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Rachel Levy EXECUTIVE DIRECTOR January 29, 2019

Hon. Margery Perlmutter, Chair New York City Board of Standards and Appeals 22 Reade Street, Spector Hall New York, NY 10007

Re: Cal. No. 103-70-BZ (203 East 74th Street, Manhattan)

Good morning, my name is Sara Kamillatos and I am here representing FRIENDS of the Upper East Side Historic Districts.

For 35 years, FRIENDS of the Upper East Side Historic Districts has been the leading voice for the preservation of the architectural legacy and sense of place of the Upper East Side. We are a voice for common sense development and sound planning, and we see balanced urban development as a critical aspect of neighborhood preservation. As part of our mission, FRIENDS regularly monitors ongoing development on the Upper East Side.

The question before the Board today is whether to amend a previously granted variance issued in 1970 to allow construction of 203 East 74th Street in order to facilitate a transfer of unused development rights to a new residential development proposed at 1297-1299 Third Avenue.

Due to shallow lot depth, the subject building was granted the 1970 variance to construct a building with a tiny inner court measuring just 252 square feet onto which face several legally required windows for habitable rooms in the building. In fact, the subject building has several rooms where the only legal windows face this small court. Under zoning regulations (ZR 23-851), an inner court with a legal window must be at least 1,200 square feet and have no dimension smaller than 30 feet.

FRIENDS commissioned urban planner George Janes to study the impact that the potential Third Avenue tower allowed by a zoning lot merger would have on light exposure to the inner court. The analysis (attached as an appendix) shows that at the second floor (14.5 feet above grade), the court will lose 36.8% of its natural light averaged over the course of the year. At the sixth floor (63 feet above grade), it will lose 55% of its natural light. These are substantial losses, especially when we take into account that one of the three units on each floor has all of its legal windows facing this court, and half the rooms in another unit have legal windows facing this court.

Light and air are cardinal urban values, especially as our city becomes increasingly denser. Any proactive decision to further limit access to these basic standards of



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Rachel Levy EXECUTIVE DIRECTOR livability, especially at a site where they are already compromised, should made with an abundance of caution. The Board must ask itself whether facilitating a transfer of development rights to enlarge the adjacent new development is justified, given the significant negative impact to the light of the subject building. FRIENDS believe the answer to be a resounding no.

Additionally, though not under specific consideration of the Board, we would like to share some neighborhood perspective. Located on the same block as the iconic J.G. Melon restaurant, a beloved neighborhood fixture, this project has drawn significant attention and concern from neighbors since early conceptual renderings showed a design that incorporated the full southern corner of the block. But the applicants' 2017 BSA application and Community Board presentation described an approximately 31-story building with significant cantilevers to the north and south, that would leave the corner buildings on lots 1 and 2 intact. Then in March 2018, plans filed with the Department of Buildings indicated something else entirely – an 80 foot, 6-story building to replace the 5-story tenements on lots 3 and 4.

Given the developer's own representations of the project that indicated a much taller building, FRIENDS believes that the March 2018 filing was a placeholder for the developer's true plans. We believe that it is unlikely that Premier and Thor Equities intend to demolish a 5-story building in order to construct a 6-story building, especially since they own significant development rights on the block. In addition to the development rights, it appears that Premier also owns the buildings on Lots 1 and 2 as real property, which leads us to additionally question the sincerity of the plans represented in the BSA application. At each stage of the process, the applicants for this project have presented a different version of their plans, effectively obfuscating their true intent from a very concerned public.

Developers should not be allowed to propose two completely different visions of the same site to two different city agencies. Nor should they be able to file placeholder plans with the DOB with the intent to radically alter the scope of such plans through post-approval amendments, as Extell had done at 36 West 66th Street.

FRIENDS believes in the Board's responsibility to grant relief when justified, but in this case, amending the variance at 203 East 74th Street will exacerbate the already-compromised access to critical light and air for residents of that building, in addition to affirming the developer's overreach for additional air rights from the block. We urge the Board to deny this application.

Thank you.

MEMORANDUM

George M. Janes &	Date:	January 25, 2019
Associates	To:	Rachel Levy Friends of the Urner Fost Side
250 EAST 87TH STREET NEW YORK, NY 10128	-	Friends of the Upper East Side
www.georgejanes.com	From:	George M. Janes, AICP Alihan Polat
T: 646.652.6498 F: 801.457.7154 E: george@georgejanes.com	RE:	Impact of tower at 1299 Third Ave on 203 East 74 th Street

Summary of findings

There will be a significant impact on the amount of light the tiny inner court at 203 East 74th Street (Block 1429, Lot 103) receives, due to tower facilitated by the zoning lot merger the BSA must approve for 203 East 74th Street. At the second floor, the court will lose 36.8% of its natural light. At the sixth floor, it will lose 55% of its natural light. Legally required windows for habitable rooms face this court, which the BSA allowed in its 1970 variance. Above the first floor, the building has three units per floor. All of the rooms in the A line have their legal windows facing this court. One half the rooms in the C line have legal windows facing this court and the other line is unaffected. The BSA should consider the significant loss of light this zoning lot merger facilitates and its impact on the habitability of these units when considering approval of this zoning lot merger.

As an alternative, the applicant has filed a ZD1 for a building without lot 103 should BSA deny this zoning lot merger. This six story building is not much larger than the tenements that are currently on this site and will have virtually no adverse impact on the amount of light this court receives. The applicant is prepared for the BSA's disapproval and considering the impact on the habitability of 203 East 74th Street, it is my opinion that the BSA should deny this application.

Background

A developer is proposing a zoning lot merger that will facilitate the construction of a tower at 1299 Third Ave. One of the lots proposed to be included in the zoning lot for the tower is 203 East 74th Street. This lot was the subject of a 1970 BSA variance that allowed the construction of a building with windows that overlook a tiny court, just 252 SF with dimensions 22' by 13' 5" at its largest. When windows for legally habitable rooms overlook a court, the Zoning Resolution requires that the court must be at least 1,200 SF and have no dimension smaller than 30 feet (ZR 23-851). The building on Lot 103 has several rooms where the only legal windows face this court. Because Lot 103 is the subject of a previous BSA variance, the BSA must approve the zoning lot merger. As a part of their approval, the BSA should consider the impact the building allowed by this zoning lot merger will have on the habitability of the rooms that face the tiny court that was allowed in 1970. In my opinion, if the building that this zoning lot merger facilitates significantly impairs the amount of light this court receives, then the BSA should not allow the merger.

The proposal

In their July 28, 2017 application, the applicant described the structure that this zoning lot merger will facilitate.¹ The tower in the following image is a 3D architectural massing of that description produced by my office.



The building labeled "Lot 103" is the subject of the BSA variance and has the tiny court. The following shows a plan for the building's second through fifth floors

¹ Inexplicably, this plan is missing from the applicant's October 17, 2018 application. A recent DOB application filed on December 19, 2018 shows that the applicant still hopes to construct a building similar to this one at 33 stories and 411 feet. This is slightly taller than the building studied in this analysis.

that was included in the applicant's October 17, 2018 application. Each wall goes to the lot line, except for the walls that abut the court. The only windows that create legally habitable rooms are the windows that abut 74th Street and the court; these windows are marked with red boxes in the below plan.



George M. Janes & Associates

The plan for 203 East 74th Street shows the plan for floors two through five. The sixth and seventh floors are similar, although there are mezzanine levels. The first floor is similar for the rear, or A unit. The front units are replaced by commercial uses. Outside the first floor, this building has three dwelling units per floor. All of the legal windows for the A line face the court. The legal window for the bedroom of the C line faces the court. The B line is unaffected.

Light to the court

The purpose of establishing a minimum size for an inner court that supports legal windows is clear. In Rezoning New York City, the City Planning Commission wrote in 1959 that the new Zoning Resolution established "requirements for courts sufficient to ensure adequate light and air between buildings and parts of buildings. It also sets up regulations for access of light and air to legally required windows." The requirement that inner courts be 1,200 SF with no dimension less than 30 feet when legal windows face the court has been unchanged since 1961.

If the proposed building facilitated by this zoning lot merger significantly impacts the amount of natural light this tiny court receives, that should be a consideration in the BSA's decision-making on this application.

The amount of natural light an area receives is the sum of light from direct sun, light from the sky and reflected light. This amount is directly related to the amount of solar energy or irradiance an area receives. Digital tools now allow us to calculate the amount of energy and natural light an area receives. This same software allows the introduction of changes to the built environment to allow us to measure how much those changes impact the amount of light and energy an area receives.

The following images show the amount of light and energy this area gets over the course of a year. The court in question is circled in black.



Red areas get the most light; yellow areas get a moderate amount of light and blue areas do not receive much light. The reddest areas are tops of buildings and their bulkheads, as these areas -- not surprisingly -- receive the most light. The bluest areas are small inner courts and light-wells in tenements.

The image to the left shows existing conditions. The image to the right shows proposed conditions with the tower described in the applicant's 2017 application that is facilitated by the zoning lot merger. The small inner court with legal windows allowed by the BSA variance is circled in black above.

We can zoom into this small inner court and measure the amount of light it receives.

Existing Conditions





Each on square foot grid cell (called a raster) shows how much solar irradiance that area receives throughout the course of the year. These numbers can be summed to show how much light the area currently receives and how much light it will receive.

The amount of light the court receives varies according to its depth; the deeper it goes, the darker it gets. Consequently, we measured the light in two places: at a plane 14.5 feet above grade, which is roughly at the second floor windows, and on a plane 63 feet above grade, which is close to the sixth floor windows.

Currently, at 14.5 feet above grade, the court receives 17,775,675 WH/M2 over the course of the year. With the proposed tower, the court will receive 11,228,516 WH/M2² at this height over the course of the year. This is a 36.8% reduction in energy and light the court will receive at a plane set at 14.5 feet above grade.

 $^{^2}$ This is a measure of energy. These units can be converted into light measurements by multiplying by 0.0079 to get lux.

At 63 feet, the court currently gets much more light than it does at 14.5 feet, as that height is higher than most nearby buildings. At 63 feet, the court currently gets 48,509,206 WH/M2. With the proposed tower, it will receive 21,839,690 WH/M2. This is a 55% reduction in the amount of energy and light the court receives.

While New York City or State do not set any standards for significance in the loss of daylight, there are organizations that do set such standards. The United Kingdom has a long history with the right to light, which has resulted in the developments of methods of measuring daylighting, and determining standards for significance. The Building Research Establishment (UK) has guidelines for materiality of the change in daylight, which in built-up areas is generally a 20% reduction. This tiny court is already dark and a loss of between 36.8% and 55.0% of the light this court receives is a significant loss of light by either BRE or common sense standards and must be a consideration for the BSA when they evaluate this application.

An alternative

On June 22, 2018, well after this applicant first filed their application to the BSA, they obtained zoning approval for a six story building for this site. The approved ZD1 is attached to this memo. This six story building is only slightly taller than the buildings currently on the lot and has no cantilevers that carry the structure closer to 203 East 74th Street's tiny court. The following shows the axonometric for which they obtained zoning approval:



AXONOMETRIC DIAGRAM

Since this building is only marginally larger than the existing buildings on the lot, it will not have a material impact on the amount of light the tiny court will receive. The only plausible legitimate reason for obtaining a zoning approval so different from the building shown in their BSA application was to anticipate the BSA's denial of this zoning lot merger.

Since the applicant is prepared for the BSA denial with an approval of an as-ofright building, the hardship of a disapproval of the zoning lot merger will be minimized.

Appendix: Technical documentation on how solar irradiance was calculated The solar irradiance analysis was performed using ArcGIS software with the 3D and Spatial Analyst extensions. Raw data describing the built environment includes the 3D Building Model of New York City and the outline of city blocks, including sidewalks with elevation data from the City of New York base map.

First, the two datasets were clipped to a reasonable extent for performing the analysis. Three blocks of context were included in each direction to ensure all buildings that impact existing irradiation levels of the subject area are analyzed. Using these two layers, two raster datasets were created for existing and proposed conditions based on sidewalk and building elevation data. The resolution for the raster datasets (each cell) is set to one foot by one foot. The Area Solar Radiation tool in ArcGIS's Spatial Analyst extension was then used to calculate annual total radiation. The resulting raster datasets show the annual solar irradiance on each raster cell. Solar irradiance is a measure of energy that can be converted into a measure of light by multiplying by a constant (1 KW/M2 of solar irradiance = 0.0079 Lux).

The model for the proposed building was developed by my office from a plan included in the July 28, 2017 application. Building height was based upon information presented to Community Board 8 in early 2018 and it is modeled at 370 feet to the roof. While the site has a zoning approval for a six story building, a Plan / Work Application filed with the DOB on December 19, 2018 shows that the building that will be constructed should this zoning lot merger be allowed is now 411 feet tall. This additional height would marginally increase the amount of light lost.



ES238061358

ES2 	238061358 Scan Code
Call In the second	Buildings
	ZD1 Zoning Diagram Must be typewritten.
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	Submitted to resolve objections stated in a notice of intent to revoke issued pursuant to rule 101-15.
	Location Information
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-40-0"	BoroughManhattanBlock1429Lot0004BIN1044022
GROUND FL. TERRACE EL-0.83'	Falsification of any statement is a misdemeanor and is punishable by a fine or imprisonment, or both. It is unlawful to give to a city employee, or for a city employee to accept, any benefit, monetary or otherwise, either as a gratuity for properly performing the job or in exchange for special consideration. Violation is punishable by imprisonment or fine or both. I understand that if I am found after hearing to have knowingly or negligently falsified or allowed to be falsified any certificate, form, signed statement, application, report or certification of the correction of a viola- tion required under the provisions of this code or of a rule of any agency, I may be barred from filing further applications or documents with the Department.
LOT 103 EXISTING 8 STORY BUILDING	Name (please print) Robert J. COER Place Signature P.E. / R.A. Seal P.E. / R.A. Seal BIS Doc #
	PLAN EXAMINER SIGN AND DATE



ZD1 Zoning Diagram Must be typewritten. Sheet 2 of 2

1	Applicant Inform	mation Required for	all applications.					4
	Last Name	Laudenschlager	Firs	st Name Robert	Middle Initial J		_	
	Business Name	SLCE Architects			Business Telephone 21	29798400		
	Business Address	1359 Broadway			Business Fax		-	
	City	New York	State NY	Zip 10018	Mobile Telephone		-	
	E-Mail	rlaudenschlager	@slcearch.com	1	License Number 022	2227	-	
2	Additional Zoni	ng Characteristics	Required as appli	cable.				
	Dwelling Units	3 Park	ing area 0	sq. ft.	Parking Spaces: Total 0	Enclosed		
3	BSA and/or CPC	C Approval for Sub	ject Applicatio	n Required as app	licable.		I	
	Board of Standard	ds & Appeals (BSA)						
		Variance	Cal. No		Authorizing Zoning Section 72-21	_		
		Special Permit	Cal. No		Authorizing Zoning Section	_		
		General City Law Wai	ver Cal. No		General City Law Section			
		Other	Cal. No					
	City Planning Cor	nmission (CPC)						
		Special Permit	ULURP No		Authorizing Zoning Section	_		
		Authorization	App. No.		Authorizing Zoning Section	_		
		Certification	App. No		Authorizing Zoning Section	_		
		Other	App. No					
4	Proposed Floor	Area Required for al	I applications. One	e Use Group per lii	ne.		I	
							1	

Zoning Floor Area (sq. ft.) Building Code Gross Floor Number Floor Area (sq. ft.) Use Group Residential Community Facility Commercial Manufacturing FAR CEL 2/6 1st 2nd 3rd 4th 5th 6th Bulkhead EMR

Building Code Gross Floor Area (sq. ft.) Floor Number Use Group Residen Totals

ZD1

Sheet __2_ of __2_

Proposed Floor Area Required for all applications. One Use Group per line.

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