asked the Department to require the applicant to replace the ZD1 with one that showed the entire zoning lot. The Department responded by telling me that I didn't need that information and that they would not ask the applicant to correct the obviously incorrect document.⁶ The ZD1 is just two pages long and needs to be stamped by a licensed professional certifying its accuracy, but it appears that the Department does not care if it is complete and accurate. What's the point of the ZD1 if it is not complete or accurate? I have documented many inaccuracies over the years in zoning challenges, and while this one is not as bad as some, cutting off part of the zoning lot is a fairly big omission, yet the Department refuses to correct it. Until the Department actually requires complete and accurate documents—as the architect's stamp certifies—New York City will continue to be plagued by incomplete and inaccurate documents that are certified as complete and accurate.

In part because the ZD1 was not complete, I engaged an expediter to obtain building plans. Yet even with professional help, plans obtained by the expediter were incomplete. I submit this zoning challenge today not because it is done or complete, but because today is the statutory deadline.

Deductions are not internally consistent and the building's floor area maximum and distribution in the C1-9 portion of the lot may not comply

How big is the building and how many deductions is it taking? There are different answers to that question depending on the page being examined.

The Project Summary portion of this document reproduces the floor area table found on page Z-001. This table shows the gross and zoning floor area for each floor of the building. Deductions are summarized here and the detail on how

⁵ See [ZD1 Guide](#).

⁶ Email from David Louis, March 15, 2021.

those deductions were made is shown on pages Z-010 through Z-017. The problem is that the deductions shown on pages Z010 through Z-017 are not accurately summarized on the table shown in Z-001; the numbers are different. Not all of these errors are in the applicant's favor, but on floors two and higher⁷ there are 959 SF fewer deductions than the table on Z-001 claims.

For example, examine floors 17 through 23 in the table below. They are shown to have 300.3 SF in deductions per floor, exclusive of Quality Housing deductions.

Floor	C1-9/R10				
	Residential Gross Area	Commercial Gross Area	Deduction	QH Deduction	Residential Zoning Floor Area
Cellar	4,430.6				
1	3,447.4	876.4	47.0		3400.4
2	3,414.0	0.0	381.5	146.0	2886.5
3	3,429.6	0.0	247.5	114.5	3067.6
4	3,443.8	0.0	279.5	136.5	3027.8
5	3,483.4	0.0	279.5	130.5	3073.4
6	3,253.4	0.0	257.5	68.0	2927.9
7	3,118.1	0.0	188.6	68.0	2861.6
8	4,295.3	0.0	4295.3	0.0	0.0
9	4,295.3	0.0	241.7	68.0	3985.6
10	4,295.3	0.0	260.5	68.0	3966.8
11	4,295.3	0.0	260.5	68.0	3966.8
12	4,295.3	0.0	260.5	68.0	3966.8
13	4,295.3	0.0	260.5	68.0	3966.8
14	4,295.3	0.0	260.5	68.0	3966.8
15	4,295.3	0.0	260.5	68.0	3966.8
16	4,295.3	0.0	73.8	3111.6	1109.9
17	4,295.3	0.0	300.3	68.0	3927.0
18	4,295.3	0.0	300.3	68.0	3927.0
19	4,295.3	0.0	300.3	68.0	3927.0
20	4,295.3	0.0	300.3	68.0	3927.0
21	4,295.3	0.0	300.3	68.0	3927.0
22	4,295.3	0.0	300.3	68.0	3927.0
23	4,295.3	0.0	300.3	68.0	3927.0
24	4,295.3	0.0	301.9	68.0	3925.4
25	4,295.3	0.0	301.9	69.5	3923.9
26	4,295.3	0.0	301.9	69.5	3923.9
27	4,295.3	0.0	301.9	69.5	3923.9
28	4,295.3	0.0	301.9	69.5	3923.9
29	4,295.3	0.0	301.9	69.5	3923.9
30	3,418.5	0.0	236.4	78.5	3103.6
31	2,710.8	0.0	213.8	53.0	2444.1
32	2,199.6	0.0	2199.6	0.0	0.0
Roof Bulkhead	1,103.5	0.0	1103.5	0.0	0.0
EMR	687.9	0.0	687.9	0.0	0.0
	0.0	0.0			
Total	128,206.3	876.4	16209.8	5274.1	106722.5

The deductions taken are detailed on page Z-014 and are itemized in the following tables:

⁷ The plan set we obtained was missing the detail for the first floor.

17TH-23RD FLOOR PLAN - BUILDING AREA DEDUCTION

AREA CALCULATION			
MECH. DEDUCTION - CI-9 (R-10)			AREA (S.F.)
NUMBER	LENGTH	WIDTH	
01	1'-7"	2'-1"	3.30 SF
02	1'-2"	5'-4"	6.22 SF
03	1'-2"	5'-4"	6.22 SF
04	2'-3"	2'-11"	6.56 SF
05	2'-1"	1'-11"	3.99 SF
06	2'-5"	1'-9"	4.23 SF
07	1'-7"	1'-9"	2.77 SF
08	1'-11"	2'-9"	5.27 SF
09	3'-2"	2'-1"	6.60 SF
10	2'-8"	1'-11"	5.11 SF
11	4'-0"	3'-0"	12.00 SF
			62.28 SF

AREA CALCULATION			
PLUMBING DEDUCTION - CI-9 (R-10)			AREA (S.F.)
NUMBER	LENGTH	WIDTH	
20	1'-3 1/2"	2'-4 1/2"	3.05 SF
21	1'-5"	1'-5"	2.01 SF
22	3'-0"	8"	2.00 SF
23	2'-2"	1'-5"	3.07 SF
24	8'-5 1/2"	8"	5.64 SF
25	2'-6"	1'-2"	2.92 SF
26	3'-0"	8"	2.00 SF
27	5'-4"	8"	3.56 SF
28	2'-3"	8"	1.50 SF
29	5'-5 1/2"	8"	3.64 SF
30	10"	1'-1 1/2"	0.94 SF
31	6'-0"	8"	4.00 SF
32	2'-3"	1'-2 1/2"	2.72 SF
33	3'-0"	8"	2.00 SF
34	3'-0"	8"	2.00 SF
35	3'-0"	8"	2.00 SF
36	10'-2"	8"	6.78 SF
37	3'-0"	8"	2.00 SF
			51.82 SF

AREA CALCULATION			
WALL DEDUCTION - CI-9 (R-10)			AREA (S.F.)
NUMBER	LENGTH	WIDTH	
W01	8"	69'-10"	46.56 SF
W02	5 3/4"	44'-11 1/4"	21.56 SF
W03	5 3/4"	12'-2"	5.83 SF
W04	5 3/4"	22'-7"	10.83 SF
W05	5 3/4"	38'-4"	18.39 SF
W06	5 3/4"	9'-4"	4.48 SF
W07	5 3/4"	7'-2"	3.44 SF
W08	5 3/4"	19'-0"	9.11 SF
W09	5 3/4"	12'-2"	5.83 SF
W10	5 3/4"	39'-2 1/4"	18.80 SF
			144.83 SF

The deductions shown in the floor area table in Z-001 (300.3 SF) should match the sum of the deductions shown on these tables: $62.28 + 51.82 + 114.83 = 258.93$ SF. They don't match. Where does that extra 41.39 SF of floor area deduction per floor come from? We don't know.

When deductions taken for each floor above the first is compared on each table we find the following differences:

Floor	Deduction Z-001 Table	Deduction as per Zoning Plans	Difference
2	381.5	250.83	130.67
3	247.5	251.27	-3.77
4	279.5	286.95	-7.45
5	279.5	287.2	-7.7
6	257.5	217.21	40.29
7	188.6	147.05	41.55
8	4295.3	4295.3	0
9	241.7	200.22	41.48
10	260.5	219.23	41.27
11	260.5	219.23	41.27
12	260.5	219.23	41.27
13	260.5	219.23	41.27
14	260.5	219.23	41.27
15	260.5	219.23	41.27
16	73.8	218.62	-144.82
17	300.3	258.93	41.37
18	300.3	258.93	41.37
19	300.3	258.93	41.37
20	300.3	258.93	41.37
21	300.3	258.93	41.37
22	300.3	258.93	41.37
23	300.3	258.93	41.37
24	301.9	260.46	41.44
25	301.9	260.46	41.44
26	301.9	260.46	41.44
27	301.9	260.46	41.44
28	301.9	260.46	41.44
29	301.9	260.46	41.44
30	236.4	195.01	41.39
31	213.8	172.25	41.55
32	2199.6	2199.59	0
33	1103.5	1103.53	0
EMR	687.9	687.87	0
Totals	16162.6	15380.5	959.04

This table suggests that the building may be 959 SF larger than what is claimed, but we don't know which table is correct. But this is not the only floor area inconsistency.

Consider that the C1-9 portion of this building claims to be 146,192.9 SF on page Z-001, showing compliance with the C1-9 FAR limitations:

3) TOTAL C1-9 (EXISTING + PROPOSED):

TOTAL RESIDENTIAL (EXISTING + PROPOSED)
 32,618 SF + 106,722.5 SF = 139,340.5 SF (11.36F.A.R.)

TOTAL COMMERCIAL (EXISTING + PROPOSED)
 5,976 SF + 876.4 SF = 6,852.4 SF (0.55F.A.R.)

TOTAL (EXISTING + PROPOSED)
 139,340.5 SF + 6,852.4 SF = 146,192.9 SF (11.91F.A.R.)

COMPLIES

On page Z-006, however, floor area in the C1-9 district changes to 146,105 SF to show compliance with the tower-on-a-base calculations.

23-651(a)(3) MIN. 57.5% OF TOTAL FLOOR AREA LOCATED BELOW HEIGHT OF 150'

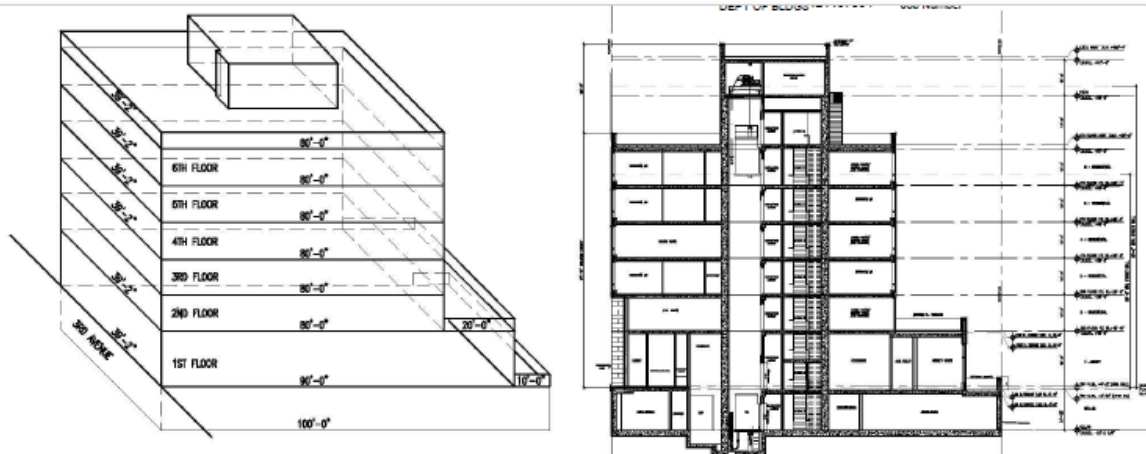
TOTAL F.A.R. 146,105 SF (57.5% = 84,011 SF)

This is not a rounding error and brings into question the building's compliance with the bulk packing requirements of the tower-on-a-base regulations.

The applicant is correct in saying that tower coverage requires that 57.5% of the floor area on the lot must be under 150 feet. But if we were to correct the floor area for the deductions taken but not itemized, which are mostly above 150 feet, the building does not comply with having 57.5% of the floor area under 150 feet. In other words, if pages Z-010 through Z-017 are correct, the building does not comply. If the building summarized in Z-001 is correct, then it does. The Department needs a set of plans that are internally consistent to demonstrate compliance.

The 2018 approval

In June 2018, the applicant received a zoning approval for a modest six-story building on this site:

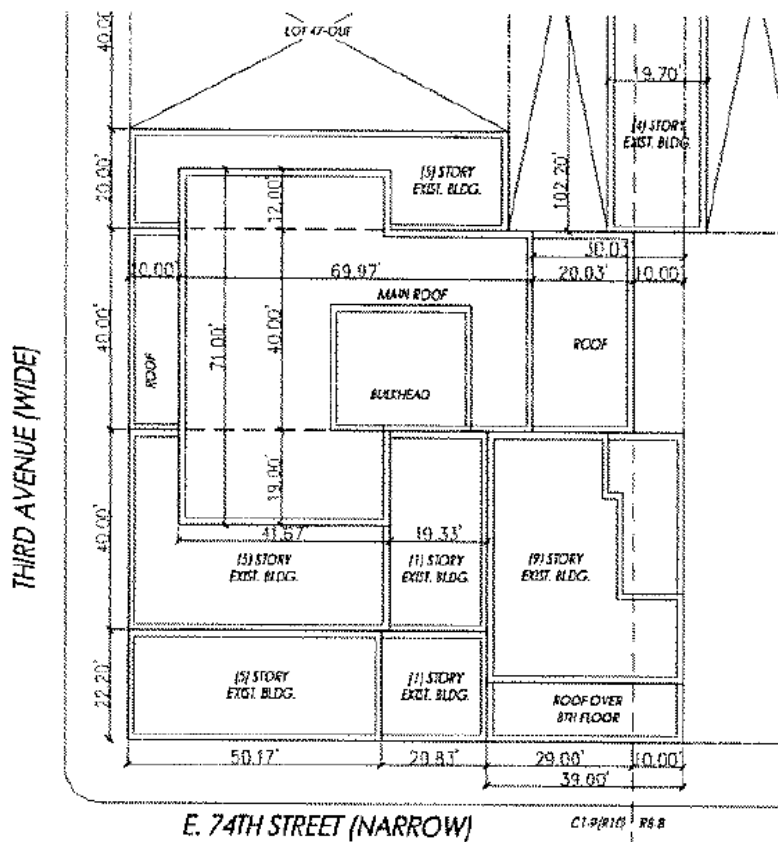


02 AXONOMETRIC DIAGRAM

03 SECTION DIAGRAM

Detail from June 2018 approved ZD1, a building the applicant did not intend to build

In July 2017, nearly one year *prior* to its 2018 zoning approval, the applicant submitted an application to the Board of Standards and Appeals, which included the following plan that showed a bigger zoning lot and a tower with two large cantilevers – 12 feet to the north over Lot 48 and 19 feet to the south over Lot 2.



Plan from BSA application, dated July 24, 2017, page 32

In other words, this applicant had two different buildings in front of two different New York City agencies for the same site at the same time. Further, the current building plans were first dated August 31, 2018, just two months after the six-story building got its zoning approval. While I do not believe that the applicant's subterfuge is illegal or challengeable, it is certainly not transparent, forthright or a good use of public resources. The Department should not waste its time reviewing and approving buildings that no one intends to build.

But more than transparency, this tactic allowed the applicant to get Support of Excavation and Foundation approvals in 2018 and start construction. This has prejudiced any challenge to this building to the courts because they are loath to overturn a permit when a building is largely complete. The 2018 approval has given the applicant a "head-start," which was based on a filing for a building that no one intended to build.

Close

This applicant has filed plans that are inconsistent and do not demonstrate compliance. They have filed plans that describe a building that fronts two streets in the Z-series, but at the same time filed plans that describe a building that fronts three streets in the A-series, perhaps trying to segment their zoning approval into parts to facilitate permitting. They filed a ZD1 that showed a plan that omitted the zoning lot, which the DOB itself refused to have the applicant correct.

They have shown bad faith and wasted public resources by getting a DOB zoning approval for a building for this site they did not intend to build. We know this because they had filed a plan with the BSA showing their intended building nearly one year earlier.

This is not a typical applicant, building, plans, or approval. I hope DOB issues an intent to revoke and then works with the applicant to address all the concerns detailed herein, and those that I have missed, of which I am sure there are many.

Thank you for your attention. Should you have any questions, please feel free to contact me at 917-612-7478 or george@georgejanes.com.

Sincerely,



George M. Janes, AICP
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