

GEORGE M.
JANES &
ASSOCIATES

250 EAST 87TH STREET
NEW YORK, NY 10128

www.georgejanes.com

T: 646.652.6498
F: 801.457.7154
E: george@georgejanes.com

April 20, 2019

Thomas Fariello, RA
Acting Commissioner
Department of Buildings
280 Broadway
New York, NY 10007

RE: Zoning Challenge
1059 Third Avenue
Block 1417, Lot 47
Job No: 121187599

Dear Acting Commissioner Fariello:

At the request of the Friends of the Upper East Side Historic Districts, a community-based organization that promotes responsible development on the Upper East Side, I have reviewed both the zoning drawings and the building plans for the building under construction at 1059 Third Avenue. My firm regularly consults with land owners, architects, community groups and Community Boards on the New York City Zoning Resolution and I have been a member of the American Institute of Certified Planners for the past 21 years.

Summary of findings

This zoning challenge is being filed in response to a new ZD1. My office was also able to review the latest set of Z and A-series plans. Even with the recent amendments, there are still serious errors in the building's floor area calculations. The new drawings have done nothing to correct the myriad of errors in the building and perhaps even created more. This challenge addresses:

- 1) The building is too large for its district:
 - a) The gross floor area in the Z-series plans, from which floor area deductions are taken, is measured incorrectly on every floor over 18. This provides between 131 SF and 408 SF of extra floor area for each floor.
 - b) Deductions taken in the Z-series do not match the size of the deducted areas shown in plan. In the majority of cases, these deductions are larger or much larger than their corresponding areas.
 - c) The applicant is taking a deduction for an MTA easement in Lot 45. This deduction is only available to buildings that are in the Special Transit Land Use District.

- d) The applicant is taking Quality Housing deductions in a tower. It needs to follow the Quality Housing bulk program.
- 2) The interior portion of the lot requires a rear yard.
- 3) The proposed tower coverage is calculated incorrectly. Floor area under 150 feet is calculated incorrectly. At the correct tower coverage, this building needs more floor area under 150 feet.
- 4) Finally, there are substantial errors and inconsistent information found throughout the DOB approved plans. The DOB may wish to reexamine its processes.

According to my office's measurements, this building is nearly 10,000 SF of zoning floor area too large for its zoning lot. The magnitude and pervasiveness of errors found in this drawing are exceptional.

In past reviews, I have identified dozens of errors in DOB approved drawings, but such errors could plausibly be attributed to applicant negligence, ignorance, carelessness, or the result of a complex process. Their size, pattern and pervasiveness suggest that these errors are likely in a different category. The DOB may wish to conduct an internal investigation into how this building was able to not only obtain approval, but to be substantially built with such substantial errors.

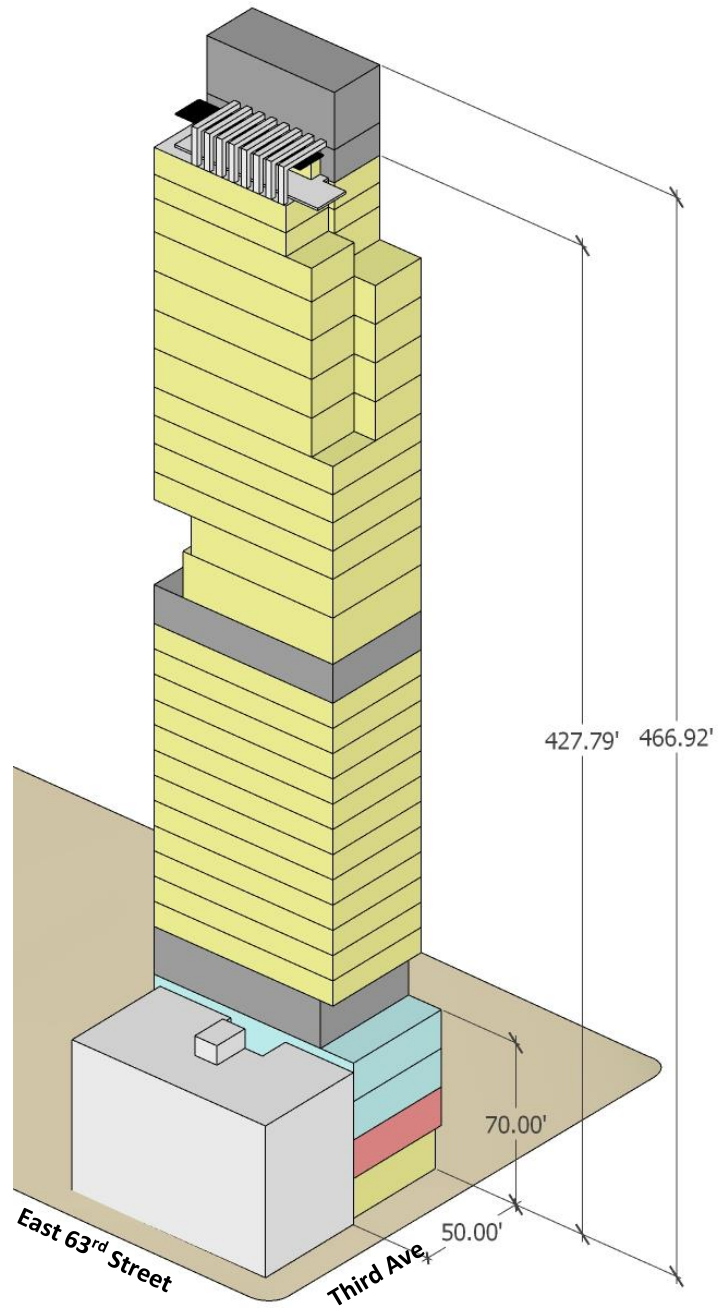
Project summary

The building has been largely constructed on the east side of Third Avenue between East 62nd and East 63rd Street on Block 1417, Lot 47. The zoning lot includes lot 45 directly to the north. At 100.42 by 105 feet, the zoning lot is mostly in the C1-9 zoning district and is mostly a corner lot. The five feet located beyond 100 feet from Third Avenue is in the R8B district and is an interior lot. According to the ZD1 and the Z-series plans, the zoning lot is 10,543.75 SF.¹ The vast majority (10,041.67 SF) of the lot is in the C1-9 zoning district, while 502.08 SF, or less than 5%, is in the R8B district. The C1-9 allows residential development up to 12.0 FAR with the as-of-right affordable housing bonus and the R8B allows development up to 4.0 FAR. The corner portion of the lot allows for 100% coverage and no yards. The interior portion of the lot requires a 30-foot rear yard.

The proposed form is tower-on-base (23-651). The new building is over 95,000 SF while the total development on the zoning lot including the building to stay on lot 45 is 120,748 SF of zoning floor area. Tower-on-base requires tower coverage to be between 30% and 50% of the C1-9 portion of this sized zoning lot.

¹ The zoning lot is repeatedly referred to as 100'5" by 105' in the ZD1, the Z-series, and the required survey filed at the DOB. If so, that means it is 10,544.1 SF, not 10,543.75 SF. The 0.35 SF difference is both unexplainable and not material.

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.



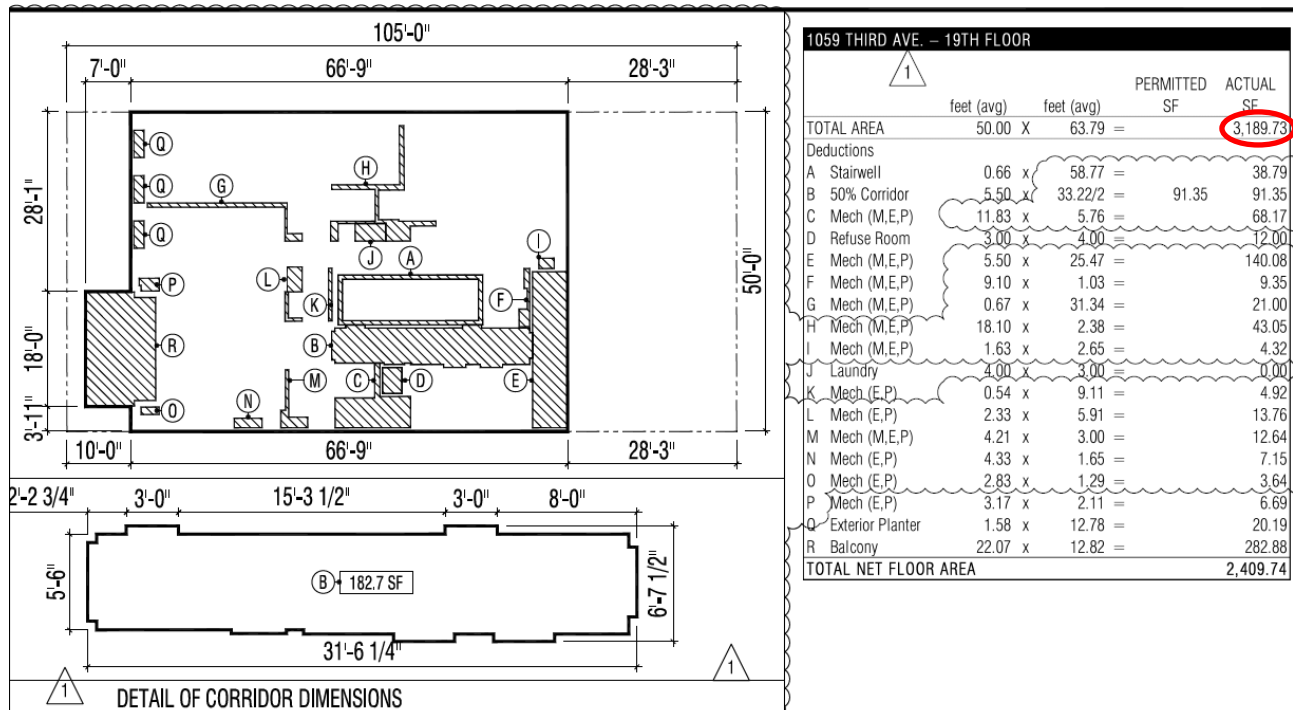
Axonometric view of 1059 Third Avenue color coded using traditional land use colors

The proposed building is mixed use with commercial, community facility and residential.

1. The building is too large for its district

a) The gross floor area in the Z-series plans is measured incorrectly on every floor above 18 (12-10, Floor Area)

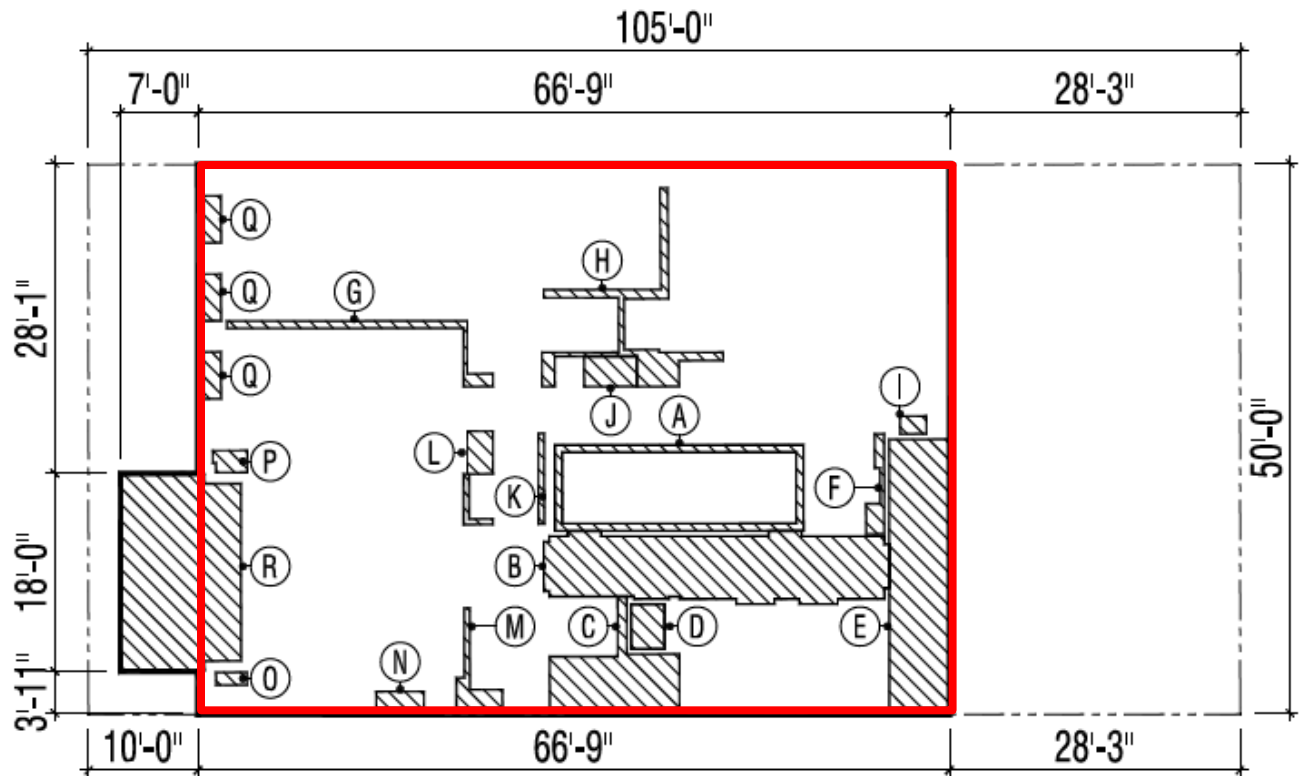
Below is a reproduction of the 19th floor from the Z-series plans. On the left, we see the 19th floor in plan and the areas deducted. On the right, we see a table showing the size of those areas deducted. Those deductions are subtracted from a number at the top of the table that I have circled in red.



Reproduction of the 19th floor from Z-002-03, with claimed gross floor area number circled

In theory, the number circled in red is the gross floor area for this floor. The table shows that it is calculated by the numbers shown in this table: 50' by 63.79', which equals 3,189.73 SF.

But where does 63.79' come from? The depth dimension on the plan reads 66' 9", not 63.79'. If we just measure the gross floor area as described by the red line, leaving out part of the balcony, the gross floor area is 3,337.50 SF. This area is shown below on the same plan for floor 19.



Detail of the 19th floor plan from Z-002-03 with the area inscribed by the outer walls in red

The 3,337.50 SF also cannot be the correct gross floor area, since just following those dimensions leaves out most of item R, the balcony, which the applicant deducts from the gross floor area. The plan shows that part of the balcony is 7' by 18' or 126 SF, which makes the total gross floor area shown in the drawing equal to 3,463.50 SF.

Consequently, the applicant is showing two different gross floor area numbers in this single drawing of the 19th floor. The first, 3,189.73 SF, is shown in the table, and is the starting point from which all floor area deductions are taken. The second, 3,463.50 SF is shown in the plan when simple geometry is applied to the drawing using the dimensions provided. The difference, 273.77 SF, is a substantial amount of floor area. By leaving it out of the gross floor area, it is never carried to the zoning floor area.

This Z-series plan does not show all the articulation in the building façade and so the drawing might be overstating the floor area in an articulated façade. We can double-check the measurements by examining the A-series plan, which shows building articulation. Shown below is the 19th floor plan from the A-series inscribed by a red line showing gross floor areas counted by the applicant.

The drawing dimensions show that the floor plate measured to the exterior wall is 50' by 68' 10" or 3,441.5 SF. This is more than a full two feet deeper than the dimension shown on the Z-series. But that is measuring the exterior building wall at its largest, ignoring exterior wall articulation. When we measure the area inscribed by the red line in CAD, we get 3,542.95 SF, which is 353.22 SF larger than what is shown on the Z-series.

When this analysis is done for every floor, we find that all the floors higher than 18 show substantial differences between the gross floor area shown on the Z-series (and ZD1) and the gross floor area measured from either plan. A table detailing all the differences is shown below and side-by-side comparisons of each floor above the 18th is shown in Appendix A.

Floor	GFA			
	Zoning Series	Architectural Plans	Difference	%
1	5250	5,250	0	0%
2	4850	4,850	0	0%
3	4850	4,850	0	0%
4	4850	4,850	0	0%
5	4050	4,050	0	0%
6	4350	4,350	0	0%
7	4024.44	4,018.75	-5.69	0%
8	4350	4,350	0	0%
9	4024.44	4,018.75	-5.69	0%
10	4350	4,350	0	0%
11	4032.44	4,018.75	-13.69	0%
12	4350	4,350	0	0%
13	3887.07	3,879.17	-7.90	0%
14	4350	4,350	0	0%
15	3887.07	3,879.17	-7.90	0%
16	4350	4,350	0	0%
17	3887.07	3,879.17	-7.90	0%
17M	4314.68	4,313.67	-1.01	0%
18	3652	3,665.67	13.67	0%
19	3189.73	3,542.95	353.22	11%
20	3619.93	3,967.70	347.77	10%
21	3289.94	3,626.00	336.06	10%
22	3619.93	3,969.19	349.26	10%
23	3289.94	3,625.98	336.04	10%
24	3686.25	4,094.34	408.09	11%
25	3686.25	4,094.34	408.09	11%
26	3686.25	4,094.34	408.09	11%
27	3686.25	4,094.34	408.09	11%
28	3293.48	3,451.92	158.44	5%
29	2973.04	3,154.61	181.57	6%
30	2122.08	2,253.54	131.46	6%
Bulkhead	1601.64	1,810.48	208.84	13%
		Added GFA	4,035.02	

Table showing the difference between the gross floor area used in the zoning series (Z002.03 and Z-003.03) compared to the A series (.02 and .03 series)

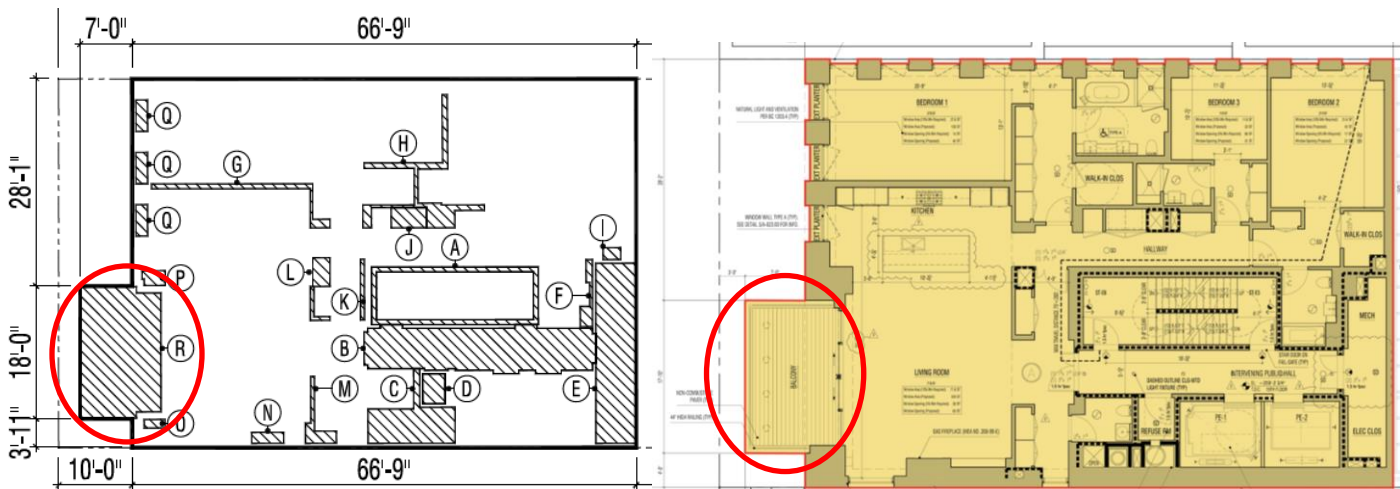
Absolute differences of less than 0.5% are ignored because those differences likely due to measurement errors rather than a problem with the plans. Errors start on the 19th floor. Each floor between 19 and 27 is between 10% and 11% larger

than the gross floor area number listed in the Z-series for that floor. These measurements show that the building has an additional 4,035 SF that was never counted.

It is telling that the added floor area does not start until the 19th floor. These higher floors are the most valuable. If we estimate that the retail value of this floor area is \$3,000 per square foot, the retail value of the extra 4,035 SF is \$12,105,000.

b) Some deductions taken in the Z-series do not match the size claimed or identify the same areas in the A-series (12-10, Floor Area)

The differences between the Z-series and the A-series do not stop at gross floor area. For example, let's look at floor 19, specifically the balcony:



Z-series (left) and A-series (right) 19th floor plans

In plan, the balconies are nearly identical in size and the dimensions shown on the plan are trivially different. The Z-series balcony measures 18 feet wide while the A-series has it at 17' 10" wide. Neither shows a dimension for depth; but when measured it is about 10' 8" deep in both plans. The area of the A-series balcony when measured in CAD is 191.06 SF. Balconies enclosed by less than 67% are not zoning floor area and so something very close to 191 SF should be deducted for item R in the Z-series table showing deductions.

The table with the 19th floor deductions is reproduced below. It reports that *Item R, Balcony*, highlighted in red below is **22.07 feet** wide and **12.82 feet** deep for a total deduction of **282.88 feet**.

1059 THIRD AVE. – 19TH FLOOR				
	feet (avg)	x	feet (avg)	
				PERMITTED SF
				ACTUAL SF
TOTAL AREA	50.00	x	63.79	= 3,189.73
Deductions				
A Stairwell	0.66	x	58.77	= 38.79
B 50% Corridor	5.50	x	33.22/2	= 91.35
C Mech (M,E,P)	11.83	x	5.76	= 68.17
D Refuse Room	4.00	x	4.00	= 12.00
E Mech (M,E,P)	5.50	x	25.47	= 140.08
F Mech (M,E,P)	9.10	x	1.03	= 9.35
G Mech (M,E,P)	0.67	x	31.34	= 21.00
H Mech (M,E,P)	18.10	x	2.38	= 43.05
I Mech (M,E,P)	1.63	x	2.65	= 4.32
J Laundry	4.00	x	3.00	= 0.00
K Mech (E,P)	0.54	x	9.11	= 4.92
L Mech (E,P)	2.33	x	5.91	= 13.76
M Mech (M,E,P)	4.21	x	3.00	= 12.64
N Mech (E,P)	4.33	x	1.65	= 7.15
O Mech (E,P)	2.83	x	1.29	= 3.64
P Mech (E,P)	3.17	x	2.11	= 6.69
Q Exterior Planter	1.58	x	12.78	= 20.19
R Balcony	22.07	x	12.82	= 282.88
TOTAL NET FLOOR AREA				2,409.74

Table detailing floor area deductions on the 19th floor. Balcony highlighted

The amount being deducted for this one balcony is nearly 100 SF too large! This balcony is not going to be 22 feet wide, nor is it going to be nearly 13 feet deep; it is not shown anywhere near that size on either plan. It appears that the number in the table is completely fabricated.

This building is taking so many deductions and is built so close to the maximum FAR for this district, that just correcting this one balcony would put this building out of FAR compliance. But how many other errors are there? There could be dozens or even hundreds of other similar errors.

As a result, my office examined every single deduction and measured what was shown in the A-series and compared it to what was in the Z-series. In some cases, there are deductions in the Z-series that do not appear in the same place or are a completely different size and shape compared to the A-series. Nevertheless, we endeavored to compare the two in a uniform fashion to see the differences. Plans

from each series with the deductions highlighted appear in Appendix B and is summarized in the table below:

Total Floor Area Deductions Taken			
Floor	From Z-Series Table (SF)	From A-Series Measurements	Difference
6	128.18	203.92	-75.74
7	141.97	208.26	-66.29
8	128.18	203.92	-75.74
9	141.97	208.26	-66.29
10	128.18	203.92	-75.74
11	136.67	208.26	-71.59
12	366.07	258.22	107.85
13	511.62	397.67	113.95
14	366.07	258.22	107.85
15	511.62	397.67	113.95
16	366.07	258.22	107.85
17	511.62	397.67	113.95
18	322.80	204.53	118.27
19	638.14	492.41	145.73
20	493.54	303.80	189.74
21	794.30	573.06	221.24
22	493.54	302.11	191.43
23	729.24	490.51	238.73
24	510.94	371.24	139.70
25 - 27	1,545.42	1,135.29	410.13
28	277.04	179.36	97.68
29	415.88	391.42	24.46
30	918.15	841.62	76.53
Total all floors	10,577.21	8,489.56	2,087.65

You will see that the building gets 2,087.65 SF of additional floor area by mischaracterizing deductions. But most interestingly, those mischaracterized deductions are not equally distributed throughout the building. In floors 12 through 30, deductions are overstated by 2,519.04 SF. In floors 5 through 11, deductions are *understated* by 431.39 SF.

The 11th floor is the last floor counted below 150 feet and towers in this district require between 55% and 60% of the floor area to be located under 150 feet. This requirement provides the incentive to understate floor area deductions below 150 feet while overstating floor area deductions over 150 feet. In my opinion, this is evidence of a purposeful attempt to evade the zoning regulations to the applicant's advantage.

In addition to fabricating over 2,000 SF of floor area by overstating deductions, which have a value of \$6,262,950 (assuming a value of \$3000 per SF), the way this extra floor area was added to the building helps to ensure that the entire building is able to be constructed with more floor area over 150 feet, contrary to the tower-on-base regulations of 23-651.

c) The applicant is improperly taking a 1,583 ZSF deduction for the MTA easement in Lot 45 (95-00, 95-05, 12-10 Floor Area)

Around 2010, the MTA took an easement on lot 45, which is the building to stay on this zoning lot. The MTA converted what was once a space for a bank into some kind of ancillary facility, presumably related to the Second Avenue subway. The applicant is claiming that the floor area associated with this easement is not zoning floor area, quoting 95-50. This is incorrect.

First, there is no Section 95-50 in the Zoning Resolution. The applicant likely meant to cite section 95-05, which exempts MTA easements from zoning floor area in certain areas. Second, and more importantly, this section does not apply to this building or the floor area the applicant claims as exempt.

Chapter 9, Article 5, contains regulations that apply only in the Special Transit Land Use District. This is a special zoning district and the regulations found in this section only apply in areas where this special zoning district is mapped. Most of these areas are along Second Avenue and this site is not in that special district. There is nothing in the Zoning Resolution that would exempt this floor area from zoning floor area maximums.

If we estimate the retail value of this floor area is \$3,000 per square foot, the value of the 1,583 SF excluded because it was is being used by the MTA is \$4,749,000.

d) The applicant is taking Quality Housing deductions that are not available in a tower (28-00, 77-40)

The Z-series plans show that this building is taking Quality Housing (QH) deductions. Even though it does not follow the QH bulk program, the applicant believes 77-40 allows this building to claim the benefits of QH without having to follow the bulk requirements. This interpretation is incorrect.

The QH program is a set of standards that reward better building design in exchange for prescribed bulk provisions. 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). In exchange for limiting height, QH rewards good quality design 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.

ZR 77-40 states when it applies:

#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 [emphasis added]

QH is mandatorily applied in the R8B district, while in the C1-9 district QH applies optionally, but the QH applies in both districts. Since QH applies in both districts 77-40 is not applicable to this development.

This is the only interpretation that makes any legislative sense, as otherwise this building gets rewarded with QH benefits without the bulk Quality Housing requires. 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.

Using the interpretation used by the applicant, developers on the Upper East Side would be incentivized to increase the size of their 100 foot deep C1-9 and C2-8 development sites one inch into the R8B midblock portion of the block and design a building where they can reap the rewards of QH program, without paying the price of committing to the bulk regulations. This absurd result cannot be accurate.

The building is taking 2,157 SF of QH deductions, which at \$3,000 per square foot are worth \$6,471,000.

2) Rear Yard Requirement (23-47, 23-44)

The applicant shows a residential amenity space on the first floor of the new building that is located at the rear of the R8B portion of the interior lot. The interior portion of this lot requires a rear yard (23-47) and a building residential amenities are not permitted obstructions in a rear yard (23-44). The applicant claims that no rear yard is required because of 23-471(c), which reads:

In R6 through R10 Districts, no #rear yard# shall be required where such #rear lot line# coincides with a #side lot line# of an adjoining #zoning lot#.

This is an incorrect application of 23-471(c) as that text cannot be read independent of earlier text in 23-471. The start of 23-471 reads, in part:

The portion of a #side lot line# beyond 100 feet of the #street line# that it intersects shall be considered a #rear lot line#.

The rear yard line of the R8B portion of this zoning lot abuts a side lot line beyond 100 feet of the street line that it intersects. Consequently, that lot line must be considered a rear lot line and a 30-foot rear yard is required (23-44).

3) Tower coverage and floor area under 150 feet (23-651)

ZR 23-651 states that the percentage of the lot the tower must cover is between 30% and 50% on small lots like this. The tower coverage percentage also determines the minimum amount of floor area that must be located in stories under 150 feet. The drawings and calculations that describe this building have serious problems with both tower coverage and the area under 150 feet.

Tower coverage

On Z-001.02, the applicant states that tower coverage is 41%, calculated as follows:

4,306.5 SF of tower coverage / 10,543.75 SF of lot area = 41% tower coverage.

There are several errors in the applicant's calculation of tower coverage. First, the denominator is wrong. This is a split lot district where one district allows towers and the other does not. As a result, 77-02 requires that tower coverage is calculated based only on the C1-9 portion of the zoning lot, which is 10,041.67 SF.

The numerator is also wrong. This building is designed so that tower coverage *varies* according to the floor of the tower. ZR 23-651(1)(a) clearly states that tower coverage is measured, "At any level above a #building# base" with an exception of the top four floors to allow for tapering under certain conditions. The size of the floors in 1059 Third Avenue above the base and below the top four floors varies, and so does the tower coverage at those

levels. Consequently, this building does not have a single number that can be used for tower coverage as several floors have different tower coverage.

Tower coverage ranges from a low of 3,189.73 SF on the 19th floor to a high of 4,350 SF on floors 5 through 17.² Consequently, this tower has a range of tower coverage; at the low end, it is 3,189.73/10,041.67 or 31.8%, and at the high end it is 4,350/10,041.67 or 43.3%, which complies with the requirements of the district for a lot of this size, but has impacts on floor area below 150 feet.

Floor area below 150 feet

Section 10 of the Zoning Calculations on Z-001.02 show the applicant claiming that the building requires 67,073.31 SF under 150 feet. This is calculated by multiplying 122,508.33 SF (the size of the building) by 0.5475 (from 23-651 with at 0.25 bonus). This is clearly wrong since 122,508 SF is not the size of the building. Section 7 of the same page shows the size of the proposed building on the C1-9 portion of the lot at 120,497.74. Correcting the applicant's formula, the applicant believes they need 65,972.49 SF under 150 feet.

But all that assumes a tower coverage of 41%. With a range of tower coverage, how can the requirement for floor area under 150 feet be determined? ZR 11-22 tells us that when there are overlapping regulations the more restrictive provision applies. Consequently, 31.8% tower coverage is the more restrictive provision. ZR 23-651 instructs that 59.5% of this building's floor area must be under 150 feet. Credit for articulation in the base lowers this to 59.25%.

Currently, the applicant is claiming that 67,106.9 SF is under 150 feet, or just 55.7% of its floor area in the C1-9 district. This building needs an additional 3.55% of its zoning floor area to be moved from over 150 feet and placed under 150 feet. For a building this size, that means the applicant must move 4,277.7 SF of zoning floor area from the tower into the base. In other words, a whole floor needs to be taken out of the tower portion and put into the base to comply with the tower-on-base provisions of 23-651.

The removal of floor area from the tower to the base would significantly impair the value of that floor area. If the value were cut in half, and the retail value was \$3000 per square foot, the movement would impair the value of this floor area by \$6,416,550. This assumes that there could be a place to put that floor area, which is far from a certainty.

But perhaps more importantly, if all missing or improperly deducted floor area were counted the building would not comply at all, as it would have vastly too much floor area in the tower and on the lot.

² The applicant claims that tower coverage is 4,306.5 SF. It is not clear from where that number comes.

4) There are substantial errors and inconsistent information found throughout the documents DOB approved

Besides the several errors already identified herein, there are many errors still to be found within these documents. Below is a reproduction of the floor area schedule of the latest ZD1. All the circled numbers are wrong. This is the fourth ZD1 this applicant has prepared and submitted for the same building, yet we still see so many errors.

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

Floor Number	Building Code Gross Floor Area (sq. ft.)	Use Group	Zoning Floor Area (sq. ft.)				FAR
			Residential	Community Facility	Commercial	Manufacturing	
CEL	5,250	6	-	-	-	-	0
1ST	3,698.42	2	3,374.79				.84
1ST	1,551.58	5,6			1,538		.15
2ND	4,850	5			4,850		.48
3RD	4,850	6		4,850			.48
4TH	4,850	6		4,850			.48
5TH	4,050	ACC TO 2	-	-	-	-	0
5TH MEZ	720.26	ACC TO 2	-	-	-	-	0
6TH	4,350	2	3,933.40				.39
7TH	4,024.44	2	3,594.05				.36
8TH	4,350	2	3,933.40				.39
9TH	4,024.44	2	3,594.05				.36
10TH	4,350	2	3,933.40				.39
11TH	4,032.44	2	3,602.05				.36
12TH	4,350	2	3,685.29				.37
13TH	3,887.07	2	3,048.30				.30
14TH	4,350	2	3,685.29				.37
15TH	3,887.07	2	3,048.30				.30
16TH	4,350	2	3,685.29				.37
17TH	3,887.07	2	3,048.30				.30
17TH MEZ	4,314.68	ACC TO 2	-	-	-	-	.0
18TH	3,652	2	1,174.36				.12
19TH	3,189.73	2	2,409.74				.24
20TH	3,619.93	2	2,982.21				.30
21TH	3,289.94	2	2,352.58				.23
22TH	3,619.93	2	2,982.21				.30
23TH	3,289.94	2	2,407.85				.23
24TH	3,686.25	2	3,055.21				.30
25TH	3,686.25	2	3,055.21				.30
26TH	3,686.25	2	3,055.21				.30
27TH	3,686.25	2	3,055.21				.30
28TH	3,293.48	2	2,912.82				.29
29TH	2,973.04	2	2,437.34				.24
30TH	2,122.08	2	1,165.08				.12
ROF	1,601.64	2	145.06				.01
TOW1	1,601.64	2	-				-
TOW2	1,601.64	2	-				-
EXISTING	26,636.76	2	24,338.39		715.37		2.50
Totals	159,214		103,694	9,700	7103	0	12.00
			Total Zoning Floor Area				120,497.77

Proposed floor area table from latest ZDI. Errors marked in red

Each of the errors are briefly discussed below, in order of their appearance in the table.

- 0.84 FAR would require that part of the first floor to be 8,856 SF, not 3,374 SF
- Use group 5 (community facility) and 6 (commercial) are listed on a portion of the first floor but only commercial floor area is shown
- Use group 5 (community facility) is listed on the second floor, but only commercial floor area is shown
- Use group 6 (commercial) is listed on the third floor, but only community facility floor area is shown
- Use group 6 (commercial) is listed on the fourth floor, but only community facility floor area is shown
- If the building is 120,497.77 SF, then the FAR is 11.43 FAR.
- But 120,497.77 SF is not the size of this building, or at least it does not match with the zoning floor area found in the Z-001.02, which tells us that 120,497.77 SF is the size of the building only on the C1-9 portion of the zoning lot, omitting 250 SF on the R8B portion.

These types of errors shouldn't be found on the first ZD1 let alone the fourth ZD1. This quality of work shows disrespect for DOB's process and the law it is supposed to serve. This form contains the following statement above the architect's stamp:

“Falsification of any statement is a misdemeanor and is punishable by a fine or imprisonment or both.”

I believe the only way the fourth version of a two page form has so many errors--even when these false statements could result in imprisonment--is because there is no respect for the process or the law it is supposed to protect. Considering the major errors and outright fabrication of floor area identified earlier, I suppose I shouldn't be surprised. But trivial errors on important documents are not trivial, they are a signal that something is seriously amiss.

Final thoughts

This building is astounding. It first got zoning approval in 2015! It has been changed and amended multiple times and is nearly completed. Yet, it still has drawings littered with errors, does not comply with basic zoning calculations, and perhaps most worrisome, is building floor area the zoning has not lawfully provided. This floor area is easily worth in the tens of millions of dollars that makes it much too big for its zoning district.

While I know this is not relevant for the DOB's decision-making, the following table summarizes the amount of floor area taken by subject area covered by this challenge, and adds a value to it:

Issue	SF Created	SF Moved from Tower to Base	Per SF retail value	Retail Value of SF
1.a Gross Floor Area Mismatch	4,035.02		\$ 3,000	\$ 12,105,060
1.b Misrepresented Deductions	2,087.65		\$ 3,000	\$ 6,262,950
1.c MTA Easement	1,583.00		\$ 3,000	\$ 4,749,000
1.d Quality Housing Deductions	2,157.00		\$ 3,000	\$ 6,471,000
3 Tower coverage/ FA under 150 feet		4,277.70	\$ 1,500	\$ 6,416,550
Total	9,862.67	4,277.70		\$ 36,004,560

In Manhattan towers the incentives to take floor area not allowed under law are higher than they ever have been. For this building to have been approved and largely built with such substantial errors begs some questions. Is DOB properly equipped to review buildings such as these? Are there processes in place that will identify applicants that do not take the professional obligations of their stamp seriously? Are DOB's own internal procedures followed and respected?

I cannot know the answer to any of those questions. But I do know that last year, I filed a zoning challenge for 65 West Broadway, where it was demonstrated that building was being built hundreds of square feet too large for its district. DOB's response was that the building was "substantially correct," a choice of language that suggested that while the applicant may have exceeded the maximum FAR, the building was close enough. That kind of attitude is dangerous for the regulator. The DOB does not make law; it just enforces law. And while it is given the power to make interpretations of law, it should not make judgements on absolute measures like building floor area.

In the case of 1059 Third Avenue, we have a nearly completed building with substantial errors that just got a new zoning approval 45 days ago. Since the most significant of these errors are the result of applicant negligence or possible fraud, I believe the only remedy will be partial deconstruction, similar to what happened to the building at Park Avenue and 96th street in the Park View decision. That will not be easy for anyone, but it is the right way forward; a way forward that respects our processes and the law those processes are meant to serve.

Close

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, George M. Janes & Associates

For



Rachel Levy, Friends of the Upper East Side Historic Districts

Attachments: Attachment A: Floor by floor gross floor area comparisons
Attachment B: Floor by floor deduction comparisons

CC: Bill deBlasio, New York City Mayor
Keith Powers, New York City Council Member
Benjamin Kallos, New York City Council Member
Gale Brewer, Manhattan Borough President
Liz Krueger, New York State Senator
Rebecca Seawright, New York Assembly Member
Edith Hsu-Chen Director, Manhattan, DCP
Raju Mann, Director, Land Use, New York City Council
Alida Camp, Chair, Community Board 8
Julianne Bertagna, Treadwell Farm Historic District Association
Barry Schneider, East Sixties Neighborhood Association
Elizabeth Ashby, Defenders of the Historic Upper East Side
Lo van der Valk, Carnegie Hill Neighbors
Alan Kersh, East River Fifties Alliance
Alexander Adams, CIVITAS
Sean Khorsandi, Landmark West!
Elizabeth Goldstein, Municipal Art Society of New York
Peg Breen, New York Landmarks Conservancy
Simeon Bankoff, Historic Districts Council
Andrew Berman, Greenwich Village Society for Historic Preservation
Olive Freud, Committee for Environmentally Sound Development