

September 22, 2009

Testimony Supporting the Proposed Bell Boulevard Rezoning

Good morning:

I am Richard Bass, of Herrick, Feinstein LLP, representing the Briarwood Organization, LLC (“Briarwood”), long-term resident, affordable housing developer and builder in the Bayside area and City-wide. Thank you for this opportunity to speak in support of the proposed 50’ extension of the existing C2-2 commercial overlay zoning.

This application requests an amendment to the Zoning Map to establish within an existing R4 District, a C2-2 commercial overlay on property located on the mid-block of Bell Boulevard and between 36th and 38th Avenues. (Block 6176 Lots p/o 2 and 61.) This rezoning will facilitate the expansion of an existing commercial and community facility building, located on Lots 55 and 58. The proposed action will permit the expansion of Briarwood’s operations.

In brief summary:

- **The Proposal:** would extend the existing commercial overlay C2-2 zoning district 50’ from mid-block between 36th and 38th Avenues. The underlying R4 zoning district would remain.
- **The Rezoning site:** is 50’ frontage on Bell Boulevard and 150’ deep.
- **The Existing zoning:** R4-- maximum 1.0 residential FAR, 2.0 community facility FAR.
- **The Proposed zoning:** R4/C2-2--maximum 1.0 residential FAR, 2.0 community facility FAR, 1.0 commercial FAR.
- **The Proposed Briarwood Development:** The Building will contain 16,366 SF--half commercial office space and half community facility space.

The proposed extension of the C2-2 commercial overlay will facilitate the expansion of the Briarwood operation, so this family business can develop and build more affordable housing and commercial property in New York City.

Sunset Park

Contextual Rezoning Proposal

City of New York
Department of City Planning
Brooklyn Borough Office

DEPARTMENT OF
CITY PLANNING



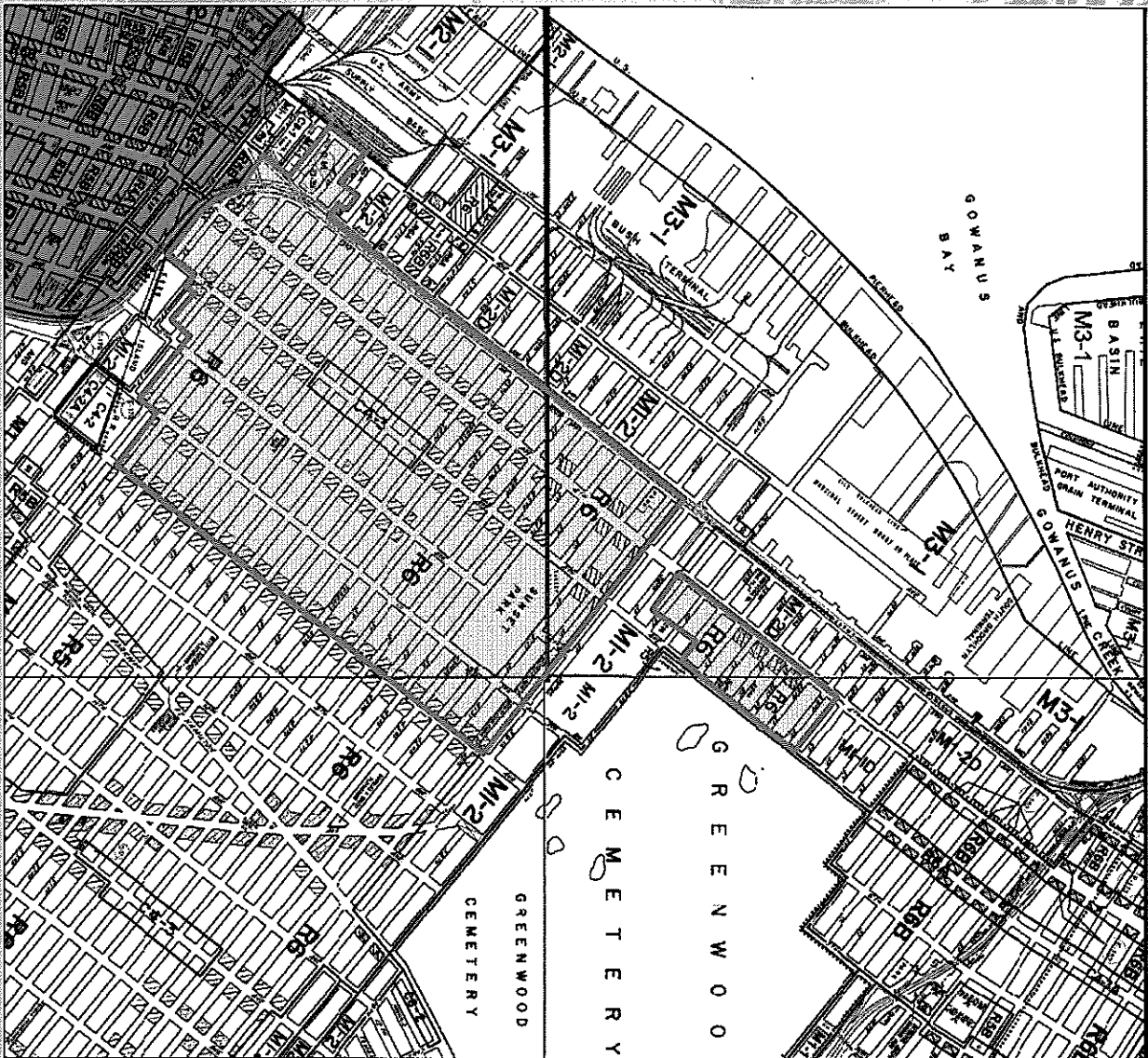
CITY OF NEW YORK

Study Area

Study areas are approximately:

- 29th Street to 37th Street between 4th and 5th Avenues
- 40th Street to 64th Street between 3rd and 8th Avenues

Currently zoned R6, plus a six-block C4-3 commercial district C1-3 and C2-3 commercial overlays mapped on all or part of 4th – 8th Avenues



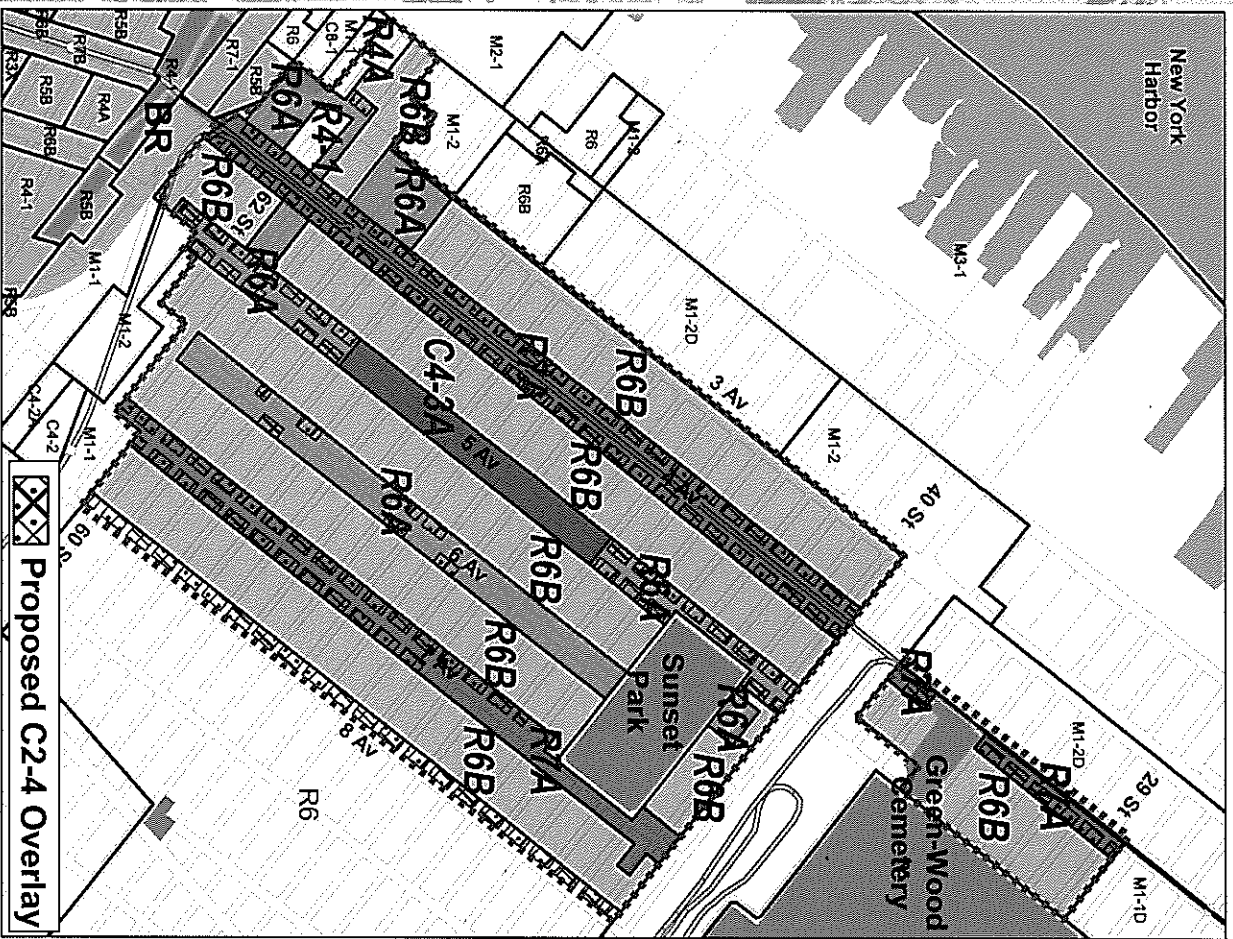
Existing Character



Zoning Proposal

Overview

- Address community's request for the preservation of neighborhood scale and character by:
 - Rezoning to contextual districts with height limits throughout the area;
 - Allowing for new development where appropriate at a height and scale that is in keeping with the existing context.
- Create opportunities for affordable housing through inclusionary zoning at appropriate locations.
- Address location and depth of appropriate commercial overlays on Avenues and commercial district on Fifth Avenue.

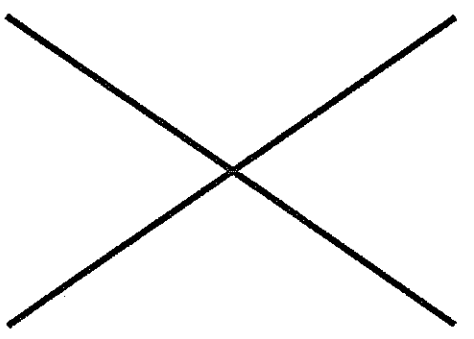
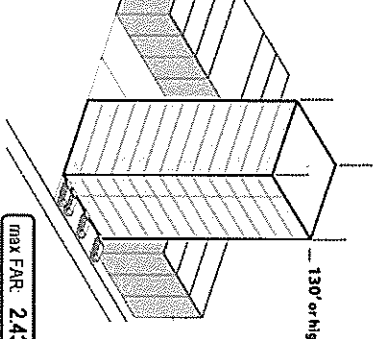
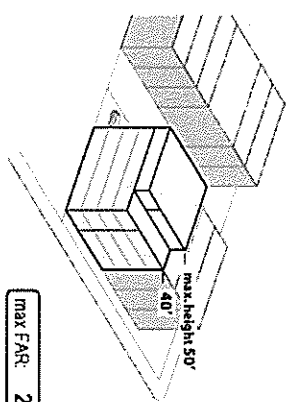
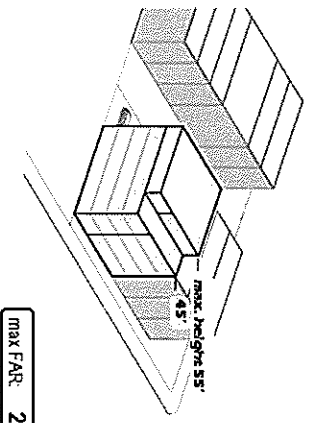
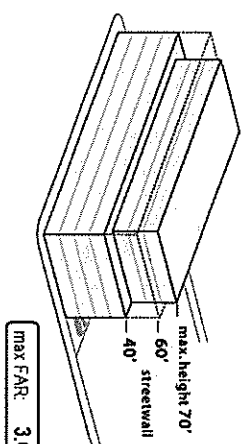
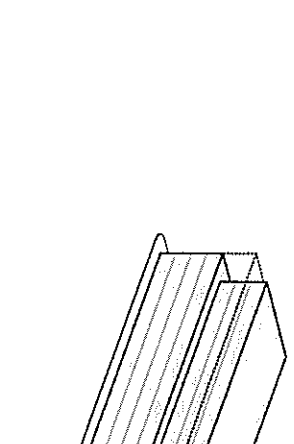
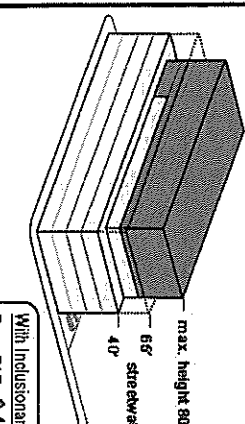


Department of City Planning

Brooklyn Borough Office | Sunset Park Rezoning

Zoning Proposal

Proposed Contextual Zoning Districts

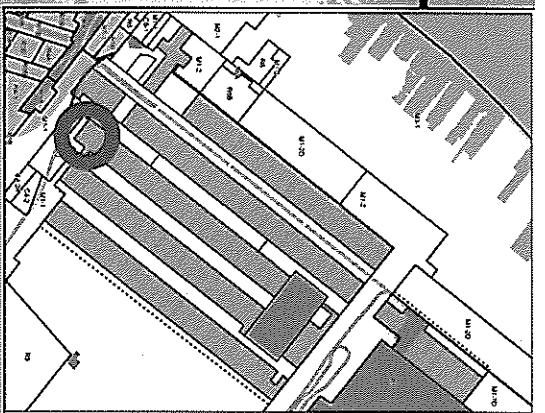
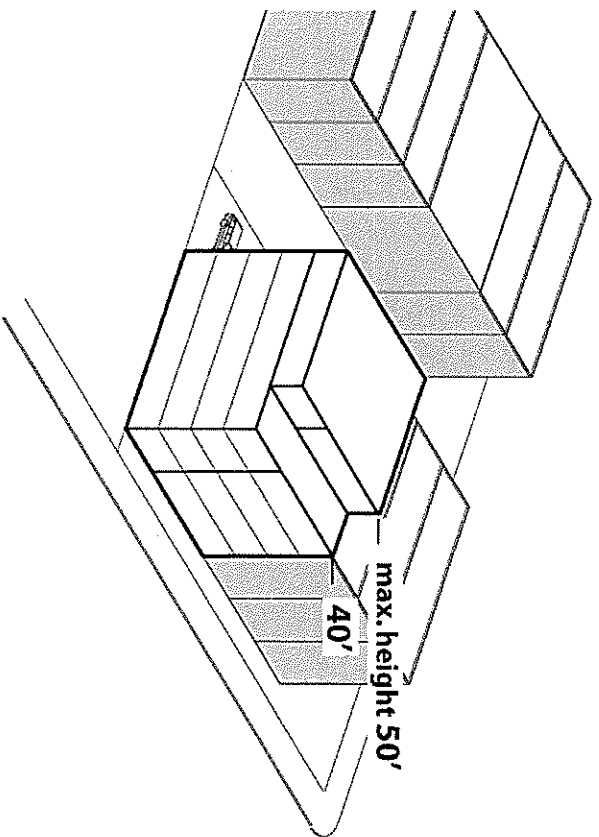
Proposed Zoning Districts	Existing Zoning Districts
	<p>R6 Height Factor: Available everywhere</p>  <p>130' or higher max FAR: 2.43</p>
<p>R6B Proposed for Narrow Streets</p>  <p>max height 55' 45° max FAR: 2.2</p>	<p>R6 Quality Housing: Available on Narrow Streets</p>  <p>max height 50' 40° max FAR: 2.0</p>
<p>R6A Proposed for Wide Streets</p>  <p>max height 70' 60° streetwall 40° max FAR: 3.0</p>	<p>R6 Quality Housing: Available on Wide Streets</p>  <p>max height 70' 60° streetwall 40° max FAR: 3.0</p>
<p>R7A Proposed for Wide Streets Near Transit</p>  <p>max height 80' 66° streetwall 40° With Inclusionary Base FAR: 3.45 Bonus FAR: 4.6</p>	

Zoning Proposal

R6 to R6B

Preserve row house character with height limits—4 stories setting back to a maximum of 5 stories

max FAR: 2.2

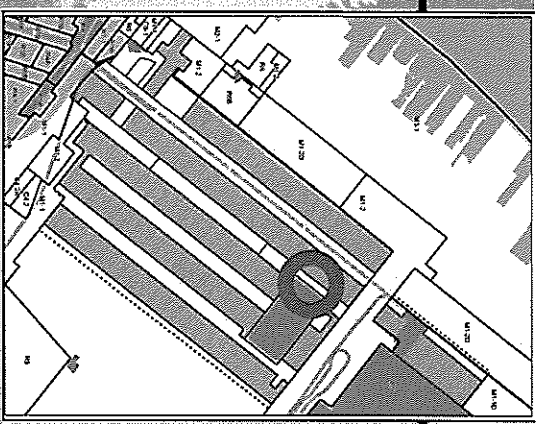


62nd St between 5th and 6th Ave.

Zoning Proposal

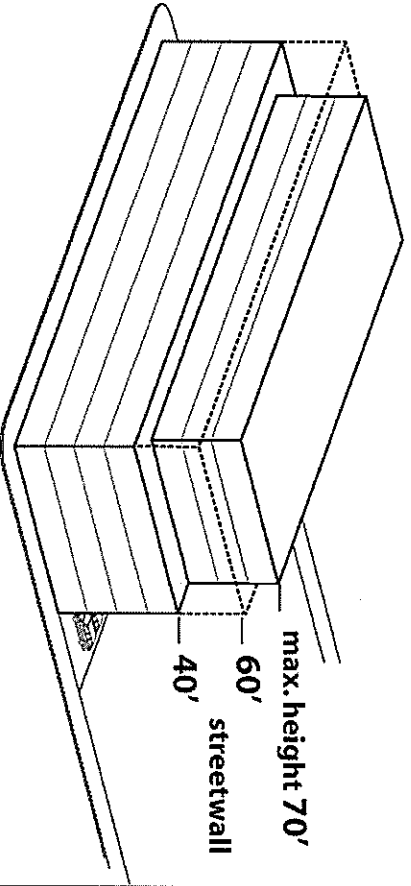
R6 to R6A

Preserve row house character with height limits—4 stories setting back to a maximum of 5 stories



max FAR: 3.0

R6A DISTRICTS
C4-3A DISTRICTS

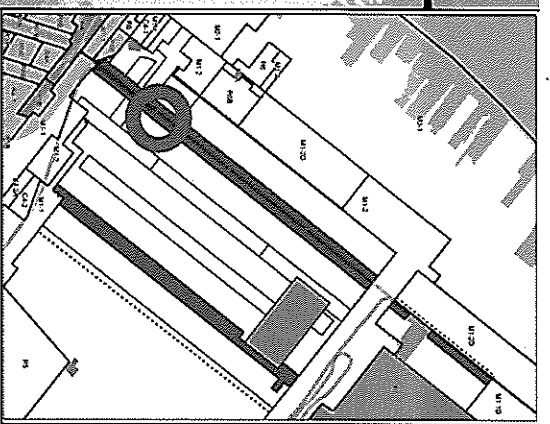


Fifth Avenue at 42nd Street

Zoning Proposal

R6 to R7A

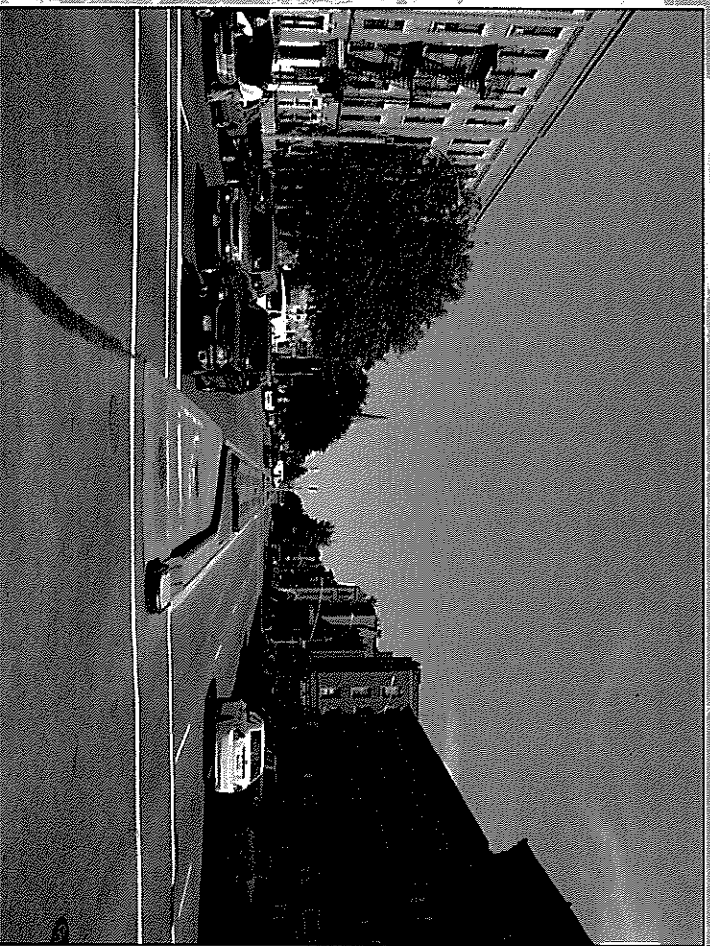
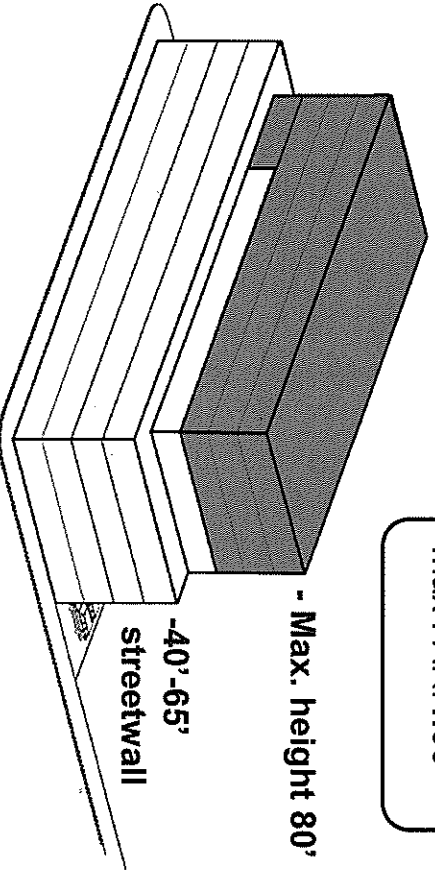
Modestly increase density with incentives for affordable housing in new developments along 4th and 7th Avenues:



base FAR:3.45
max FAR:4.60

- Max. height 80'

-40'-65'
streetwall

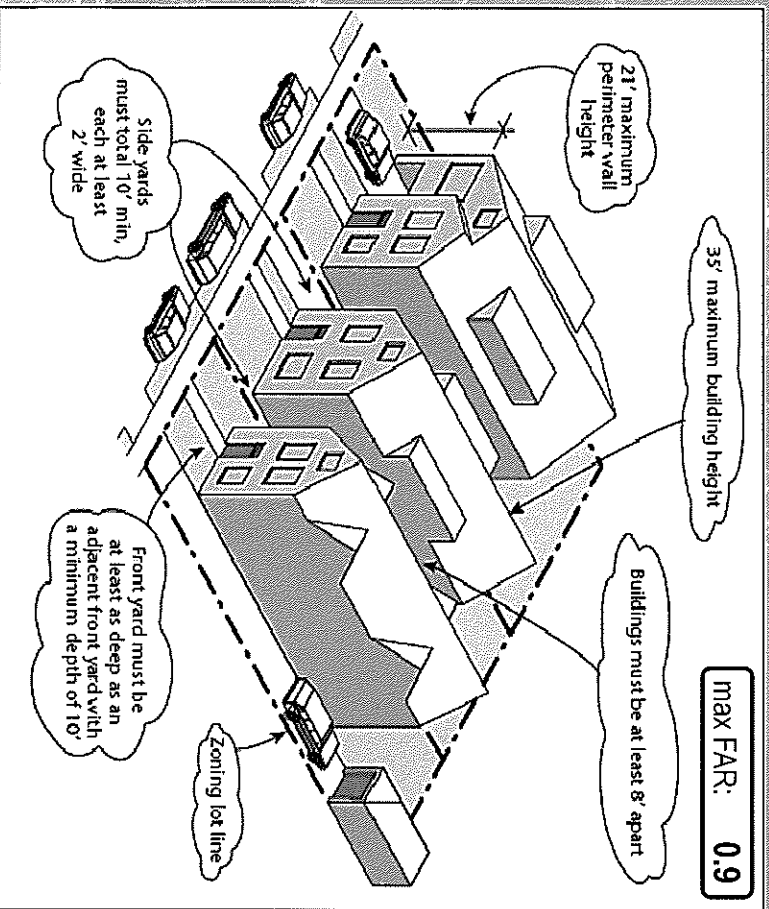
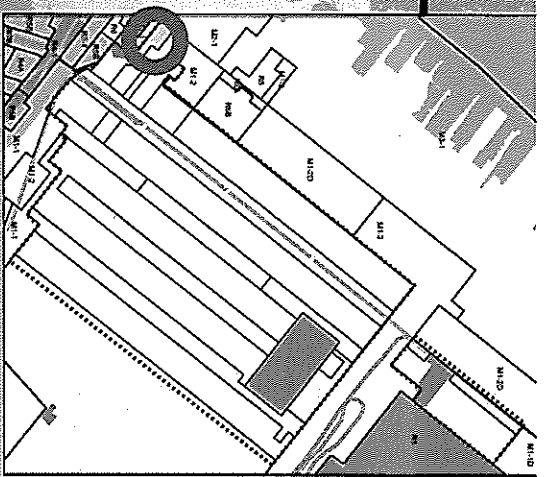


4th Avenue at 59th Street

Zoning Proposal

R6 to R4A

Permits one- and two-family detached residences

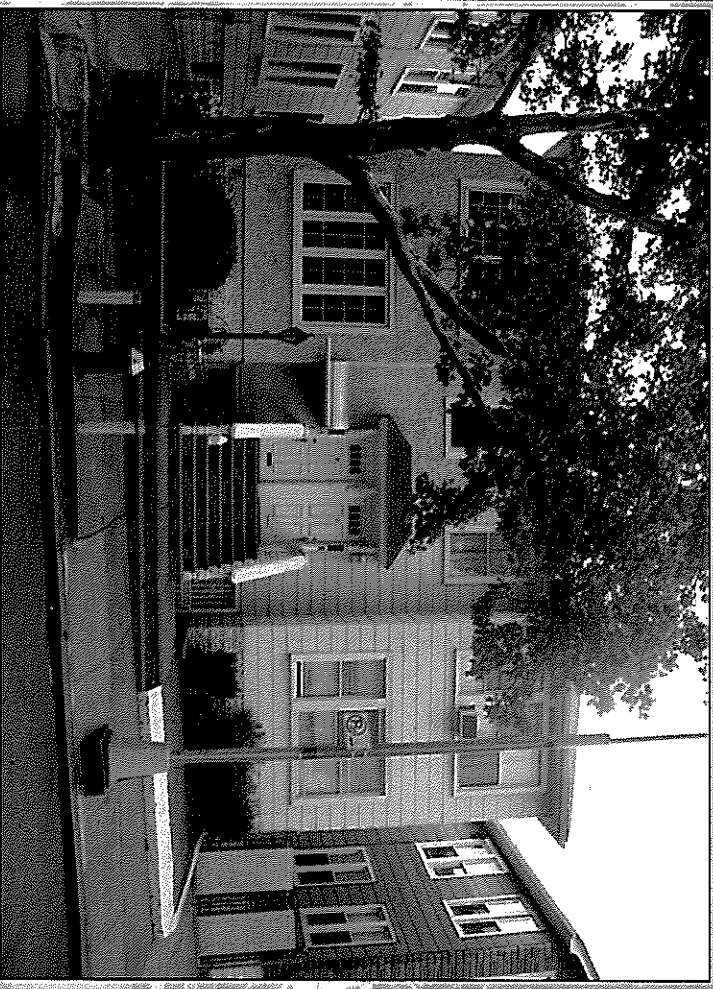
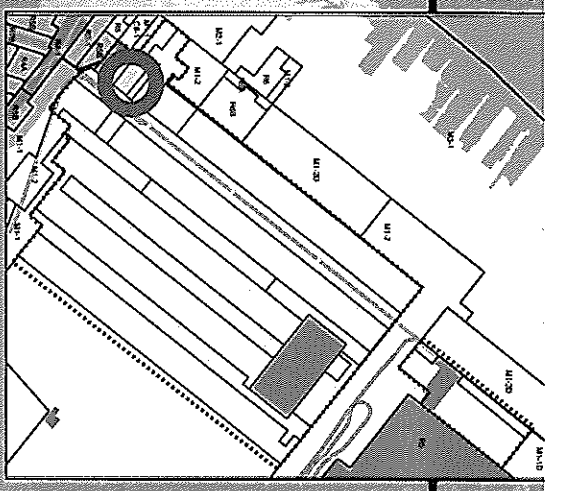
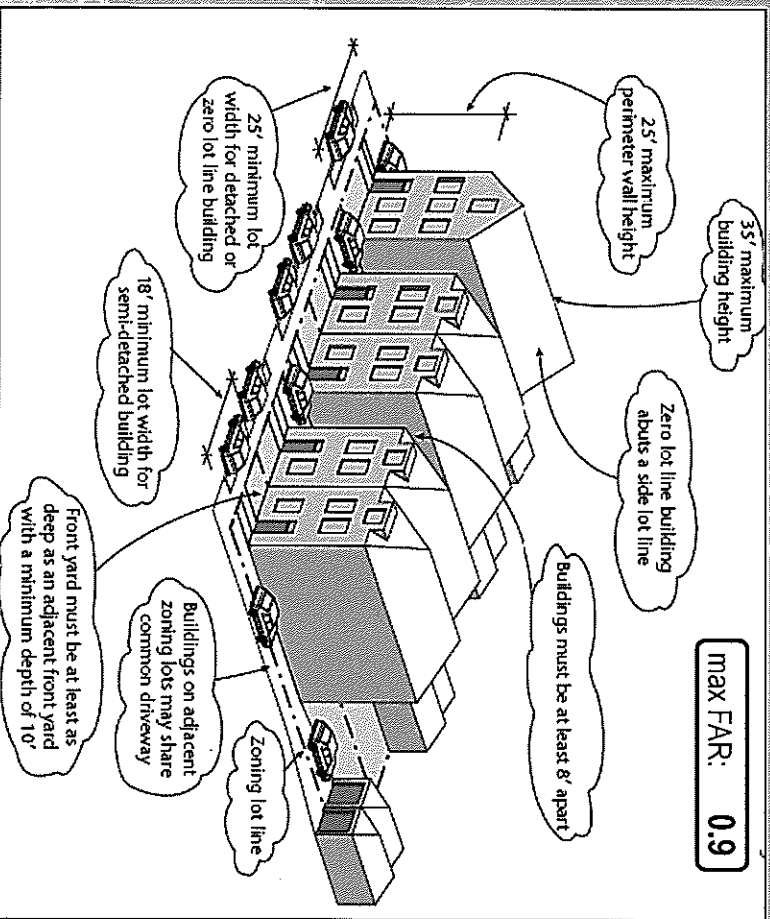


62nd St between 2nd & 3rd Avenues

Zoning Proposal

R6 to R4-1

Permits 1- and 2-family detached and semi-detached residences



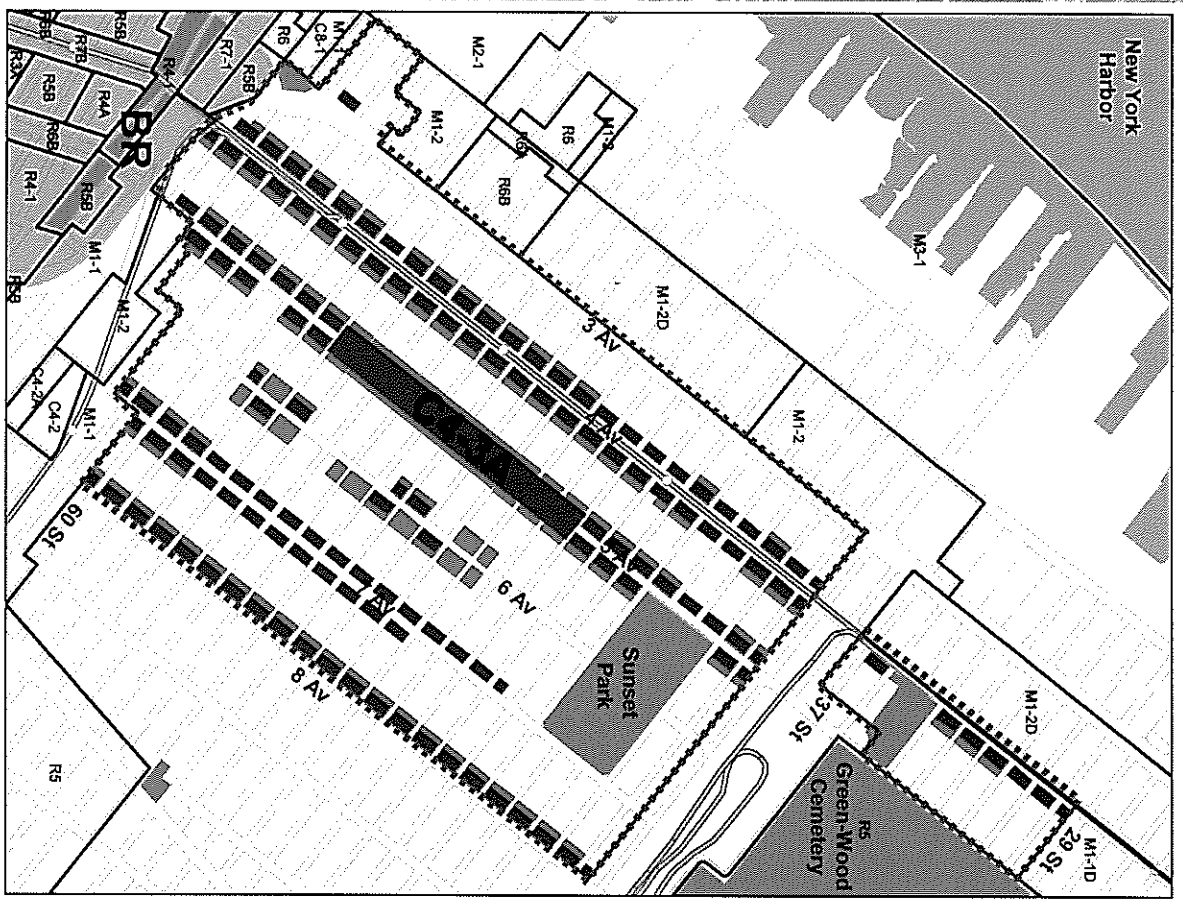
62nd St between 3rd & 4th Avenues

Zoning Proposal

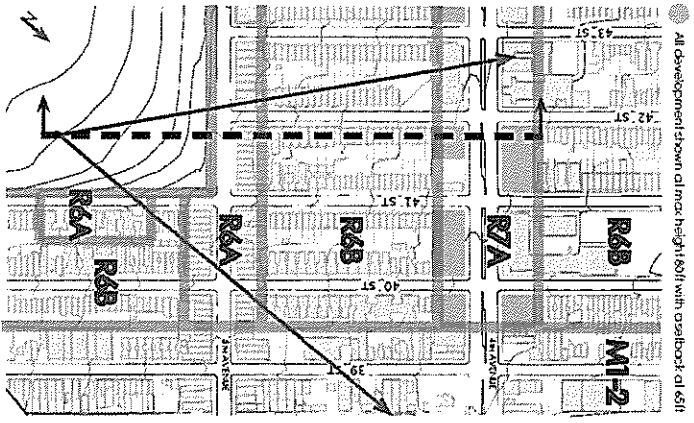
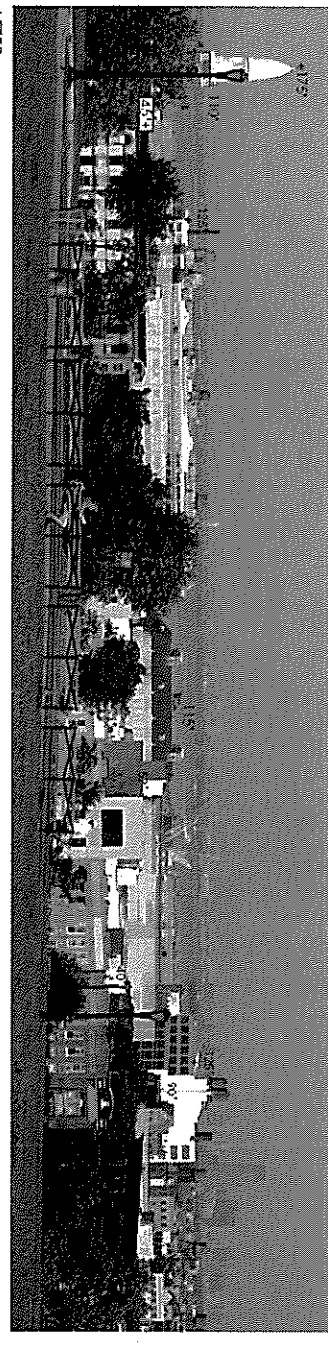
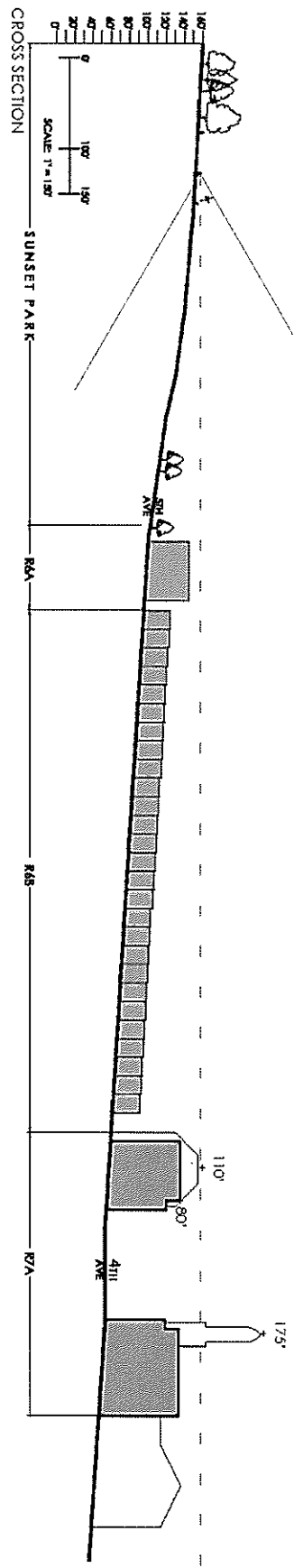
Commercial Districts

Existing commercial districts to be trimmed or removed

Proposed C2-4 commercial overlays and C4-3A commercial district



Views from Sunset Park



INTEGRAL PLANNING
 CONSULTANTS
 BROOKLYN OFFICE

SUNSET PARK: LOOKING EAST ACROSS PARK
 JULY 2009

Views from Sunset Park

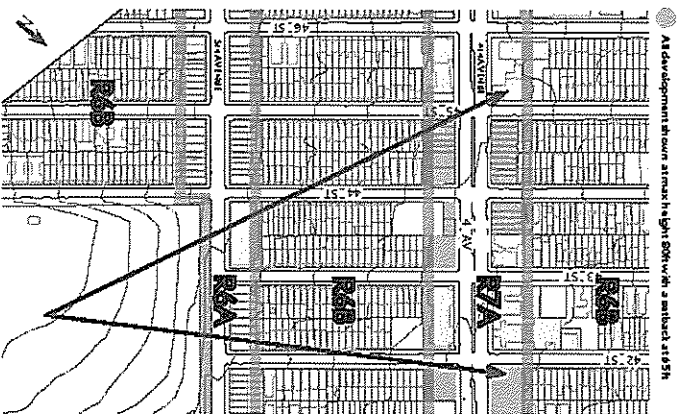


BEFORE



AFTER

URBAN PLANNING
BROOKLYN OFFICE



SUNSET PARK, VIEWS ACROSS PARK
JULY 2009

Committee to Protect Sunset Park

Sunset Park Alliance of Neighbors • Chinese Staff and Workers Association
Asian American Legal Defense and Education Fund
c/o 5411 7th Avenue
Brooklyn, NY 11220
(718) 633-9748

September 13, 2009

Dear Councilmember,

We are writing on behalf of the Committee to Protect Sunset Park, a coalition of community organizations, legal advocacy groups, faith-based groups, and small businesses. We urge you to vote against the passage of the Sunset Park rezoning plan, which if passed will make Sunset Park more vulnerable to luxury development and displace the predominantly low income Latino and Chinese communities. The plan will upzone the avenues, significantly impacting 4th and 7th Avenues, which will encourage developers to demolish current buildings for luxury development. The plan also expands the types of commercial businesses that can be developed in the neighborhood, allowing for more national chain stores that will hurt small businesses and spur displacement.

In addition, the Department of City Planning (DCP) has failed to fully disclose the impact the Sunset Park rezoning plan will have on the community, particularly the socioeconomic impact of the plan, by not producing an Environmental Impact Study (EIS). By not conducting an EIS, the City is violating state and city environmental laws by not taking a hard look at the impact the plan will have on the Sunset Park community. As a result, many members of our coalition filed a lawsuit in New York Supreme Court against the Department of City Planning for violating environmental laws.

While the City is supposed to ensure that all community members have a public voice in the development of their community, the democratic process has been dismissed consistently. Despite the overwhelming majority of residents and community members who spoke out in the public hearings against the plan, including the Community Board 7, Brooklyn Borough President, and DCP hearings, public opinion has been disregarded at every level. According to a memo from the Brooklyn Borough President's Office, more than 81% of community members spoke out against the Sunset Park rezoning at the Brooklyn Borough President's hearing. In addition, about 4,000 Sunset Park residents, small businesses, and community members have signed petitions against this plan.

The Sunset Park rezoning plan comes on the heels of other rezonings under the Bloomberg Administration that have been destructive for many low income communities of color, including the recent Lower East Side rezoning that has displaced many residents and small businesses. We urge you to take a stand with the many Sunset Park residents, community members, and small businesses and vote against the passage of this plan, which will devastate the community and cause mass displacement of the low income communities of color. Instead, work with us to ensure the full participation of all of us living and working in Sunset Park in planning the future of our community. Enclosed, please find more information and a copy of the lawsuit. As community members concerned about what is happening in Sunset Park, we look forward to meeting with you to discuss further our concerns. If you have any questions, please contact us at (646) 642-9501.

Sincerely,

Johnny Trelles
Sunset Park Alliance of Neighbors

Wendy Cheung
Chinese Staff and Workers Association

Summary of Sunset Park Rezoning Lawsuit

DCP's Proposal to Rezone 128 Blocks in Sunset Park

- *Upzoning Residential Buildings:* Upzoning (increasing permitted building floor area) Fourth and Seventh Avenues from R6 to R7A and Fifth and Sixth Avenues from R6 to R6A allows more opportunities for market-rate development – thereby increasing rental prices and accelerating displacement of low-income tenants.
- *Expanding Commercial Zoning:* Increasing the number of blocks with commercial zoning and expanding the type of commercial uses allows will bring more large chain stores to the neighborhood and indirectly displace low-income tenants and small businesses.

Commercial zoning changes include:

- A new “regional shopping destination” along Fifth Avenue: Currently, six blocks are zoned C4-3 and allow larger, national chains like Payless Shoe Source. DCP proposes to change these blocks to C4-3A and expand this zoning by four more blocks.
- New commercial overlay along Seventh Avenue: Currently, Seventh Avenue is only residentially zoned. The rezoning introduces a commercial overlay that expands existing commercial uses.

The Environmental Assessment Statement Violates State and City Environmental Laws

- DCP concluded that the rezoning does not result in a significant impact, thereby evading the need for an Environmental Impact Statement.
- DCP uses 200 additional residential units as the threshold for significant impact. DCP concludes that the rezoning will result in only 27 development sites, equaling 75 additional units. DCP is incorrect for the following reasons:
 - DCP relied on an error of law in failing to include buildings with six or more units. Whereas DCP states that rent stabilized buildings are unlikely to be demolished due to tenant relocation requirements, the law in fact states that owners of these buildings do not have to relocate tenant but can simply pay them a stipend – making demolition a cost-benefit analysis.
 - DCP arbitrarily limited soft sites to those that are 5,000 square feet or more when the average size of lots in Sunset Park is half that size.
- DCP therefore missed an additional 89 soft sites resulting in a total of 217 additional residential units – well above DCP's threshold for finding significant impact.
 - DCP's undercount of development sites in the comparable South Park Slope rezoning is indicative of its underestimation in Sunset Park. Using the same limiting criteria in South Park Slope, DCP estimated the rezoning would result in 10 additional development sites in 10 years along Fourth Avenue. In the 4 years since the rezoning, Department of Building records show that Fourth Avenue has 24 additional development sites – double the amount in less than half the time.
- Despite the significant changes in commercial zoning and even introducing plans to create a “regional shopping destination” on Fifth Avenue, DCP does not consider the impact of these changes.
- Using the 200 unit threshold as an excuse, DCP fails to consider the rezoning's impact on socioeconomic conditions or neighborhood character.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK IAS PART

-----X
In the Matter of the Application of

CHINESE STAFF AND WORKERS' ASSOCIATION,
CHURCH OF GOD OF BROOKLYN,
FOURTH AVENUE UNITED METHODIST CHURCH,
IGLESIA CRISTIANA LUZ DEL MUNDO, INC.,
IGLESIA PENTECOSTAL FUENTE DIVINA, IGLESIA
PENTECOSTAL DE JESUCRISTO FE TRIUMFANTE,
HUGO PANIAGUA, and JOHNNY TRELLES,

INDEX NO.

Petitioners,

For Judgment Pursuant to Article 78
of the Civil Practice Law & Rules,

-against-

AMANDA M. BURDEN, as Director of the
New York City Department of City Planning,
and the NEW YORK CITY DEPARTMENT
OF CITY PLANNING,

Respondents.
-----X

PETITIONERS' MEMORANDUM OF LAW

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PRELIMINARY STATEMENT

In this Article 78 proceeding, Petitioners seek an order: (1) enjoining the New York City Department of City Planning (“DCP”) from taking any further action on the proposed rezoning of Sunset Park until it prepares an Environment Impact Statement (“EIS”); and (2) declaring the DCP’s Environmental Assessment Statement (“EAS”) null and void. Petitioners are organizations with members who live and work in Sunset Park and individuals who also live in the plan area.

Sunset Park is an ethnically diverse and predominantly residential community in south Brooklyn comprised of low- and middle-income residents, many of whom are immigrants. Sunset Park boasts a thriving Chinatown, a bustling commercial corridor on Fifth Avenue with many locally-owned businesses, low- to mid-rise row houses and apartment buildings, a growing Hispanic population, and a 24-acre park after which the neighborhood takes its name. In recent years, Sunset Park has attracted new luxury development that is unaffordable for the vast majority of neighborhood residents. As such, already some long-time residents have been priced out of Sunset Park.

In 2007, DCP announced its plan to rezone Sunset Park. In October and November of 2007, Community Board 7 and Councilmember Sara Gonzalez held meetings concerning the City’s plan to rezone the neighborhood. Later, DCP convened meetings with “community stakeholders,” but did not invite Petitioners to the meetings. On April 17, 2009, DCP certified an EAS that found the proposed rezoning would have no negative impact on the environment. The rezoning plan is currently under review with the City Planning Commission.

DCP touts the proposed rezoning as a protectionist measure that will preserve views of the Manhattan skyline, the row house character of the neighborhood, and add contextual zoning

districts where none exist. In fact, the plan is far from protectionist and instead encourages even more new development in the area. The plan increases the allowable Floor Area Ratio ("FAR") on Fourth, Fifth, Sixth, Seventh and Eighth Avenues; imposes a commercial overlay on Fourth and Seventh Avenues that will radically change the character of those avenues and displace local businesses; and expands the permitted commercial uses on several blocks of Fifth Avenue. DCP did not properly consider the impact this rezoning will have on land use, housing, commerce, neighborhood character, or the livelihoods of the unique residents of Sunset Park. DCP shirked its obligation to take a hard look at these impacts under the State Environmental Quality Review Act ("SEQRA") and the City Environmental Quality Review ("CEQR") and issued a negative declaration without preparing an EIS. Accordingly, this Court should enjoin the Respondents from proceeding with the proposed rezoning until it complies with the law.

STATEMENT OF FACTS

For a comprehensive statement of the facts, including the procedural history of the proposed rezoning, the Court is respectfully referred to the Order to Show Cause, attorney affirmation submitted in support of Petitioners' motion, and verified petition. Following is a summary of the proposed rezoning plan and the methodologies DCP used to prepare its EAS.

The proposed rezoning plan for Sunset Park seeks to amend the zoning map such that the side streets and avenues would receive new zoning designations.¹ The avenues would be upzoned (in other words, the maximum allowable Floor Area Ratio ("FAR") would increase) from R6 to R7A on Fourth and Seventh Avenues, and from R6 to R6A on Fifth and Sixth

¹ For the purposes of the instant petition, the zoning map amendments to the side streets are less environmentally significant than those to the avenues.

Avenues.² Practically, this upzoning would mean that lots that are currently unattractive to developers because they contain buildings that take up most of the existing allowable FAR would become attractive to developers because new buildings on those lots could be constructed to be much larger. In addition to this residential upzoning, the plan would place new commercial zoning overlays and zoning on the avenues. Seventh Avenue, which does not have any commercial overlay, would receive a C2-4 overlay. A commercial overlay permits commercial districts within residential areas and are governed by the residential districts within which they are mapped. Multiple blocks on Third, Fourth, Fifth, Sixth and Eighth Avenues that have either a C1 commercial overlay or no overlay at all would change to C2-4 overlay. Furthermore, Fifth Avenue's C4-3 commercial zoning, which currently exists on six blocks, would be expanded to four additional blocks.

In the EAS, DCP was required to determine whether the proposed plan may have a negative affect on the environment. To arrive at this determination, DCP decided to employ a numerical threshold test: If it determined that the rezoning would yield a projected net increase of less than 200 residential units, it would issue a negative declaration without considering other factors, such as socioeconomic impacts and impacts on neighborhood character.³ Presumably, if it determined that the net increase in residential units was 200 or more, it would do some analysis of these other factors.

To calculate the projected increase in residential units, DCP predicted a "Future-with-Action" development scenario by identifying lots it determined were susceptible to development

² For an explanation of the Floor Area Ratio permitted under these zoning designations, see the Angotti Affidavit, attached as Exhibit A to the verified petition.

³ Although the EAS is silent as to why it chose 200 units as the threshold, upon information and belief this number comes from DCP's standard methodology for calculating residential units. See Angotti Affidavit at ¶ 16 n.1, 2 (describing the methodology).

under the proposed plan, or “soft sites.” See EAS at 9.⁴ Rather than completing a comprehensive survey of all lots susceptible to development, DCP’s analysis applied several limiting criteria to eliminate from consideration *ex ante* certain lots in the study area. For example, DCP did not take any look at the development potential of lots that, individually or assembled, had an area of under 5,000 square feet. See id. In addition, DCP did not take any look at churches or public or private schools. See id. Finally, DCP did not take any look at whether buildings with six or more residential units were likely to be developed. See id. DCP reasoned as follows: “These buildings are likely to be rent-stabilized and difficult to legally demolish due to tenant relocation requirements.” Id.

Using the limiting criteria, DCP identified eight lots that were likely to be developed under the proposed rezoning and 19 sites that had the potential for redevelopment. See id. at 9-23. It calculated that these lots, if developed, would yield a net increase of 75 residential units. See id. at 28. As this number was below DCP’s threshold of 200 units, DCP did not analyze the potential socioeconomic effects of the plan or the impact it would have on neighborhood character. Nor did DCP analyze the effect the commercial zoning changes would have on the study area. Foregoing these analyses, DCP concluded that the proposed plan would not have a negative environmental impact and, therefore, an EIS was unnecessary.

LEGAL FRAMEWORK

The State Environmental Quality Review Act (“SEQRA”) requires agencies New York State to incorporate social, economic and environmental factors into their planning processes. See 6 NYCRR § 617.1(d). Specifically, an agency proposing a particular action must determine

⁴ Relevant portions of the EAS are attached to this memorandum as Appendix 1. Upon the Court’s request, Petitioners will provide the Court with a complete copy of the EAS.

whether that action “may have a significant effect on the environment.”⁵ 6 NYCRR § 617.7(b)(3). To accomplish this, the agency must prepare an Environmental Assessment Statement (“EAS”). The EAS is a compilation of the methodology and analysis used by the agency in reaching its conclusion. The process of preparing an EAS is set forth in SEQRA regulations, 6 NYCRR § 617.7, and by New York City’s implementation of SEQRA in CEQR and the CEQR Technical Manual (hereinafter “CEQR TM”).⁶

If the EAS reveals, after thorough analysis, that the environmental impact of the proposed action is not significant, the agency issues a negative declaration. If, on the other hand, the EAS reveals that the plan “may include the potential for at least one significant adverse impact,” the agency is required to prepare an Environmental Impact Statement (“EIS”).⁷ 6 NYCRR § 617.7(a)(1). In “Type 1” actions, like the instant one, there is a presumption that an EIS is necessary to comply with SEQRA.⁸ See Defreestville Area Neighbors Ass’n, Inc. v. Town. Bd. of Town of North Greenbush, 299 A.D.2d 631, 633 (3d Dep’t 2002). An EIS is also required under CEQR if displacement may be significant. “The threshold at which the requirement that an EIS be prepared is triggered is relatively low: it need only be demonstrated that the action

⁵ The “environment” is defined as “physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.” 6 NYCRR § 617.2(l).

⁶ An electronic version of the CEQR Technical Manual is available at <http://www.nyc.gov/html/oec/html/ceqr/ceqrpublish.shtml>. The text of CEQR can be found in the Appendices to the CEQR Technical Manual.

⁷ An EIS is a document that “provides a means for agencies, project sponsors and the public to systematically consider significant adverse environmental impacts, alternatives and mitigation,” and that “facilitates the weighing of social, economic and environmental factors early in the planning and decision-making process.” 6 NYCRR § 617(2)(n).

⁸ SEQRA specifies that “Type 1” actions include, *inter alia*, “adoption[s] of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district.” 6 NYCRR § 617.4(b)(2). The EAS acknowledges that the rezoning plan is a “Type 1” action. EAS at 2.

may have a significant effect on the environment.” Chinese Staff and Workers Association v. City of New York, 68 N.Y.2d 359, 364-65 (1986).

Though the EAS is a predicate for determining whether a full-scale EIS is needed, agencies may not rely on a cursory examination of the proposed environmental impacts in preparing the EAS. Rather, agencies must take a “hard look” at the “same areas of environmental impacts as would be contained in an EIS, including both the short-term and long-term effects as well as the primary and secondary effects of an action on the environment.” Id. at 363, 364 (internal citations and footnote omitted); see also Matter of Spitzer v. Farrell, 294 A.D.2d 257, 258, 742 N.Y.S.2d 285 (2002).

CEQR requires that an EAS predict a range of development scenarios that could result from the proposed plan and use the “reasonable worst-case scenario” for purposes of analysis. CEQR TM, ch. 2, at 2-2. “Although the reasonable worst-case scenario is often hypothetical, it must have enough detail to allow analysis [and] must discuss the buildings that could be built on the site in terms of their square footage, use, height, and bulk, and . . . provide more information if needed for any one technical area.” Id. at 2-3. The EAS “cannot simply dismiss the likelihood of expected impacts occurring without providing reasoning.” Id. at 2-7.

CEQR requires that an agency proposing an action that will affect zoning map or text changes prepare a detailed assessment of land use. See CEQR TM, ch. 3, at 3A-5. This land use assessment should “determine the level of detail and types of information appropriate for the assessment; survey the area; check the survey data against available maps and other sources; characterize existing land use patterns and trends in the area; estimate future land use conditions without the action; and assess future conditions with the action.” Id. at 3A-7. “Surveys of the

land uses in the study area are performed through field visits. These can be made on foot or in a vehicle, depending on the size of the area and the level of detail required.” Id. at 3A-9.

CEQR is clear that an agency must perform a detailed analysis of socioeconomic impacts when preparing an EAS if it determines, after a preliminary assessment, the action is “reasonably expected to create substantial socioeconomic changes within the area affected by the action that would not be expected to occur absent the action.” CEQR TM, ch. 3, at 3B-2. In its preliminary assessment, the lead agency must assess, inter alia: (1) the socioeconomic profile of those residents who would be displaced [under the proposed plan] and compare it to the profile of the affected area,” id. at 3B-4; (2) the type and extent of business and workers to be directly displaced by [the] action,” id.; (3) the possibility of indirect displacement of the residential population, see id. at 3B-5; and (4) the possibility of indirect displacement of businesses and institutions, see id. at 3B-6. In addition, the lead agency must assess the impact the proposed action will have on neighborhood character if the proposed action will change, inter alia, the area’s land use patterns, urban design, or socioeconomic conditions. See CEQR TM at ch. 3.

Under SEQRA and CEQR, it is not enough for an agency to consider only the potential impacts a project may have on the physical environment. “[T]he impact that a project may have on population patterns or existing community character, with or without a separate impact on the physical environment, is a relevant concern in an environmental analysis” and must be considered by the lead agency when preparing an EAS. Chinese Staff and Workers Ass’n, 68 N.Y.2d at 366 (internal footnote omitted).

ARGUMENT

On review of the Department of City Planning's negative declaration, this Court considers "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." C.P.L.R. § 7803(3); see also Chinese Staff and Workers Ass'n, 68 N.Y.2d at 363. With respect to the claims under SEQRA, the Court must decide "whether [DCP] identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for [its] determination." Id. at 363-64 (citing Matter of Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400, 417 (1986)). Here, DCP's analysis fails to meet the "hard look" test, contains no elaboration of the criteria used to make its determination, contains insufficient reasoning supporting its conclusion, and relies on an error of law. Accordingly, the Court should enjoin Respondents from implementing the proposed rezoning and declare that the EAS is null and void.

I. A PRELIMINARY INJUNCTION SHOULD ISSUE STAYING THE IMPLEMENTATION OF THE PROPOSED REZONING

To obtain a preliminary injunction to stay the actions of an administrative agency, the Petitioner must show that it has a likelihood of prevailing in the proceeding, that it will be irreparably harmed if the stay is not granted, and that the balance of the equities favors a stay. See L. J. Coppola, Inc. v. Park Mechanical Corp., 131 A.D.2d 641, 516 N.Y.S.2d 722 (2d Dep't 1987). Petitioners satisfy all of the above criteria and Respondents should thus be prohibited from proceeding with the proposed rezoning until this case is resolved.

1. Petitioners Have a Strong Likelihood of Success on the Merits of this Proceeding.

In order to justify injunctive relief, the Petitioners need not establish a certainty of success on their claims, but need only make a prima facie showing of their likelihood of success.

See McLaughlin, Piven, Vogel Inc. v. W.J. Nolan & Co., 114 A.D.2d 165, 498 N.Y.S.2d 146 (2d Dep't 1986); Tucker v. Toia, 54 A.D.2d 322, 388 N.Y.S.2d 475 (4th Dep't 1976). For the reasons discussed in Section II and III, *infra*, the Petitioners have established a strong likelihood of success on the merits.

2. Petitioners Will Suffer Irreparable Injury if A Preliminary Injunction is Not Issued.

If a stay is not granted, DCP may implement the proposed rezoning, resulting in a massive amendment to the zoning map and creating the opportunity for developers to buy lots and proceed with demolition and construction. As discussed in Section III, *infra*, the development resulting from the rezoning will displace residents and small businesses, thereby changing the character of the neighborhood. The environmental impact that results from the rezoning, including demolition and subsequent displacement, cannot be reversed. See Amoco Production Co. v. Village of Gambell, 480 U.S. 531, 544 (1987) ("Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable."). The neighborhood would therefore be permanently changed and Petitioners, who live and work or have members who live and work in the neighborhood, would suffer irreparably injury.

3. A Balancing of the Equities Tips Decidedly in Favor of Petitioners.

The harm that Petitioners and their community will suffer if the proposed rezoning is implemented without sufficiently identifying the environmental impact on the neighborhood outweighs any possible harm to Respondents resulting from a stay. Respondents would suffer no harm were the rezoning delayed until they conducted an adequate review of its environmental impact. The current zoning scheme in Sunset Park has remained unchanged for years. On the

other hand, if the rezoning goes forward without first requiring an adequate environmental review of the impacts, new development promoted by the rezoning would result in displacement that cannot otherwise be stopped. The potential harm to the environment, which includes displacement of residents and small businesses, tips the balance of equities decidedly in Petitioners' favor.

II. DCP'S NEGATIVE DECLARATION WAS AFFECTED BY AN ERROR OF LAW

In its calculation of lots susceptible to development, DCP did not take any look at lots containing buildings with six or more residential units because, according to DCP, "[t]hese buildings are likely to be rent-stabilized and difficult to legally demolish due to tenant relocation requirements." EAS at 9.

DCP's reasoning was based on an error of law. Sections 2524.4 and 2524.5 of the Rent Stabilization Code set forth the grounds on which landlords may refuse to renew leases of rent-stabilized tenants. A landlord may demolish a rent-stabilized building with permission of the state Division of Housing and Community Renewal ("DHCR"). See 9 NYCRR § 2524.5(a)(2). To obtain the DHCR's permission to demolish a building, the landlord must show that it has the financial ability to undertake the demolition and that the appropriate city agency has approved the demolition. See id. If the DHCR approves a demolition, the landlord must either relocate displaced tenants to suitable housing accommodations or provide tenants with a stipend in consideration for moving. See 9 NYCRR § 2524.5(a)(2)(ii). Contrary to DCP's statement on the law, the Rent Stabilization Code does not require landlords to relocate rent-stabilized tenants when they seek to demolish a building; rather, under the stipend option, demolition becomes a cost-benefit analysis for the landlord. If the landlord anticipates a profit for demolishing a rent-stabilized building in excess of the stipend amount owed to each tenant, the landlord will

demolish the building. Thus, demolition is not difficult and can be encouraged by plans like the proposed rezoning that promote development and provide an incentive for owners to build larger buildings on their lots. As DCP's analysis regarding rent-stabilized buildings was based on legal error, this Court should enjoin Respondents from enacting the proposed rezoning and declare it null and void.⁹ See C.P.L.R. § 7803(3).

III. DCP'S NEGATIVE DECLARATION WAS ARBITRARY, CAPRICIOUS, AND AN ABUSE OF DISCRETION

In the EAS, DCP concluded that the proposed rezoning would have no adverse effect on the environment and thus an EIS was unnecessary. In reaching this conclusion, DCP failed to take a hard look at the reasonable worst case development scenario under the plan. DCP conducted an incomplete and flawed analysis of potential development sites that relied on arbitrary criteria, devoted virtually no discussion to significant commercial zoning changes, and fell far short of CEQR's requirements. A proper EAS would have concluded that the proposed rezoning "may have a significant effect on the environment," thus requiring an EIS. Chinese Staff and Workers Ass'n, 68 N.Y.2d at 364-65.

A. DCP Failed to Take a Hard Look at Developable Lots, thus Undercounting the Projected Net Increase in Residential Units.

CEQR defines developable lots, or "soft sites," as "properties that are underbuilt with respect to their zoning in areas where development demand is high." CEQR TM ch. 2, at 2-6. DCP is charged with predicting the "numeric increment the project would add to the no action condition" by estimating development that can reasonably be expected to occur within the

⁹ DCP's legal error was not harmless. By totally eliminating from its analysis buildings with six or more residential units, DCP failed to identify nine rent-stabilized buildings that would be developed under the proposed plan, see Angotti Affidavit at ¶ 20, and failed to consider the socioeconomic impact the loss of these affordable buildings will have on the neighborhood.

project's time frame, given the study area's development trends, population, market conditions and other qualitative factors. Id. at 2-7. To count the number of soft sites here, DCP sorted lots potentially subject to development by using an electronic database, including as soft sites only lots that met the following criteria:

- Lots located in areas where an increase in permitted Floor Area Ratio (FAR) is proposed;
- Lots constructed to half or less than the permitted FAR under the proposed zoning;
- Individual, assembled, or partially assembled lots of 5,000 square feet or larger.

EAS at 9. DCP did not explain why it used these selection criteria.

Not only was DCP's electronic analysis severely and inappropriately limited by these criteria but, upon information and belief, there was no field survey done of the rezoning area.¹⁰ CEQR requires that the agency preparing a CEQR land use assessment survey the area and "check the survey data against available maps and other sources." See CEQR TM, ch. 3, at 3A-7. The Technical Manual provides: "Surveys of the land uses in the study area are performed through field visits. These can be made on foot or in a vehicle, depending on the size of the area and the level of detail required." Id. at 3A-9. The analyst performing the field study should survey every street and every block of the area and "note the uses in the area." Id. When there is some doubt as to the use, the analyst should "look for visible signs, such as smoke being emitted from a stack, or mailboxes or buzzers with tenants' names, curtains in windows, etc." Id. The information gathered in the field study "can be compared to available data sources to fill in missing details and verify questionable material." Id.

¹⁰ The EAS does not mention any field survey or contain notes taken during any field survey. Moreover, DCP responded to a FOIL request for a "Lot-by-lot analysis worksheet for the Sunset Park Rezoning Environmental Assessment Statement . . . analyz[ing] existing FAR and proposed FAR for the Sunset Park Rezoning" by providing a spreadsheet of data gathered from electronic data sources.

Any careful lot-by-lot analysis completed after a field survey would have revealed that the proposed rezoning will drastically affect the land use patterns in the study area. Had DCP taken a hard look at the rezoning area, as required by law, it would have identified an additional 89 additional projected and potential development sites, leading to a net increase in residential units greater than its 200-unit threshold. See Angotti Affidavit at ¶ 16.

1. The 5,000 Square-Foot Cut-Off is Arbitrary and Unexplained

DCP provided no reasoning for its decision to eliminate from its electronic analysis all lots under 5,000 square feet. Nowhere does the CEQR Manual instruct that the agency may ignore lots under 5,000 square feet; rather, the Manual contains a broad definition of “soft sites” with the potential for development. It provides: “Some general indicators of soft sites are sites that are developed to less than 50 percent of their permitted floor area, houses of worship, vacant land, parking lots, gas stations, and one- and two-story freestanding retail.” CEQR TM ch. 2, at 2-6. By eliminating lots that were less than 5,000 square feet from consideration, DCP ignored 89 sites that are likely to be developed under the proposed plan. See Angotti Affidavit at ¶ 16. Certainly, the elimination of nearly 100 developable lots from consideration fails to meet the “hard look” test. See Chinese Staff and Workers Ass’n, 68 N.Y.2d at 363; Defreestville Area Neighbors Ass’n, Inc., 299 A.D.2d at 634 (“considering only a part of a larger proposed action is disfavored and will only be allowed when the agency conducting environmental review clearly sets forth the reasons supporting segmentation and ‘demonstrate[s] that such review is clearly no less protective of the environment’” (citing 6 NYCRR § 617.3(g)(1))).

Particularly in Sunset Park, where most lots are less than 2,500 square feet, see Angotti Affidavit at ¶ 6, DCP’s use of a 5,000 square-foot cut-off was arbitrary and capricious. The EAS provided no reasoning for the 5,000 square-foot cut-off and failed to explain why such a criterion

was reasonable for the subject area. CEQR requires that the reviewing agency provide reasoning before “dismiss[ing] the likelihood of expected impacts.” CEQR TM at ch. 2, at 2-7; see also id. at 3A-7 (the land use assessment should “characterize existing land use patterns and trends in the area”). DCP failed to consider the existing land use patterns and trends when it invented a 5,000 square foot cut-off and provided no reasoning for dismissing lots less than 5,000 square feet. Indeed, the EAS contains no discussion of Sunset Park’s average building lot size or of current development trends. Had DCP done a field survey or done any examination into neighborhood character, building bulk and current development trends, it would have discovered that lots under 5,000 square feet are being developed. See Angotti Affidavit at ¶¶ 6, 15.

2. The Failure to Consider Buildings with Six Residential Units or More was Arbitrary

DCP performed no analysis whatsoever of the development potential of residential buildings with six units or more.¹¹ Thus, it arbitrarily excluded dozens of buildings from its analysis. A review of these buildings reveals that, under the proposed rezoning, nine would be under fifty percent of permitted FAR. See Angotti Affidavit at ¶ 20. These buildings are thus likely to be developed, adding an additional 10 residential units and displacing current tenants who are likely to be low-income and relying on their regulated rents to survive. In addition, the loss of these regulated buildings is a significant socioeconomic impact that should have been discussed, at least minimally, by DCP. See CEQR TM ch. 3, at 3B-1 (“The purpose of a socioeconomic assessment is to disclose changes [to population, housing stock, or economic activities] that would be created by the action and identify whether they rise to the level of significance.”). The failure to consider buildings with six units or more as development targets

¹¹ As discussed in Section I, *supra*, DCP’s decision not to analyze these buildings was based on an error of law.

or to discuss the socioeconomic impact of the loss of rent-stabilized housing fails the “hard look” test.

3. DCP should have Counted at Least 116 Developable Lots, Resulting in a Net Increase of 217 Residential Units

Applying its unreasonable and arbitrary limiting criteria, DCP concluded only eight sites were likely to be developed under the proposed rezoning and nineteen sites had the potential for redevelopment.¹² EAS at 12-23. Because sites were arbitrarily limited *ex ante*, DCP missed 89 soft sites that will be ripe for development under the proposed rezoning. See Angotti Affidavit at ¶ 16. As Dr. Angotti explains in his affidavit, these sites are individual and contiguous lots that would be built to less than 50% of the permitted FAR under the proposed plan and thus would be attractive to developers. See id. at ¶¶ 16-19. Moreover, as Dr. Angotti explains, based on current development trends, small lots that DCP ignored are likely to be developed. See id. at ¶ 15.

Focusing on only the 27 soft sites it identified, DCP concluded that, while the proposed rezoning would yield an increase of 311 residential units, there would only be a net increase of 75 residential units compared with the “future no-action” scenario. EAS at 28. Had DCP taken a “hard look” at the development sites, as required by law, it would have found that the net increase of residential units was at least 217. See Angotti Affidavit at ¶ 16. Thus, not only did

¹² DCP distinguished “projected” development sites from “potential” development sites. According to DCP, “projected” sites were more likely to be built because they were larger sites currently built to a low density. EAS at 9. “Potential” sites were less likely to be developed in the opinion of DCP because they were owned by more than one owner, in the middle of the block and smaller. Id. DCP did not elaborate on the reasoning that led to this distinction, explain why smaller or middle-of-the-block lots are less attractive for developers, or indicate that it had surveyed the area to confirm the current development trends to affirm distinctions. Indeed, many smaller and middle-of-the block lots are currently attractive to developers, have been developed to out-of-scale buildings, and will grow increasingly attractive under the proposed plan. See Angotti Affidavit at ¶ 15.

DCP severely underestimate the number of likely developed lots, but its excuse for declining to perform any analysis of socioeconomic conditions, neighborhood character and displacement is inherently flawed.

The Sunset Park rezoning is not the first instance where DCP undercounted soft sites in an EAS. In 2005, DCP proposed, and the City Planning Commission and City Council approved, a rezoning of South Park Slope, Brooklyn. That plan, like the instant one, upzoned from R6 to R8A several blocks of Fourth Avenue where predominantly low-income Hispanics resided. DCP used the same arbitrary criteria in the South Park Slope EAS as in the Sunset Park EAS to project the amount and location of new residential development, including only looking at individual or assembled lots of 5,000 square feet or larger. In calculating the reasonable worst case scenario over a ten-year period, DCP identified only three projected development sites (sites that are more likely to be developed) and seven potential development sites (sites that are less likely to be developed because they were not assembled under single ownership, had an irregular shape, or were already developed with substantial buildings). To date, however, developers have requested permits to build new development or major alterations on 24 lots within the applicable blocks on Fourth Avenue. Thus, in only four years, the number of development sites on Fourth Avenue has already been more than double the number projected by DCP over a ten-year period. See Angotti Affidavit at ¶ 17.

B. DCP Arbitrarily and Capriciously Failed to Take a Hard Look at the Likely Impact of Commercial Zoning Changes.

Despite proposing commercial zoning changes along various avenues in Sunset Park, DCP did not assess the potential impact of these changes in a predominantly residential neighborhood. The rezoning seeks to expand the potential commercial uses over several blocks,

such as along Fifth Avenue. The rezoning also proposes changing an existing residential zone along Seventh Avenue currently lined with small bodegas and delis into a commercial overlay area with uses that significantly expand on existing uses. The EAS admits that one purpose of the rezoning is to define as a “commercial corridor” currently residential Seventh Avenue, EAS at 23, and to define Fifth Avenue as a “regional shopping destination,” EAS at 42, yet the EAS contains no analysis of these dramatic commercial changes.

DCP claims that rezoning certain areas of Sunset Park with commercial overlays or commercial zones simply brings the zoning into conformance with existing uses. However, field research conducted of the rezoned areas shows otherwise. See infra, Parts C.1 and C.2. Furthermore, even if DCP’s assertions were true, DCP must still analyze the potential impact of the zoning changes on the neighborhood. See Eggert v. Town Bd. of Town of Westfield, 217 A.D.2d 975 (4th Dep’t 1995) (agency must analyze environmental impact of zoning changes even if those changes are designed to bring nonconforming businesses into conformance).

1. Impact of Extending Commercial Zoning Along Fifth Avenue

DCP did not consider the impact of nearly doubling the C4-3 zoning area along Fifth Avenue. Fifth Avenue is currently zoned C4-3 along six blocks from 50th to 56th Streets. The rezoning seeks to change this area to C4-3a and extend the new zoning three blocks to the north and one block to the south—thereby creating a new ten-block “regional shopping destination.” EAS at 42. The four additional blocks are currently zoned residential with a C1-3 commercial overlay. Whereas C4-3 zoning permits larger businesses that serve regional markets, the C1-3 commercial overlay permits only local retail stores and services. See Department of City Planning, Use Groups Permitted in Commercial Districts, available at <http://www.nyc.gov/html/dcp/html/zone/zonetext.shtml>; Angotti Affidavit at ¶ 25. Therefore,

the uses allowed by the current and proposed commercial zoning along Fifth Avenue are significantly different.

Existing uses along these blocks illustrate the potential change that a new C4-3a extension would cause. The six blocks along Fifth Avenue currently zoned C4-3 average about four chain commercial establishments per block, with a total of 29 stores. Id. at ¶ 26. These establishments include national chains like McDonald's, Payless Shoe Source, and Foot Locker. Id. In contrast, the four blocks currently zoned as residential with only a commercial overlay average about one chain establishment per block, with a total of five stores. Id. Furthermore, the chains along these four blocks are smaller chains like a Mini Max clothing store. Id.

Although blocks along Fifth Avenue that will be rezoned C4-3a would change because of the shift in the types of stores permitted, DCP failed to take a hard look at the impact of that rezoning. The larger chain stores in the current C4-3 area attract more people and therefore have higher pedestrian and vehicular traffic and noise levels than the blocks currently zoned with only a commercial overlay. Id. at ¶ 27. The extension of the C4-3 area into the northern and southern blocks would expand the area into a "regional shopping destination" with much higher pedestrian and vehicular traffic and noise levels. DCP, however, did not examine the impact of this change. Id.

2. Impact of Expanding Commercial Uses Along Third, Fourth, Fifth, Sixth, Seventh, and Eighth Avenues

Although DCP stated in the EAS that the change from C1-3 and C2-3 commercial overlays to C2-4 commercial overlays along all the avenues would broaden the permitted commercial uses in Sunset Park, DCP failed to identify the potential impact of this change. The change from C1 to C2 overlay would lead to different types of businesses along the avenues because the C2 overlay considerably expands the permitted commercial uses. C1 zoning only

allows use groups 5 and 6 whereas C2 zoning allows use groups 5-9 and 14. See Department of City Planning, Use Groups Permitted in Commercial Districts, available at <http://www.nyc.gov/html/dcp/html/zone/zonetext.shtml>; Angotti Affidavit at ¶ 28. The new types of permitted uses would include such businesses as moving storage facilities, lumber supply, auto rental, and other businesses that would attract customers from outside of the neighborhood. Id. at ¶ 28. The number of blocks that would undergo this change is significant: one block along Third Avenue, 26 blocks along Fourth Avenue, 18 blocks along Fifth Avenue (in addition to the 10-block change to C4-3a), six blocks along Sixth Avenue, 16 blocks along Seventh Avenue, and 21 blocks along one side of Eighth Avenue. Compare EAS, Sunset Park Rezoning Figure 2, Existing Zoning with EAS, Sunset Park Rezoning Figure 3, Proposed Zoning.

The change in zoning would be particularly stark along Seventh Avenue because DCP would rezone an area that is currently zoned only residential into a C2-4 commercial overlay. DCP asserts that on avenues where no commercial overlay currently exists, the rezoning would merely bring existing commercial uses into conformance. EAS at 23. Although zoned residential, much of Seventh Avenue's existing uses include small local retail and services such as grocery stores and restaurants that would be consistent with other areas that have a C1 overlay. Angotti Affidavit ¶ 30. Therefore, rezoning with a C2 overlay on Seventh Avenue would not only change the zoning from residential to commercial, but it would also broaden the commercial uses currently allowed. Id.

Because DCP failed to account for the broader range of commercial uses allowed by the C2-4 overlay, DCP underestimated the residential and business displacement that will subsequently occur. DCP concluded that changing a residential zone into a C2-4 overlay would

result in *no* new commercial development. EAS at 23. DCP did not identify any development sites despite noting that it had mapped commercial overlays onto predominantly non-commercial areas to define the avenue as a commercial corridor. EAS at 23. Allowing a broader range of commercial uses and designating commercial corridors that did not previously exist would likely encourage larger businesses in the rezoned areas and therefore displace current small businesses. Angotti Affidavit at ¶ 29. Permitting more commercial uses would also create more incentives for converting ground floor residential uses into commercial establishments, which would cause residential displacement. *Id.* Despite purposefully encouraging a broader range of commercial development on existing residential and commercial streets, DCP did not consider the impact. The failure to perform any analysis whatsoever of the commercial zoning changes was an abuse of discretion.

C. DCP Arbitrarily and Capriciously Ignored Required CEQR Technical Areas.

DCP declined to perform any analysis whatsoever of the socioeconomic impacts of the proposed plan or the effect the plan will have on neighborhood character. CEQR mandates analyses in both of these technical areas. DCP ignored these technical areas under the theory that the plan would not reach the threshold 200 additional residential units. *See, e.g.*, EAS at 29-30 (justifying its failure to do any assessment of socioeconomic conditions under the theory that there would only be a net increase of 75 residential units under the plan). As discussed above, DCP incorrectly calculated the net increase in residential units. However, even if DCP were correct in its calculations, there is no basis in law for its decision to ignore the impact on socioeconomic conditions and neighborhood character. *See Chinese Staff and Workers Ass'n*, 68 N.Y.2d at 366 (“population patterns and neighborhood character are physical conditions of

the environment under SEQRA and CEQR regardless of whether there is any impact on the physical environment”); Defreestville Area Neighbors Ass’n, Inc., 299 A.D.2d at 634; cf. Real Estate Bd. of New York, Inc. v. City of New York, 157 A.D.2d 361, 364 (1st Dep’t 1990) (rejecting a challenge to an EAS for failure to do an analysis of socioeconomic conditions because the EAS “carefully examined whether the proposal would result in the displacement of local residents and businesses”). Even if socioeconomic changes do not constitute “impacts” under CEQR, DCP must disclose these changes if they affect land use and population patterns or community character. CEQR TM, ch. 3, at 3B-1. The failure to make any sort of findings in these technical areas was an abuse of discretion. See CEQR TM, ch. 2, at 2-7 (The EAS “cannot simply dismiss the likelihood of expected impacts occurring without providing reasoning.”); Phelps v. Town Bd. of Town of Alabama, 174 Misc.2d 889, 898, 667 N.Y.S.2d 187 (Sup. Ct. N.Y. Co. 1997) (“[C]onclusory statements, without factual basis, are hardly sufficient to demonstrate a ‘reasoned elaboration’ for the issuance of the Negative Declaration.”).

1. Socioeconomic Impacts

In the EAS, DCP notes (correctly) that a socioeconomic assessment is necessary under CEQR if the proposed action will result in direct or indirect residential displacement, direct or indirect business and institutional displacement, or effects on specific industries. See EAS at 29-30. However, the EAS then fails to devote any discussion to the likelihood of displacement, reasoning that it need not do so because there is only a projected increase of 75 residential units. See id. Rather than take a hard look, DCP took no look. This failure to conduct any assessment on socioeconomic conditions is clearly an abuse of discretion. The Court of Appeals has held that an agency may not decline to do any analysis of displacement:

[U]nder CEQR the potential displacement of local residents and business is an effect on population patterns and neighborhood character which must be

considered in determining whether the requirement for an EIS is triggered. . . . It is not relevant whether the proposed project may effect these concerns primarily or secondarily or in the long term since the regulations expressly include all such effects.

The potential acceleration of the displacement of local residents and businesses is a secondary long-term effect on population patterns, community goals and neighborhood character such that CEQR requires these impacts on the environment be considered in an environmental analysis. The fact that the actual construction on the proposed site will not cause the displacement of any residents or businesses is not dispositive for displacement can occur in the community surrounding a project as well as on the site of a project. . . . Thus, in considering the secondary and long-term effects of this project on population patterns and neighborhood character, respondents must look to more than the potential effects of this one parcel and must consider the potential impacts on the surrounding community.

Chinese Staff and Workers Ass'n, 68 N.Y.2d at 366-68 (internal citations and footnote omitted).

An EAS that does not consider socioeconomic effects does not comply with SEQRA and is therefore arbitrary and capricious. See id. at 368.

The complete failure of DCP to consider the potential socioeconomic impacts of the proposed plan was significant because, had it done so, it would have found that the proposed rezoning is likely to have a negative impact on population, housing, economic activities and direct and indirect displacement.¹³ See supra, Sections III(A), III(B). Already, out-of-scale luxury residential units are replacing smaller row homes. See Angotti Affidavit at ¶ 15.

Increased residential development resulting from the upzoning of the avenues will lead to higher rents and accelerated gentrification in this largely minority and low-income neighborhood. The

¹³ The Brooklyn Borough President noted the possibility that the proposed rezoning would increase residential displacement and recommended that the City Planning Commission adopt an anti-harassment zone for the area. See Brooklyn Borough President Recommendation (June 22, 2009), available at <http://www.brooklyn-usa.org/pdf/ULURP/CD%207%20Sunset%20Park%20Rezoning%20Recommendation%20-%20June%2022,%202009.pdf>. Unlike DCP, the Borough President recognized the large stock of affordable housing in Sunset Park and acknowledged the threat posed by the plan to that stock.

loss of affordable housing, including rent-stabilized units and units with lower market value, will have a devastating affect on the neighborhood residents. The changes in commercial zoning will lead to commercial and residential displacement. See id. at ¶¶ 25-30. Locally owned businesses will likely be replaced with larger chain stores on blocks where the rezoning expands commercial uses, particularly along Fifth and Seventh Avenues, see id. at ¶¶ 26, 28, 29, and residents will be displaced by owners who convert their ground floor residential spaces to commercial use, see id. at ¶ 29.

Churches will also likely be displaced by the proposed rezoning. The EAS fails to consider or discuss the added incentive churches will have to sell their development rights (“air rights”) under the proposed plan. If the proposed rezoning goes into effect, the upzoning will create a greater incentive for development in the area, especially along Fourth Avenue, where many of the churches are located. See Angotti Affidavit at ¶ 21. In addition to greater as-of-right development, the displacement caused by the rezoning could force a significant portion of the church’s congregation out of the neighborhood. Churches will then be more likely to sell development rights to developers, resulting in bigger buildings and a loss of important community institutions. See id. at ¶ 23-23. These churches will most likely move to a different community because, with very few large vacant sites, they are unlikely to find space in Sunset Park. See id. at ¶ 24. DCP fails to address any of these impacts on the displacement of residents and small businesses in Sunset Park.

2. Neighborhood Character

The EAS contains a brief section entitled “Neighborhood Character” on page 47. That section contains no discussion of the existing neighborhood character and contains a terse assertion—without reasoning—that the proposed action will not result in any substantial changes

to the existing land use, urban design, visual resources, historic resources, traffic and noise.

Finally, it concludes:

The predominant objective of the proposed action is the introduction of contextual zoning districts to complement the scale and density of the existing neighborhood. . . . The proposed action is expected to support the existing neighborhood character which is a mixture of residential and commercial uses. While the proposed zoning along the commercial corridors encourages new residential development, it also imposes height limits where none currently exist. Therefore, no significant adverse impacts to neighborhood character are anticipated.

EAS at 47. This section falls far short of CEQR's mandate.

CEQR requires the lead agency to perform an assessment of neighborhood character "when the action would exceed the preliminary thresholds for neighborhood character, . . . or when it appears that the action would have moderate effects on several of the elements that contribute to neighborhood character." CEQR TM at 3H-1 (emphasis added). The EAS tracks the language of the CEQR technical manual insofar as it asserts, without discussion, that the proposed action will not exceed the preliminary thresholds for neighborhood character; however, the EAS completely ignores the requirement that a neighborhood character assessment be performed even where the action "would fall below the preliminary thresholds for neighborhood character." The EAS does not discuss whether there will be a moderate effect on the elements that contribute to neighborhood character.

To adequately assess neighborhood character, the lead agency must: (1) conduct a field visit to observe the neighborhood "during typically active periods" and take note of "major uses, scale and types of buildings, activity patterns and intensities, and the relationship between traffic, noise, and the character of streets," *id.* at 3H-2; (2) take photographs of the neighborhood characteristics; (3) examine data gathered from other technical areas of the environmental

assessment; and (4) conduct interviews with neighborhood residents and workers. See id. at 3H-2-3. The lead agency must then assess the expected changes in neighborhood character and “describe key elements that define the study area’s character.” Id.

It is clear from the EAS that DCP failed to conduct a field visit, take photographs of neighborhood characteristics or conduct interviews with neighborhood residents and workers, presumably under the reasoning (though unstated) that the action did not meet the preliminary thresholds. This reasoning is arbitrary and capricious because the proposed action *does* meet the thresholds triggering a neighborhood assessment. At the very least, it will have a moderate effect on the elements that contribute to neighborhood character for the following reasons. First, as discussed above, the proposed action will change land use character and result in a significant land use impact, as it will spur development and increase the number of residential units in the study area. See Angotti Affidavit at ¶ 16. Second, this development will result in substantially different building bulk, street patterns, and noise. See Angotti Affidavit at ¶ 32. Third, the proposed action will result in substantial direct and indirect displacement of population and businesses. See Angotti Affidavit at ¶ 29; Section III (A), (B), *infra*.

Even if the action does not meet the preliminary thresholds, the rezoning will undoubtedly result in moderate effects on several of the elements set forth in CEQR. The failure of DCP to perform a neighborhood assessment given these effects was arbitrary and capricious.

CONCLUSION

DCP committed an error of law in reaching a negative declaration in its Environmental Assessment Statement of the proposed Sunset Park rezoning. Furthermore, it arbitrarily and capriciously determined that the proposed action would have no adverse effect on the environment. DCP failed to take a hard look at the reasonably likely effects of the proposed

rezoning and ignored CEQR and SEQRA procedural requirements in the process. Had it followed the law, DCP would have concluded that the proposed action may have a significant impact on the environment, thus triggering the need for an EIS. Accordingly, this Court should enjoin the Respondents from taking any further action on the proposed rezoning plan until an EIS is completed and declare the EAS null and void.

Zoning without a Plan and the Four Big Zoning Scams

By Tom Angotti

Amanda Burden, Chairperson of the NY City Planning Commission, boasts that since 2002, the city has completed a record 94 rezonings for the most sweeping revision of land use regulations throughout the city's five boroughs since the Zoning Resolution was rewritten in 1961. This massive rezoning effort supports the development priorities of the administration of Mayor Michael Bloomberg, who in 2007 introduced PlaNYC2030 (<http://www.nyc.gov>), a long-term plan to incorporate almost one million more residents by the year 2030.

But the city's rezoning frenzy highlights two fundamental problems with its approach to our neighborhoods. One is that the zoning is not based on any comprehensive review of community needs and priorities or any long-range planning. In other words, it's zoning without a plan (see <http://www.gothamgazette.com/article/landuse/20050517/12/1419>).

The second and related problem is that while the rezonings are mainly creating short-term opportunities for real estate development in neighborhoods where there is intense speculation, the city's planners falsely promote them as preservation-oriented to neighborhood groups, community boards and the public at large. In the endless succession of community meetings that go into the rezonings, the city's zoning experts often manage to obscure matters with colorful slide presentations and discourses on technical details. In other words, they're scams.

The principle culprit in this professional land use swindle is the Department of City Planning (DCP), the agency that Amanda Burden directs and that provides the staff for the 13-person City Planning Commission that she chairs. The Planning Commission is the official policy-making body but it relies heavily on recommendations by the DCP staff, and is dominated by mayoral appointees (7 out of 13).

Zoning Without a Plan

DCP is the custodian of the city's zoning but for most of its recent history has rarely done any comprehensive planning for and with the city's neighborhoods. Its zoning policies are thus not based on any broader study of economic and social conditions or neighborhood needs and problems. It might more appropriately be called the Department of Zoning or, better yet, the Department of Real Estate.

Zoning is a regulatory scheme for controlling the built environment, the physical shell that contains our vibrant human communities. Zoning is not the same as planning and should be based on planning. But DCP treats the Zoning Resolution itself as the plan for the city. This is a narrow-minded philosophy because it focuses only on the physical dimensions of buildings and plots of land. It leaves out the needs of the people who live, work and pass through our neighborhoods. It doesn't address public places, how people actually relate to the land and one another, and

the needs and problems that arise from these relations. There is no place in zoning for the flora and fauna, the natural environment within which we live. While these may be mentioned in the large and cumbersome environmental impact statements that accompany rezonings, that too is an obscure realm that has little to do with real long-term environmental and health issues.

Community planning, as distinct from zoning, looks at all of these things and lays out visions for the long-term future. There are well over 70 community plans in New York City, (MAS) many more plans than DCP has done, and while 10 of them have been officially approved the city has done little to promote and implement them. In several instances, such as Greenpoint and Williamsburg in Brooklyn, (GG) DCP has undermined them with its rezoning scams. The scams come in four major varieties and in many instances they are all used at once: the affordable housing, building height, mixed use and waterfront access scams.

The Affordable Housing Scam

In lower-income neighborhoods facing gentrification, DCP has upzoned (that is, increased development opportunities) in ways that encourage the influx of new residents with higher incomes. This creates a ripple effect that jacks up land values and rents, forcing out people living in public and privately-owned affordable housing. This is not a scenario favored by the activists working to stabilize the neighborhood so that the people who have struggled to improve it can afford to stay. So to sell the rezoning, the city latched on to and coopted an idea that first came from the neighborhoods – inclusionary zoning – and twisted it around to serve the interests of the developers.

Here's how the city's inclusionary zoning scam works. In designated areas ripe for development, the city changes the zoning to allow more development but offers to the potential future developers the option of getting a bonus of an additional 20% in floor area if they agree to make 20% of the units affordable to people with low- and moderate-incomes. DCP's public relations campaigns give the impression that if their rezoning passes, affordable housing will get developed. The problem is that:

a) Inclusionary zoning is strictly voluntary, at the discretion of the developer. When housing advocates proposed inclusionary zoning, they pointed out that where it has been successful it was required of all developers everywhere in the municipality. When it is required, then it can't favor one neighborhood over others. Most importantly, however, if it's voluntary, it may never get built. In today's real estate market, it is likely that many of the units promised will not get built.

b) Affordable housing is normally built with public subsidies – that's right, it doesn't really cost the developer, in fact they can make money on it – and these subsidies are limited, especially in hard times when the demand for affordable housing goes up and available subsidies go down. Thus, there is no guarantee the affordable housing will get built even if the developer is interested in taking the option.

c) The affordable housing is often not affordable. The zoning requires that 20% of the units be affordable to households making up to 80% of the Area Median Income (AMI), which is a federal index based on household data for New York City and a portion of the metropolitan region. Invariably, the AMI is much higher than the median income for city neighborhoods that are facing gentrification pressures. For example, the median income in Harlem is half the AMI, and the recently-approved 125th Street rezoning would produce units affordable to only 5% of Harlem households – that is, if they ever get built.

The Building Height Scam. In neighborhoods dominated by low- to mid-rise building, DCP's upzonings to promote new development face legitimate concerns by residents that new development will be out of scale and tower over existing buildings. DCP thus invented the myth that a rezoning, even when it increases the amount of building space that is permitted, puts a cap on building heights and replaces zoning that has no height cap. In such cases the new zoning is contextual zoning which, unlike the previous zoning, does indeed have an explicit height cap and other provisions that promote a more contextual building form. But the older non-contextual zoning also had an *implicit* height cap that in practice kept tall buildings from being built. Whether it's the older or contextual zoning, developers can only build so high because the amount of floor area they can build is limited. The permitted floor area is controlled by the FAR – floor area ratio.

Thus, the height of buildings is always limited by the amount of floor area that can be built. If the new zoning permits *more* floor area it may encourage property owners to demolish smaller buildings and build taller ones. So even with a height limit a rezoned area can end up with taller buildings!

This is exactly what happened with the recent rezoning of 125th Street in Harlem. Portions of this major thoroughfare had 1-3 story commercial buildings before the rezoning because property owners didn't have enough excess FAR to make it profitable for them to expand. Now they can be replaced with 20-story buildings.

The Mixed-Use Scam. In neighborhoods like Greenpoint and Williamsburg that have had rich mixtures of industry, commerce and housing, rezoning schemes that spark new development face opposition from people who believe that mixed use should be preserved and industry should not be forced out to build bedroom communities. Greenpoint and Williamsburg spent over 12 years preparing their neighborhood plans that proposed to preserve mixed use. Not long after these plans were approved by the City Planning Commission and City Council, DCP came out with a proposal to rezone large swaths of industrially-zoned land to residential and mixed use. The problem is that the new mixed use zones allow for both residential and industrial uses to compete with one another. But in a hot land market like Greenpoint and Williamsburg, no developer in their right mind would build for industrial tenants when they can sell or rent residential property for ten times the price. In effect, DCP's mixed use zoning was a back-door residential rezoning. (See <http://gothamgazette.com/article/landuse/20030522/12/401>)

The Waterfront Access Scam. When rezoning waterfront property, DCP faces the legitimate concerns of neighborhoods that new development will block public access to the waterfront. According to waterfront zoning, all residential and commercial developers on the waterfront must provide a public promenade and preserve access corridors to the waterfront. DCP uses these provisions as part of their campaigns to sell upzoning for new development on the waterfront, claiming that the only way to get public access is to have new residential or commercial development. The options of creating public parks or placing waterfront land in some sort of trust are never broached. Even worse, DCP claims that the new development has to be high-rise and sufficiently upscale so that developers can afford to build the public access. But the more high-rise and luxury the new development the more likely it is that the public promenade will become an exclusive back yard for the residents in the luxury towers.

DCP used the waterfront access scam in Greenpoint and Williamsburg, where new buildings going up are indeed becoming exclusive enclaves. A new public waterfront park in Williamsburg that was proposed by residents and promised when the neighborhood was rezoned has not been built. This neighborhood, hit by the inclusionary zoning, building height, mixed use and waterfront access scams, had the central vision of its hard-fought community plan undermined by zoning: the vision was to have a mixed-use low- to mid-rise waterfront and not rows of luxury housing.

History will determine whether the optimistic growth scenario behind DCP's rezonings and the mayor's 2030 plan will survive the current burst in the real estate bubble. But neighborhoods throughout the city will nonetheless have to live for some time with the zoning in place. This is a good time, however, for the city to re-think its approach to both community planning and city-wide planning, starting with the real needs and priorities of its residents and workers instead of the amount of floor area that can be built. It is also a good time shift the focus of development from lower-income neighborhoods that have experienced intense displacement pressures to the many low-density outlying neighborhoods that were down-zoned by DCP.

Tom Angotti teaches urban planning, is Director of the Hunter College Center for Community Planning and Development and co-editor of Progressive Planning Magazine.

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Sunset Park Residents Sue To Stop Rezoning Them Out

Allegations Claim City Development Will Disintegrate Neighborhood



Outside his United Methodist Church in Sunset Park, Pastor Hector LaPorta addresses community members about what he claims are the risks of a proposed rezoning of the area.

Photo by Chinese Staff and Workers' Association

By Samuel Newhouse
Brooklyn Daily Eagle

SUNSET PARK — In recent years, residents of Sunset Park have pushed for improvements in this quiet neighborhood between Park Slope and Bay Ridge. But with a large rezoning now on the table, the area's historical immigrant community is realizing that some beautification could cause more harm than good.

That is one issue at stake in a lawsuit filed in Manhattan Supreme Court on behalf of Sunset Park community organizations, trying to delay a proposed 128-block rezoning. Petitioners in the lawsuit — all members of the Committee to Protect Sunset Park — say the rezoning will bring large chain-stores to the neighborhood, and displace low-income residents.

This rezoning comes in the wake of legal efforts by the city to close adult bookstores and sex

shops near the Brooklyn waterfront in Sunset Park. Some of these stores allegedly used loopholes to skirt city zoning laws, disguising themselves as non-adult businesses while operating near residences, schools and religious centers.

But now, it seems that the community's attempts to improve the neighborhood could ironically have a destructive effect with accelerated gentrification, which rezoning opponents say would displace the large low-income Latino and Chinese communities.

"[The city] cleans up the neighborhood, and displaces the residents who have been asking the city to clean up the neighborhood for years," said Bethany Li, of the Asian American Legal Defense and Education Fund (AALDEF), which is filing the lawsuit in Manhattan Supreme Court with attorney Rachel Hannaford of South Brooklyn

Legal Services.

The lawsuit claims that the Department of City Planning (DCP) did not take a hard enough look at the effects this rezoning could have on the community.

"We want it to stop until [the city does] an environmental impact statement, and gives us some kind of assurance that low-income housing is part of the rezoning," said Ruben Sosa, a petitioner in the lawsuit and member of the Sunset Park Alliance of Neighbors (SPAN).

Li said that the DCP's prediction that this rezoning would not create a "significant impact" on the neighborhood was inaccurate. She listed the development of a "regional" shopping center along 10 blocks on Fifth Avenue and of hundreds of new residential units as possible results of the rezoning.

The DCP's environmental

Please turn to page 7

Sunset Park Zoning

continued from page 8

assessment statement was not sufficiently comprehensive, Li said. She said that an environmental impact statement is legally required before the City Council can vote on the rezoning.

"This lawsuit is premature as the City Council has not yet acted on the proposed rezoning for Sunset Park," responded Carrie Noteboom, senior counsel at the New York City Law Department. "The zoning amendments actually seek to preserve the low and mid-rise character of the neighborhood in addition to providing opportunities to build affordable housing where appropriate."

Noteboom said that the proposal was developed after "extensive discussion with the community board, elected officials."

SPAN member Sosa, however, told a different story.

According to Sosa, the movement to rezone Sunset Park was something that SPAN started by gathering signatures for petitions. It was intended to guarantee the development of affordable housing for low-income residents, which Sosa said was the "number one point" of community support for rezoning.

However, Sosa said, once it reached Community Board 7 and City Council Member Sara Gonzalez, SPAN was cut off from rezoning plans, "even though we did all the legwork." The main goal, affordable housing, was no longer central to the proposal.

"We consider the board and Sara to be in the pockets of the developers," Sosa said.

Low-income Latinos and Asians make up over 90 percent of the Sunset Park community, according to Wendy Cheung of the Chinese Staff and Workers' Association.

"It's a really critical time for people to come out. It's our community," Cheung said.

"Developers want to build up a bunch of high-rises," she said. "This will cause the eviction of families making \$25,000 to \$30,000, total."

Cheung said that the [Mayor Michael] Bloomberg administration has "pushed through the most rezonings in the city's history ... We know that his interest isn't in protecting low-income people of color."

"In Bay Ridge and Park Slope, rezoning was protective," she said. "Why is it that the neighborhood between Bay Ridge and Park Slope is not getting a plan that protects them?"

Cheung also cited the destructive effects on the Lower East Side and Chinatown neighborhoods in Manhattan after a rezoning last year, which led to some low-income tenants being evicted.

"We have members who were pushed out of the Lower East Side and came to Sunset Park, and want to know, are we going to be pushed out again?"



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Immigrant Groups File Lawsuit to Stop Sunset Park Rezoning in Brooklyn

Thu Aug 20, 2009 11:04am EDT

BROOKLYN, N.Y., Aug. 20 /PRNewswire-USNewswire/ -- Two long-time Sunset Park residents, five local churches and a community group, Chinese Staff and Workers' Association (CSWA), have filed a lawsuit in New York State Supreme Court challenging the Department of City Planning's (DCP) proposed rezoning of 128 blocks in Sunset Park, Brooklyn. They claim that the rezoning plan will encourage more luxury development and large chain stores, resulting in widespread residential and commercial displacement and gentrification among Sunset Park's low-income Asian and Latino communities.

The lawsuit, brought by South Brooklyn Legal Services (a program of Legal Services NYC) and the Asian American Legal Defense and Education Fund (AALDEF), charges that the City violated state and environmental laws by failing to take a hard look at the significant impacts of this rezoning plan upon the neighborhood character. The suit, Chinese Staff and Workers' Association et al. v. Burden, asks the Court to annul DCP's inadequate Environmental Assessment Statement (EAS) and prepare the requisite Environmental Impact Statement (EIS).

"This rezoning will accelerate the displacement of Asians and Latinos in this vital immigrant community. New development resulting from recent rezonings in other neighborhoods like South Park Slope have already far exceeded the City's predictions. The City must not continue to turn a blind eye to the rezoning's impact on people who have lived and worked in Sunset Park for years," said Bethany Li, Equal Justice Works Fellow at Asian American Legal Defense and Education Fund.

The rezoning plan calls for the upzoning of Fourth, Fifth, Sixth, Seventh and Eighth Avenues to allow for larger residential buildings; imposes a commercial overlay on Fourth and Seventh Avenues that will radically change the character of those avenues; and expands the permitted commercial uses on several blocks of Fifth Avenue so as to encourage national chain stores to replace local businesses.

The lawsuit alleges that the DCP violated the State Environmental Quality Review Act (SEQRA) and City Environmental Quality Review (CEQR) because the plan: (1) dramatically undercounts the number of development sites that will result from the rezoning; (2) fails to discuss or analyze the effect of the plan on socioeconomic conditions; (3) ignores the impact that commercial zoning changes will have; and (4) fails to discuss the rezoning's impact on the neighborhood's existing character.

Petitioners, including a founding member of the Sunset Park Alliance of Neighbors (SPAN), and other community residents have been vocal at recent public hearings and meetings about their fears that the plan will result in significant displacement of the low-income minority residents of Sunset Park.

"The Department of City Planning ignored its obligation under the law to ensure that its rezoning plan will not affect the lives and livelihoods of the residents of Sunset Park. Rather than taking a hard look at the plan's

potential for residential and commercial displacement, DCP took no look. We call on DCP to take its legal obligation seriously and study the effect this plan will have on the unique Sunset Park community," said Rachel Hannaford, Staff Attorney at South Brooklyn Legal Services.

SOURCE Legal Services NYC

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La tumba sigue esperando a Michael Jackson

METRO 4 'Sunset Park no está en venta'

Residentes preocupados por plan para rezonificar el área

ANNIE CORREAL/EDLP

NUEVA YORK — Hugo Paniagua, un pastor que reside en Brooklyn, se paró este jueves en medio de un grupo que cargaba afiches en inglés, chino y español con mensajes como: "¡Sunset Park no está en venta!", y expresó el temor de su comunidad en voz alta: "Si el plan procede no hay futuro para nuestra familia porque nadie va a poder pagar la renta".

"La demanda es prematura porque el Consejo Municipal no ha votado todavía sobre la rezonificación de Sunset Park". — Carrie Noteboom

Se refería a un plan de la ciudad para rezonificar 128 cuadras de Sunset Park, un barrio en el oeste de Brooklyn. La iniciativa fue aprobada por la Junta Comunitaria 7 y el presidente del condado, Marty Markowitz, y sólo necesita un voto del Consejo Municipal para ser certificada.

Sin embargo, un grupo de residentes, cinco iglesias, y una organización comunitaria, el *Chinese Staff and Worker's Association*, está demandando a la ciudad por no haber presentado una evaluación ambiental como parte del plan.

Veinte moradores del sector se reunieron frente a la *Fourth Avenue United Methodist Church* para anunciar la quere-lla.



HUMBERTO ARELLANO/EDLP

Familias de bajos ingresos cuestionan plan para rezonificar Sunset Park.

Según ellos, el cambio resultaría en la construcción de edificios de lujo que desplazarían a los residentes de bajos ingresos y abriría el camino para más tiendas de las grandes cadenas que podrían reemplazar los pequeños negocios de inmigrantes.

Bethany Li, abogada para el *Asian American Legal Defense Fund*, sostuvo: "La rezonificación acelerará el desplazamiento de asiáticos y latinos", grupos que representan el 90% de la población del barrio.

Una abogada para la ciudad, Carrie Noteboom, respondió: "La demanda es prematura porque el Consejo Municipal no ha votado todavía sobre la rezonificación de Sunset Park. Estamos seguros que la evaluación ambiental es-

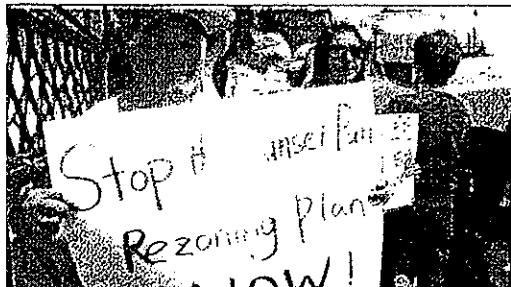
tuvo correcta en todo sentido".

Una persona afiliada a la Junta Comunitaria 7 —que no quiso dar su nombre porque no estaba autorizado para hablar sobre el tema—, señaló que el plan de la ciudad impone límites de altura a los edificios nuevos e incluye medidas de protección para los residentes de bajos ingresos.

Sin embargo, Héctor Laporta, el pastor de la iglesia metodista de la zona, duda que el plan sea bueno para la comunidad. "Ya estoy oyendo historias de mis residentes que se tienen que ir porque es demasiado caro", apuntó.

La demanda se presentó en la Corte Suprema de Nueva York y el juicio empezará a mediados de octubre.

annie.correal@eldiaryny.com



NUEVA YORK

No se vende Sunset Park

Residentes se oponen a plan de rezonificación — P4



▲在法律援助團體的協助下，反對土改的多個團體對市計劃局長柏登提出告訴。前排左一為李宇平，右一為張雪燕。

指日落公園土改案違法 法援處等10團體控告市府

本報記者彭雨農紐約報道

在昨(20日)下午位於布碌崙日落公園地區的一場記者會中，包括亞美法律援助處(Asian American Legal Defense and Education Fund)、布碌崙南區法律服務組織(South Brooklyn Legal Services)及華人職工會在內的近10個團體，正式對外宣布他們已於上週三前往紐約州高等法院，對市府「違法的日落公園土改案」提出告訴。

亞美法律援助處律師李宇平表示，這起由亞美法律援助處及布碌崙南區法律服務組織協助提出的告訴，主要是因為都市計劃局違反了紐約州法及環境法的規定，並未認真對土改將對日落公園社區環境帶來的改變做出評估。李宇平表示，市計劃局在日落公園土改案中違反了「州環境品質審查法」(SEQRA)及「市環境品質審查法」(CEQR)，因為當局嚴重的低估了土改案將帶來的開發地點，例如市府評估書所估計的開發地僅25處，但事實上土改通過後獲准開發地應為104處，此外，原告所列舉的計劃局「違法」之處還包括了「並未對土改將帶來之社會經濟影響做出評估」、「忽視土改對商業土地使用變更帶來的衝擊」以及「並未深入討論到土改對社區帶來的衝擊」等。

布碌崙南區法律服務組織律師 Rachel Hannaford 表示，希望藉著此告訴讓市計劃局依法讓社區民衆了解此土改案究竟會對日落公園社區帶來何等影響。

華人職工會成員張雪燕表示，這起官司原告包括了華人職工會等日落公園地區共7個教會及社區組織，他們要求希望藉此被告紐約都市計劃局長柏登(Amanda M. Burden)願意廢除當下不完善的環境影響評估(EAS)，並且重新提出更完整的環境衝擊評估(EIS)。

指日落公園土改違法

布碌崙居民、社團 控都規局

記者曲怡文

紐約報導

布碌崙居民、華人職工會、多個社區團體20宣布正式提告都市規畫局，表示由是規畫局提出的日落公園土地使用變更計畫未符紐約州及紐約市的環境法規，且未完善的取得社區民眾意見就執行規畫，嚴重忽視社區內的低收入戶居民權益。

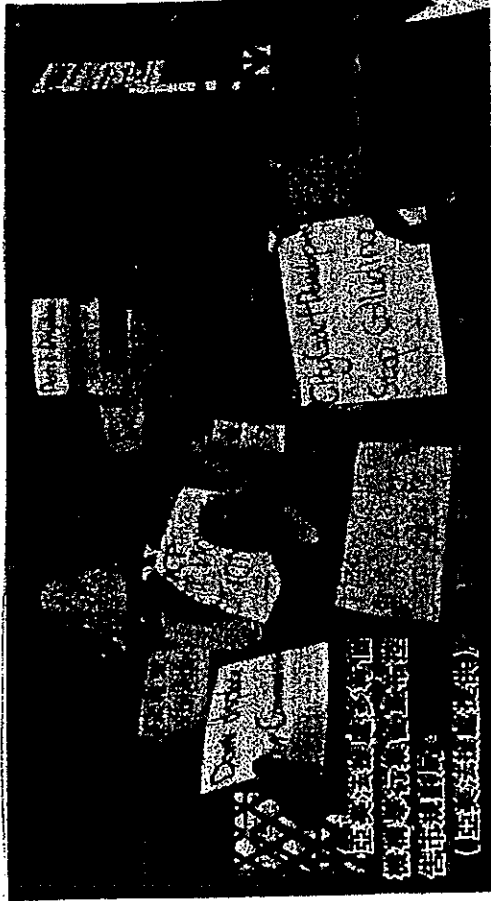
十多位日落公園社區居民、華人職工會代表、日落公園維權團體高舉著「不要出賣日落公園」、「日落公園拒絕貴族化賈租化」、「停止摧毀我們的社區」等標語，抗議都市規畫局所提出的日落公園土地使用變更計畫忽視社區內的低收入居民，並嚴重低估了變更後對社區的衝擊。亞美法律援助處律師李宇平表示，兩位來自日落公園的居民、五處日落公園的教會與社區團體、華人職工會等8處單位13日已正式提告都市規劃局違反紐約州與紐約市環保法規，其中包含嚴重低估土地使用變更計畫所造成的開發地點數量，例如報告中僅指出有27處住所共75戶居民會因此受影響，但實際上目前已有至少217戶居民受影響；此

外提告內容還有未進行社區居民的社經狀況分析、忽視商用土地使用變更可能造成的影響、忽視保有現在社區特色等四項。

華人職工會代表張雪燕也表示這份計畫只會讓目前九成華裔、西語裔居民的日落公園趨於貴族化，許多勞工家庭及低收入家庭均被迫要搬遷，失去家園，因此希望政府正視這項不公平的開發計畫，讓這些家庭能夠繼續立足。



華人職工會代表張雪燕（左）與十多名日落公園居民、職工會代表共同向市規劃局表達反對日落公園土地使用變更計畫。（記者曲怡文／攝影）



土地重劃恐致貧族化逼走老居民 日落公園社區告市規劃局

【明報記者江江報導】由美法建築師公會重劃日落公園區，老居民被迫遷出助處，布魯克林區去重劃後，控訴書指規劃局逼遷區租戶環境質量評(South Brooklyn Legal Services) 指出，包括低層重劃區的社區質量，沒(20)日代表華人職工會和行政局白告，有討論重劃可能對社區造成的影響公園5個教會及當地多個社區組織，忽視重劃可能對社區造成的負面影響栗州高等法院控告紐約市規劃局，指控該局透過不完整的環境評估報告，對日落公園社區128個街區進行貧族化土地重劃，很可能導致社區風貌大變，造成亞裔老居民被非擠的效果。這個計劃，布魯克林區長6月22日簽字同意。儘管在8月12日的公聽會上，反對記者會上表示，華人職工會和社區多次發表公開信抗議等，但規劃局仍自行其道。土地重劃對社區影響非比尋常，例如日落公園社區90%的人口為西語裔

華裔移民，收入較低，若此計劃獲得通過，第四、第七大道可建更高的公寓，開發商將大舉入駐，租金和物價都將上漲，現有居民面臨著被逼遷。此外，第四大道上目前有很多空置豪華公寓，根本不需要再建高層公寓。訴狀呼籲最高法院命令都市規劃局進行環境影響評估報告。

FRIENDS OF SUNSET PARK

521 41st Street

Brooklyn, N.Y. 11232

718.437.1413

Phone + Facsimile

friendsofsunsetpark@yahoo.com

friendsofsunsetpark-brooklyn.blogspot.com





TESTIMONY PRESENTED AT THE
NY CITY COUNCIL ZONING & FRANCHISES SUBCOMMITTEE
HEARING – SUNSET PARK RE-ZONING
TUESDAY- SEPTEMBER 22, 2009

I am Corey Kulcu-Roca, a member of the Friends of Sunset Park and I reside at 521 41st Street in Sunset Park, Brooklyn. I stand before you to enlist your help in preserving the panoramic view from Sunset Park, a view like no other, a view that shines as one of the brightest jewels in New York City's crown. Sunset Park, the park, as well as the magnificent view it affords every New Yorker, are part of this city's patrimony and they must be cherished and preserved not only for ourselves, but for future generations.

The Lenni-Lenape American Indians who tended oyster beds on Sunset Park's shores and raised their families on the bluff where Sunset Park is sited, knew that preserving their environment was key to their own preservation. The many waves of hard-working immigrants who over the centuries and from every corner of the globe have settled, and continue to settle in Sunset Park have always recognized that it is theirs to enjoy, but also to preserve for future generations.

Once the view is blocked by buildings as tall as those being proposed along Fifth (5th) and Fourth (4th) Avenues, we would have lost another iconic part of New York City,

forever. You have the power, and, we trust, the insight and the will to preserve the view from Sunset Park, as it is!

We ask that you modify the proposed plan to:

- Restrict building height on 5th Avenue (36th Street-50th Street) to a maximum height of 40 feet, including bulkheads;
- Restrict building height elsewhere on 5th Avenue (25th-36th Streets and 50th-65th Streets) along the area under consideration to a maximum of 50 feet, including bulkheads;
- Restrict building height all along 4th Avenue to a maximum of 60 feet, including bulkheads;
- Restrict building height from 39th to 41st Street, between 4th and 6th Avenues to a maximum of 40 feet, including bulkheads;
- Institute a permanent moratorium on demolition of structurally-sound buildings.

Preserving the view from Sunset Park and for all New Yorkers is in your hands, ladies and gentlemen of the City Council. Every child, and hard-working woman and man in Sunset Park is counting on each and every one of you to do the right thing.

Thank you.

Corey Kulcu-Roca, on behalf of the Friends of Sunset Park.

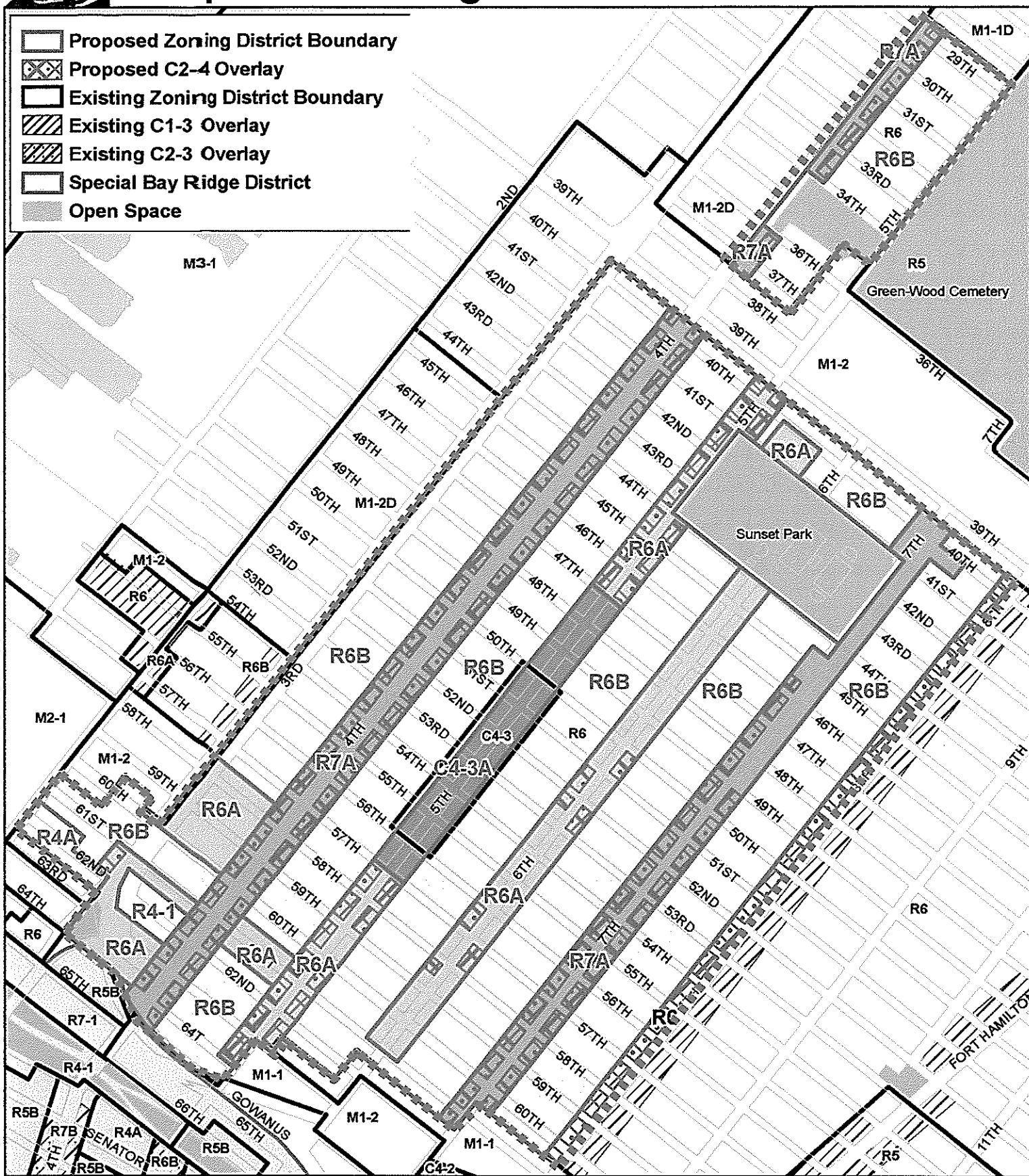
Telephone + Fax - 718.437.1413

friendsofsunsetpark@yahoo.com



Sunset Park Rezoning Proposed Zoning

- Proposed Zoning District Boundary
- Proposed C2-4 Overlay
- Existing Zoning District Boundary
- Existing C1-3 Overlay
- Existing C2-3 Overlay
- Special Bay Ridge District
- Open Space

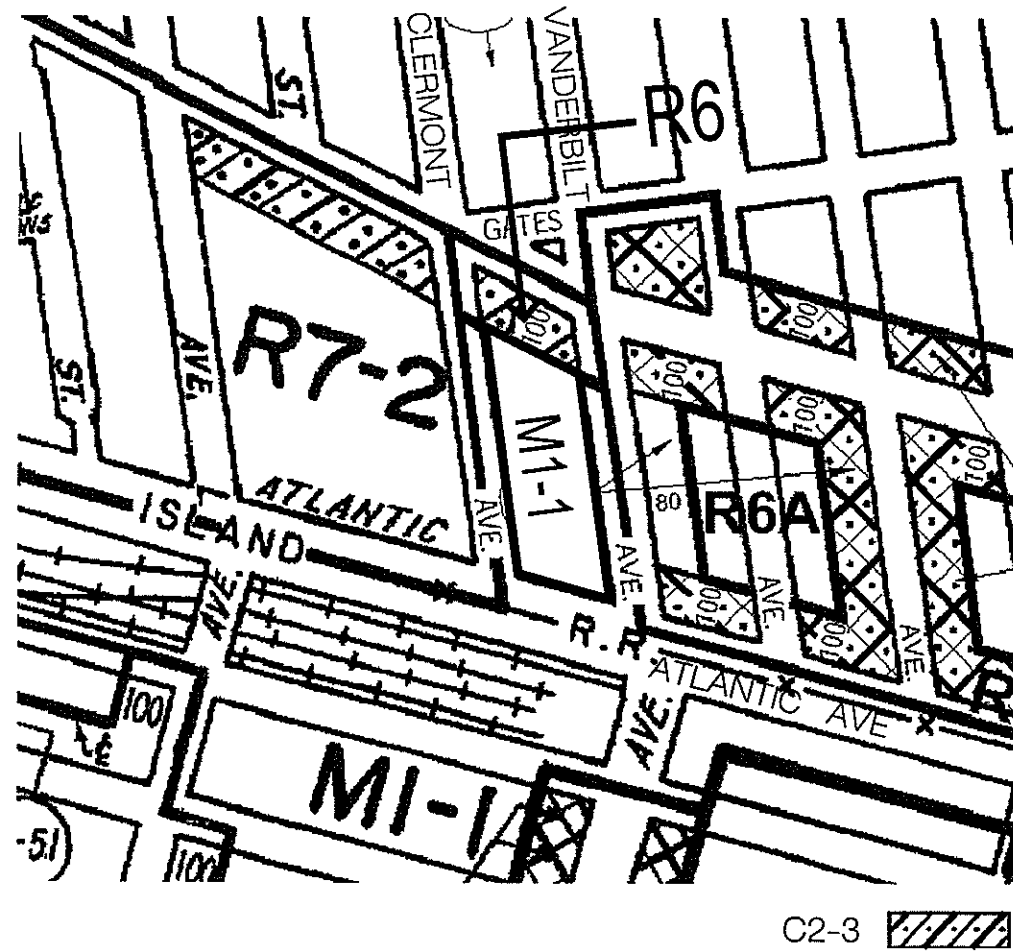




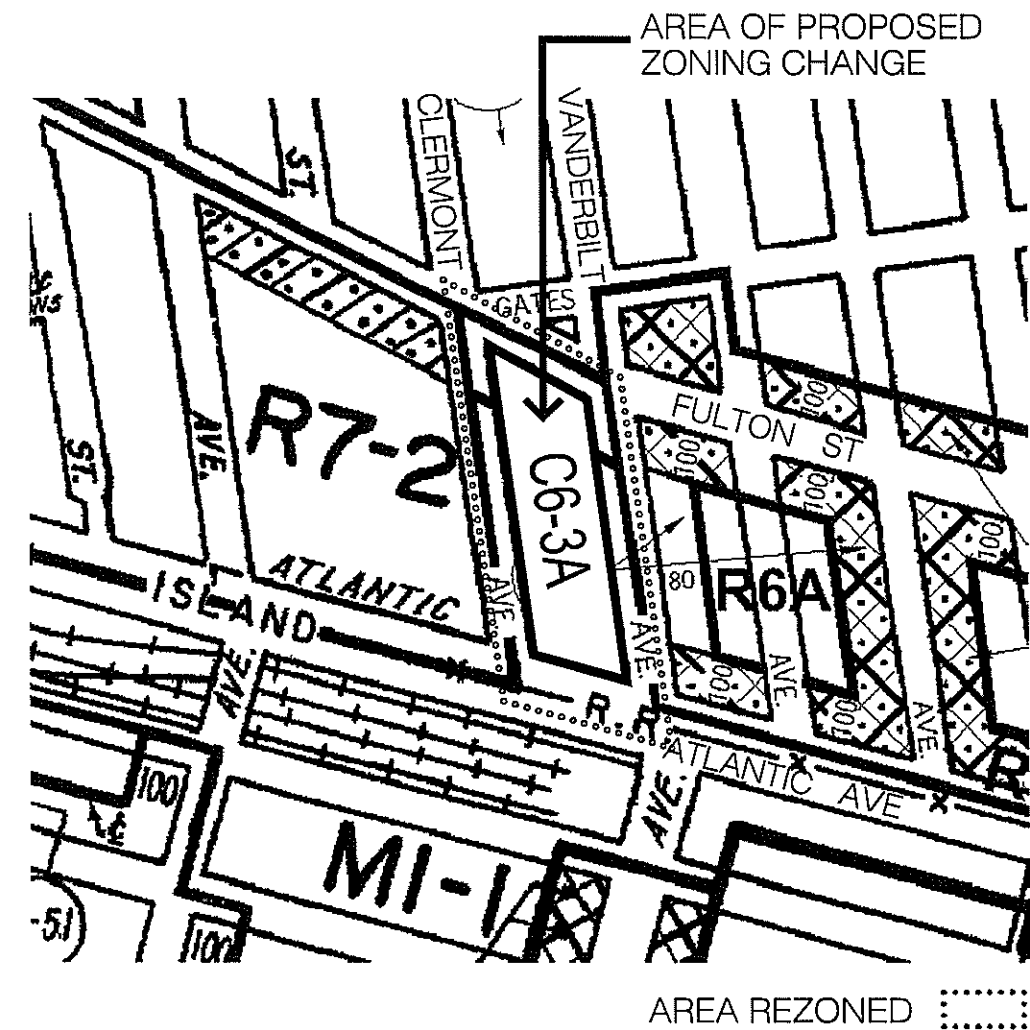
Project Location

PROPOSED DEVELOPMENT
470 VANDERBILT AVENUE

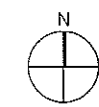
COSTAS KONDYLIS & PARTNERS LLP Architects
MAY 20, 2009



EXISTING ZONING MAP



PROPOSED ZONING MAP

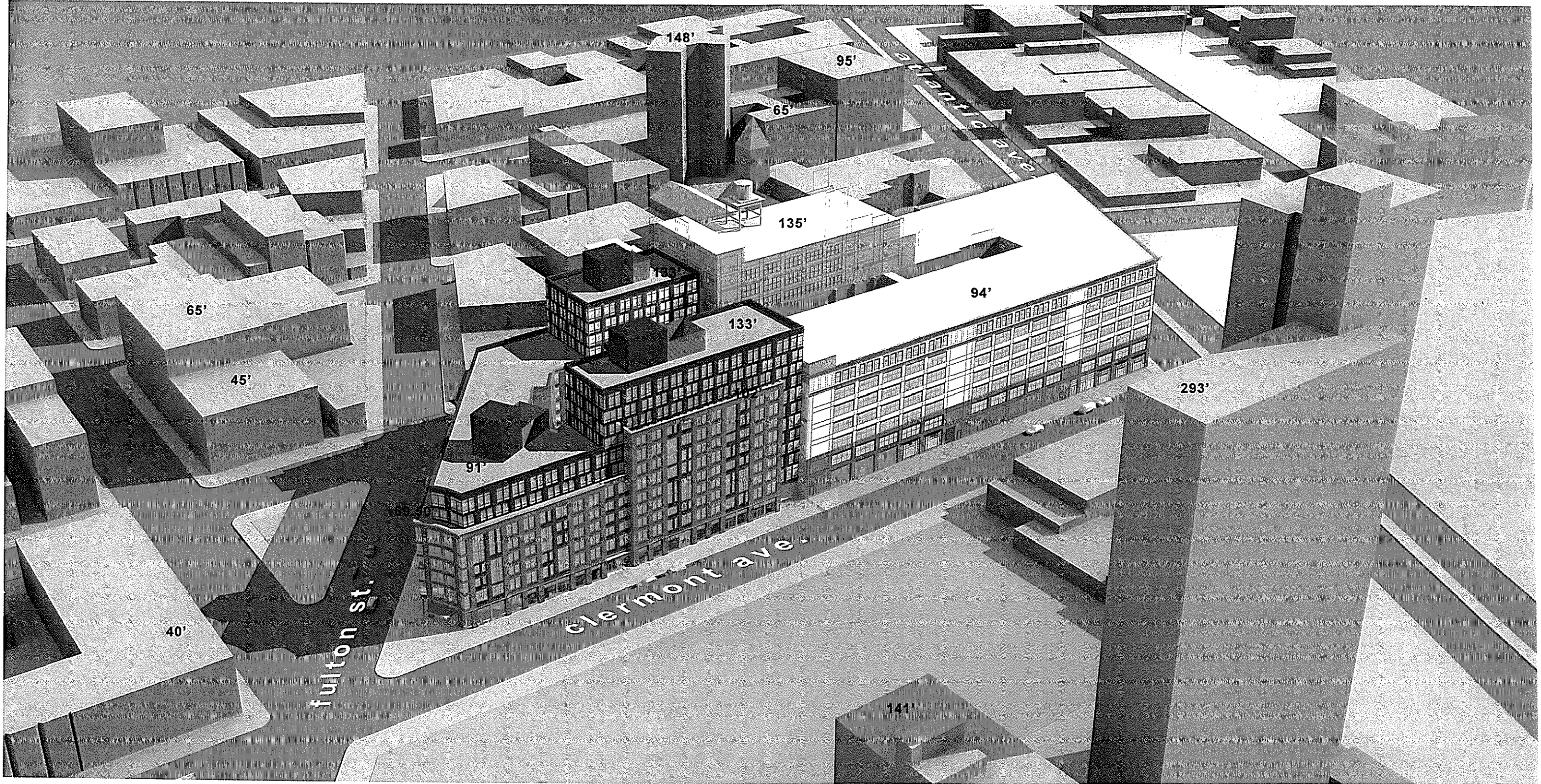




From Vanderbilt Ave.(& Fulton St.)

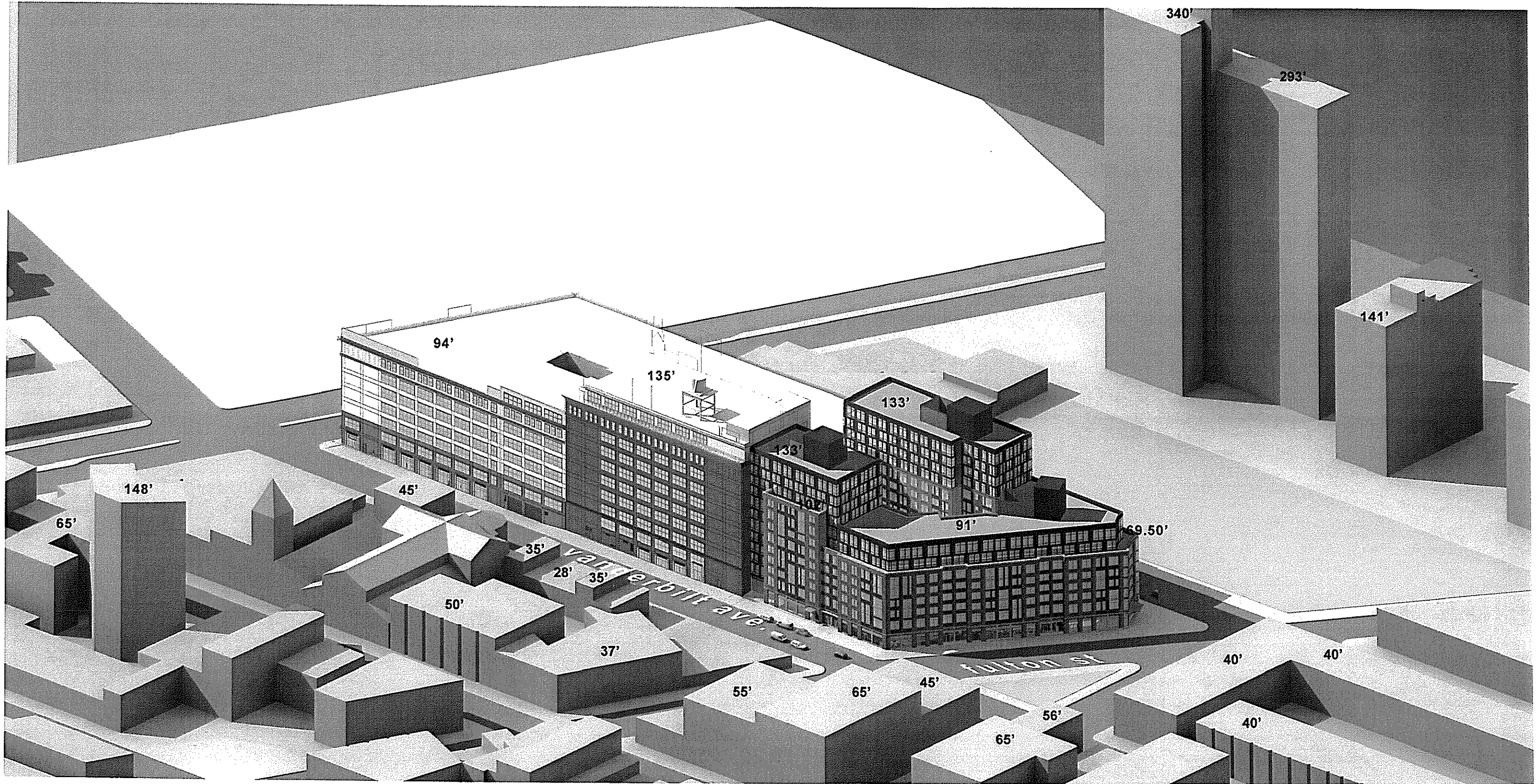


From Atlantic Ave.



PROPOSED DEVELOPMENT
470 VANDERBILT AVENUE

COSTAS KONDYLIIS & PARTNERS LLP Architects



PROPOSED DEVELOPMENT
470 VANDERBILT AVENUE

COSTAS KONDYLIS & PARTNERS LLP Architects



Clermont Avenue

PROPOSED DEVELOPMENT
470 VANDERBILT AVENUE

COSTAS KONDYLLIS & PARTNERS LLP Architects
MAY 20, 2009



Fulton St. & Vanderbilt Ave.

PROPOSED DEVELOPMENT
470 VANDERBILT AVENUE

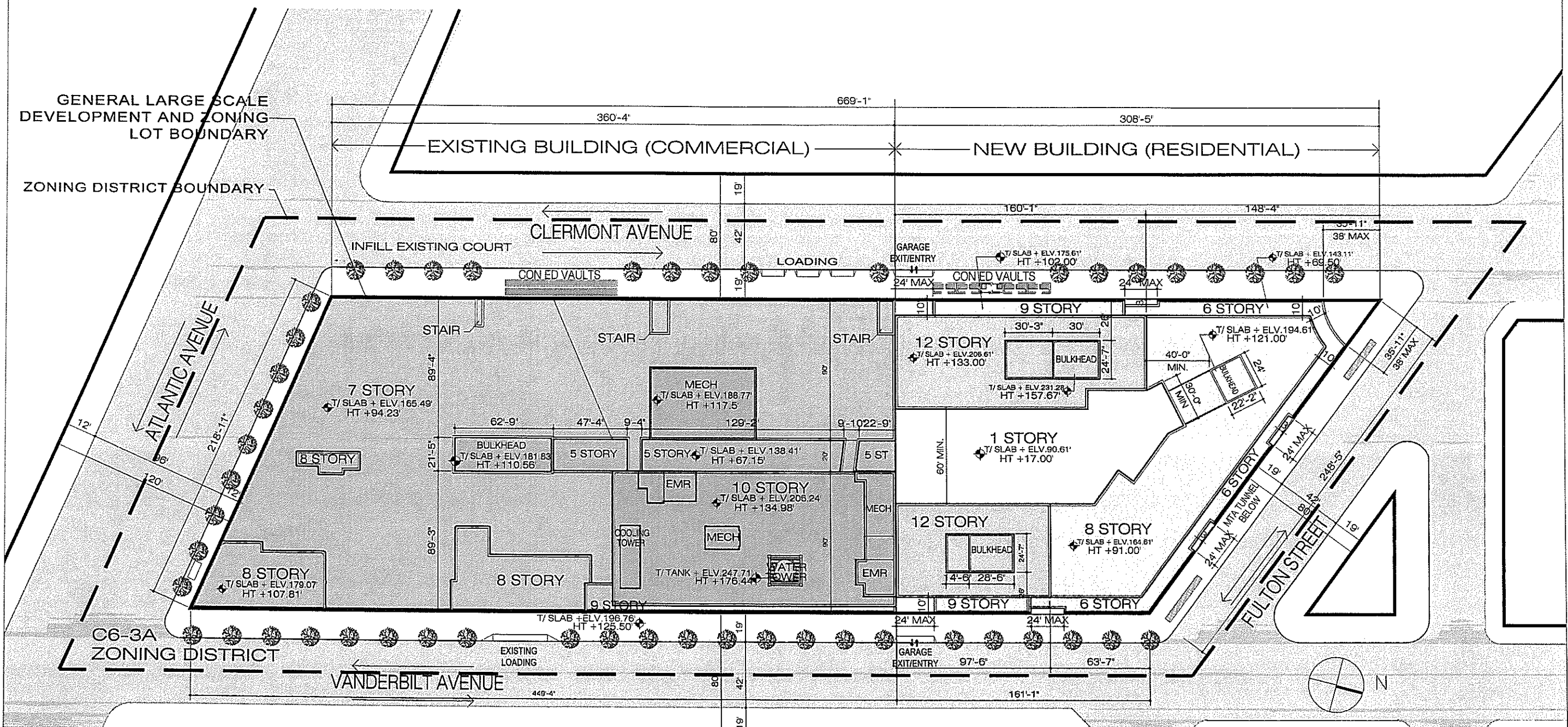
COSTAS KONDYLIS & PARTNERS LLP Architects
MAY 20, 2009

GENERAL LARGE SCALE
DEVELOPMENT AND ZONING
LOT BOUNDARY

ZONING DISTRICT BOUNDARY

EXISTING BUILDING (COMMERCIAL)

NEW BUILDING (RESIDENTIAL)



LEGEND:

- EXISTING BUILDING
- COURT INFILL
- NEW BUILDING

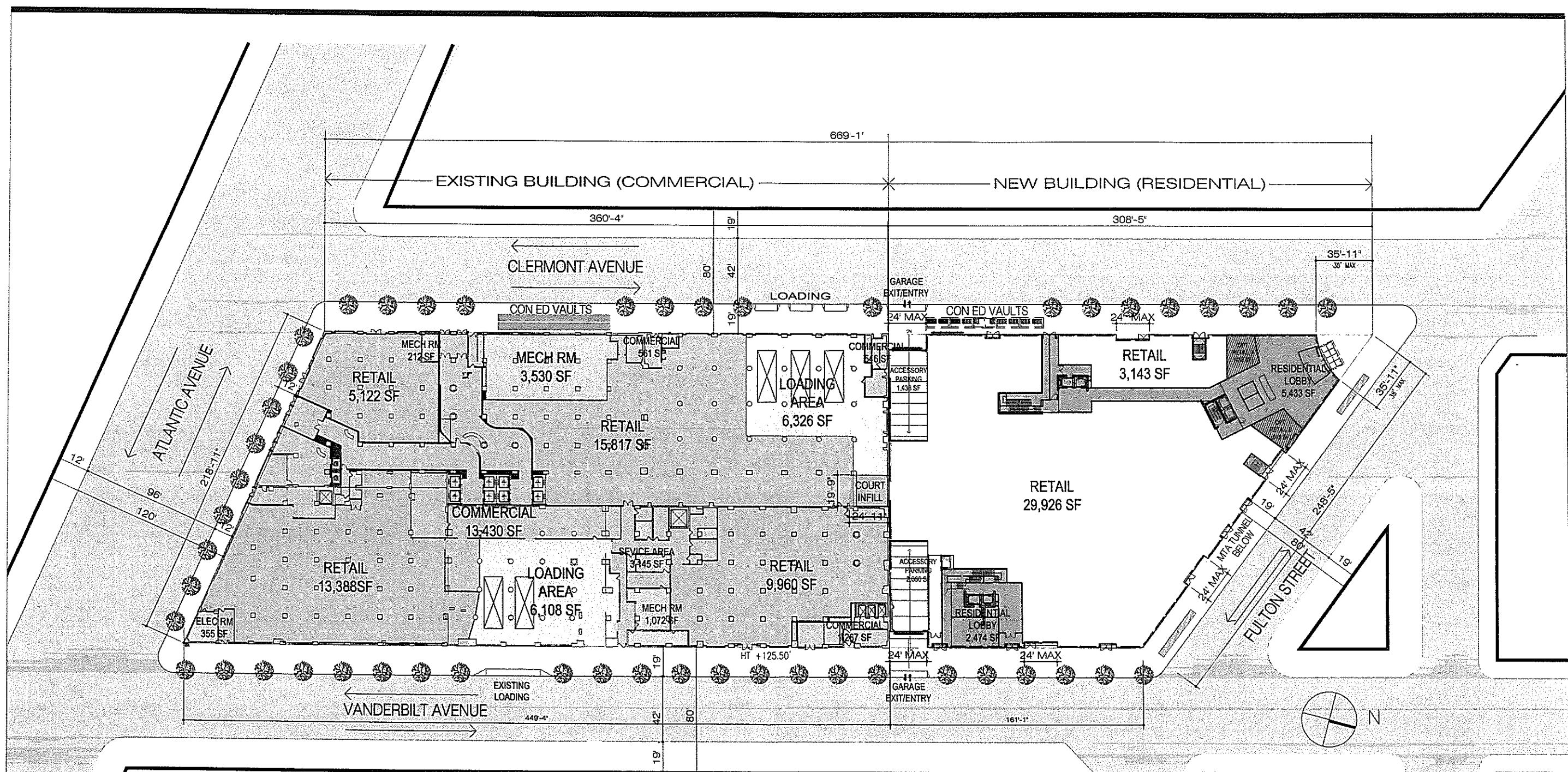
NOTE:

EXISTING BUILDING HTS. MEASURED ABOVE BASE PLANE ELEV. 71.26
 NEW BUILDING HTS. MEASURED ABOVE BASE PLANE ELEV. 73.61
 ELEVNS. ARE ABOVE BROOKLYN DATUM

COSTAS KONDYLIS & PARTNERS LLP
 ARCHITECTS
 31 W. 27TH STREET, NEW YORK NY 10001
 TEL 212.725-4655 FAX 212.725.3441

470 VANDERBILT AVENUE
 UNIFORM LAND USE REVIEW PROCESS

SITE PLAN
 SCALE 1"=30'-0"
 MAY 20, 2009



LEGEND:

- | | | | | | |
|--|--------------------------|--|--------------------------|--|-------------------|
| | EXISTING BUILDING RETAIL | | COMMERCIAL LOBBY/SERVICE | | RESIDENTIAL LOBBY |
| | NEW BUILDING RETAIL | | LOADING AREAS | | ACCESSORY PARKING |
| | COURT INFILL | | MECHANICAL | | |

NOTE:
ILLUSTRATIVE

COSTAS KONDYLIS & PARTNERS LLP
ARCHITECTS
31 W. 27TH STREET, NEW YORK NY 10001
TEL 212.725-4655 FAX 212.725.3441

470 VANDERBILT AVENUE
UNIFORM LAND USE REVIEW PROCESS

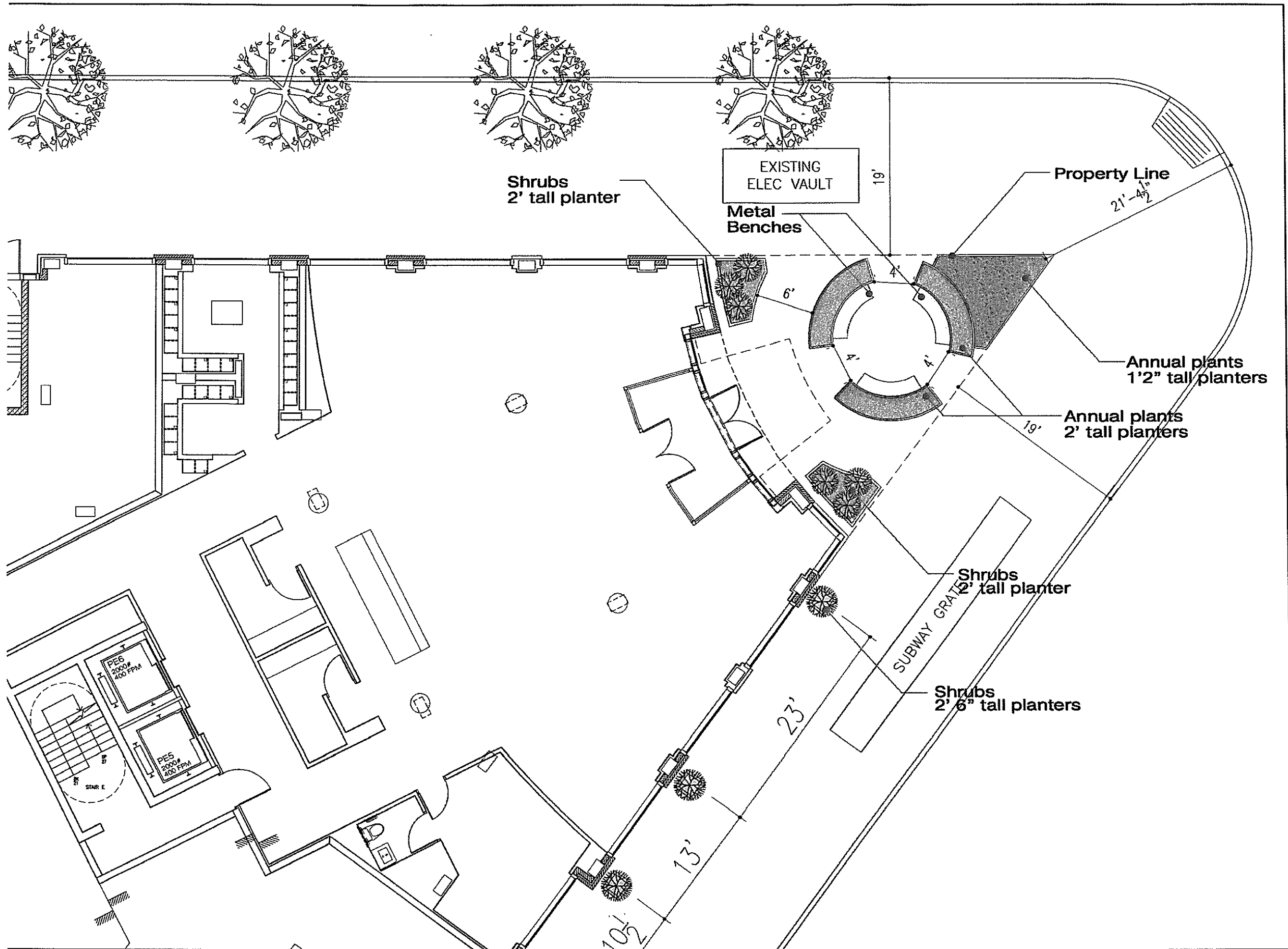
GROUND FLOOR PLAN
SCALE 1"=30'-0"
MAY 20, 2009

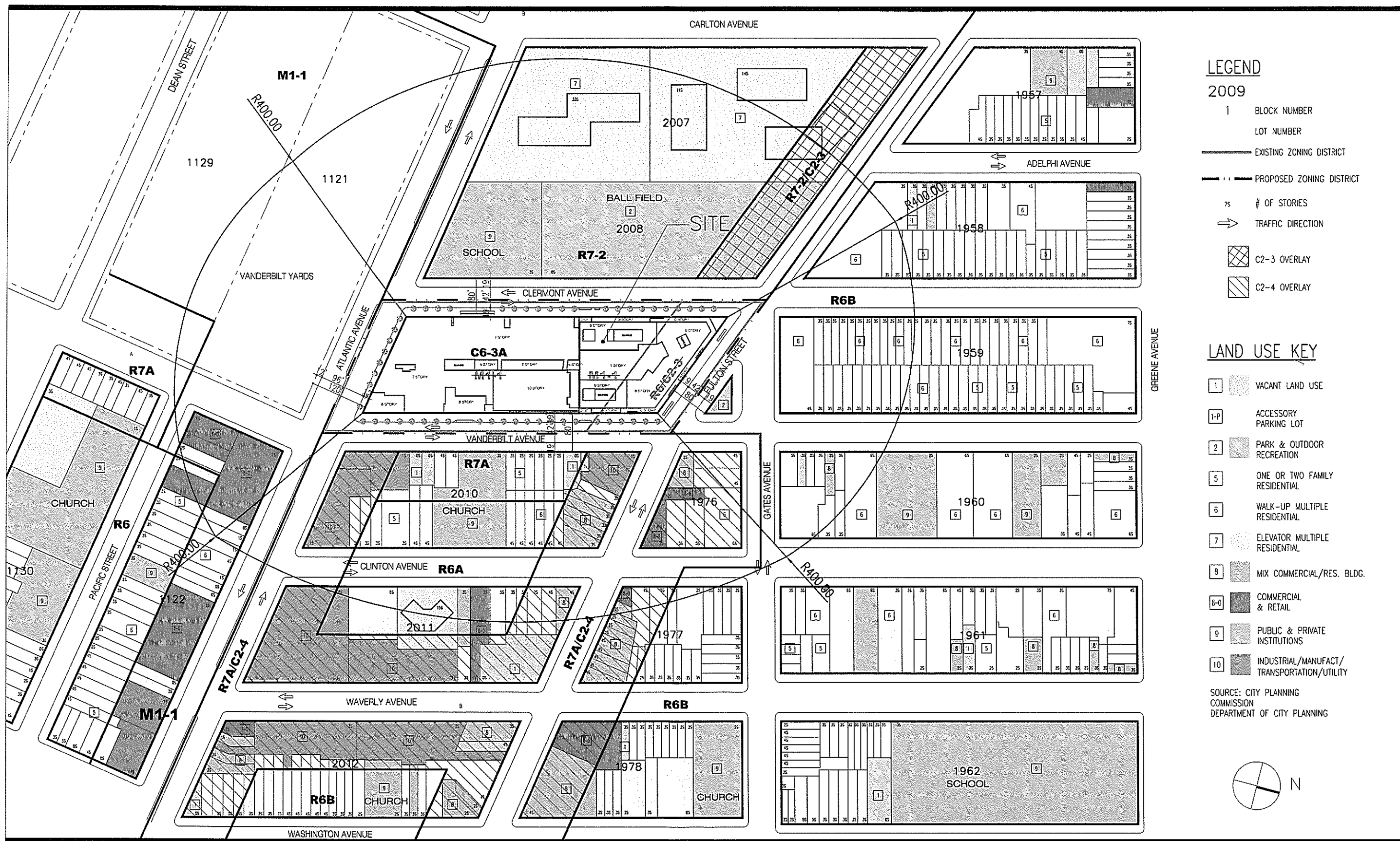


Landscape
Option 5

PROPOSED DEVELOPMENT
470 VANDERBILT AVENUE

COSTAS KONDYLIS & PARTNERS LLP Architects
JULY 28, 2009





LEGEND

- 2009
- 1 BLOCK NUMBER
 - LOT NUMBER
 - EXISTING ZONING DISTRICT
 - PROPOSED ZONING DISTRICT
 - # OF STORIES
 - TRAFFIC DIRECTION
 - C2-3 OVERLAY
 - C2-4 OVERLAY

LAND USE KEY

- 1 VACANT LAND USE
- 1-P ACCESSORY PARKING LOT
- 2 PARK & OUTDOOR RECREATION
- 5 ONE OR TWO FAMILY RESIDENTIAL
- 6 WALK-UP MULTIPLE RESIDENTIAL
- 7 ELEVATOR MULTIPLE RESIDENTIAL
- 8 MIX COMMERCIAL/RES. BLDG.
- 8-R COMMERCIAL & RETAIL
- 9 PUBLIC & PRIVATE INSTITUTIONS
- 10 INDUSTRIAL/MANUFACT/TRANSPORTATION/UTILITY

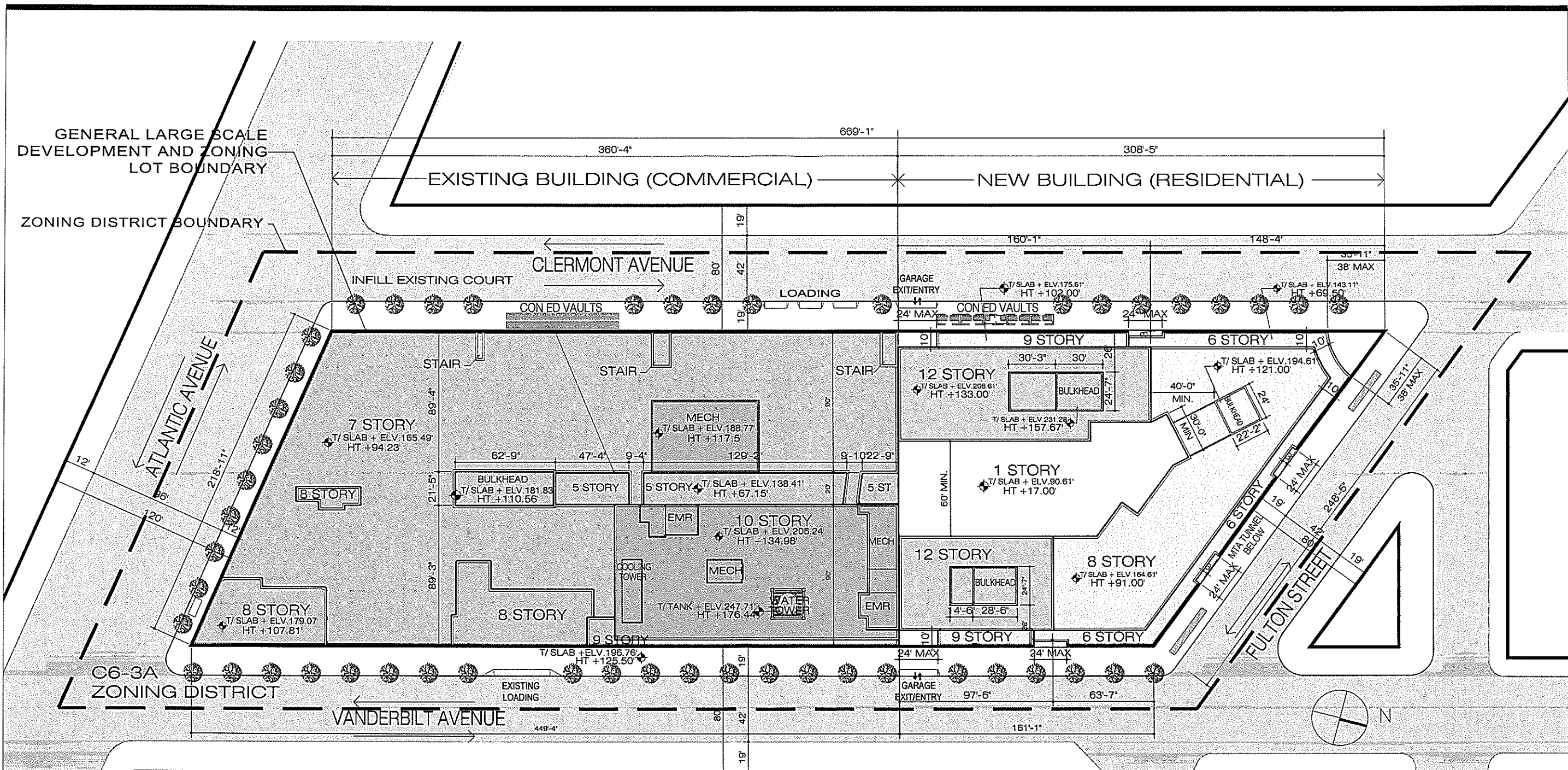
SOURCE: CITY PLANNING COMMISSION
DEPARTMENT OF CITY PLANNING



COSTAS KONDYLIS & PARTNERS LLP
ARCHITECTS
31 W. 27TH STREET, NEW YORK NY 10001
TEL 212.725-4655 FAX 212.725.3441

470 VANDERBILT AVENUE
UNIFORM LAND USE REVIEW PROCESS

LAND USE MAP
SCALE 1"=85'-0"



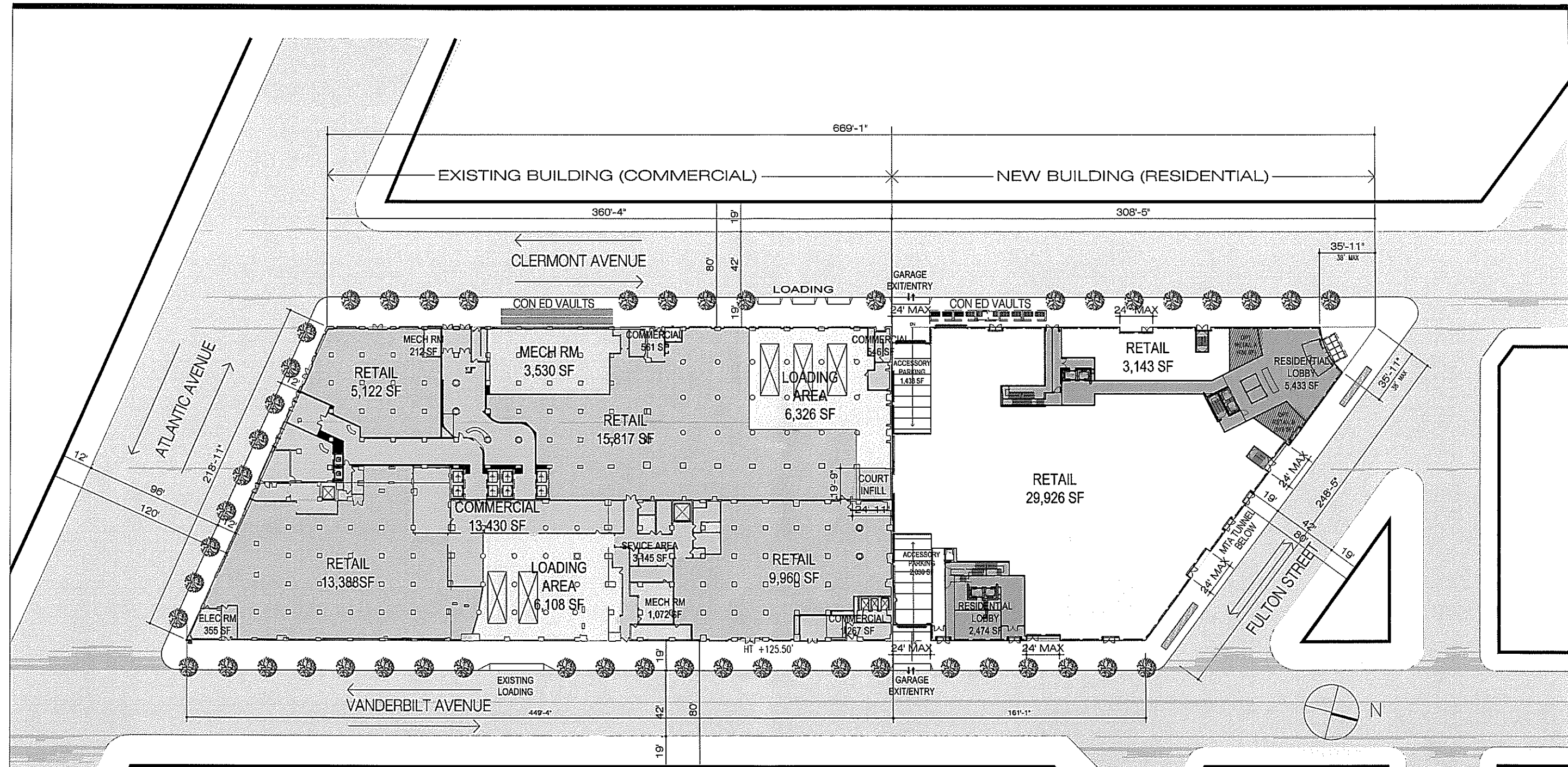
- LEGEND:**
- EXISTING BUILDING
 - COURT INFILL
 - NEW BUILDING

NOTE:
 EXISTING BUILDING HTS. MEASURED ABOVE BASE PLANE ELEV. 71.26
 NEW BUILDING HTS. MEASURED ABOVE BASE PLANE ELEV. 73.61
 ELEV. ARE ABOVE BROOKLYN DATUM

COSTAS KONDYLIS & PARTNERS LLP
 ARCHITECTS
 31 W. 27TH STREET, NEW YORK NY 10001
 TEL 212.725-4655 FAX 212.725.3441

470 VANDERBILT AVENUE
 UNIFORM LAND USE REVIEW PROCESS

SITE PLAN
 SCALE 1"=30'-0"
 MAY 20, 2009



LEGEND:

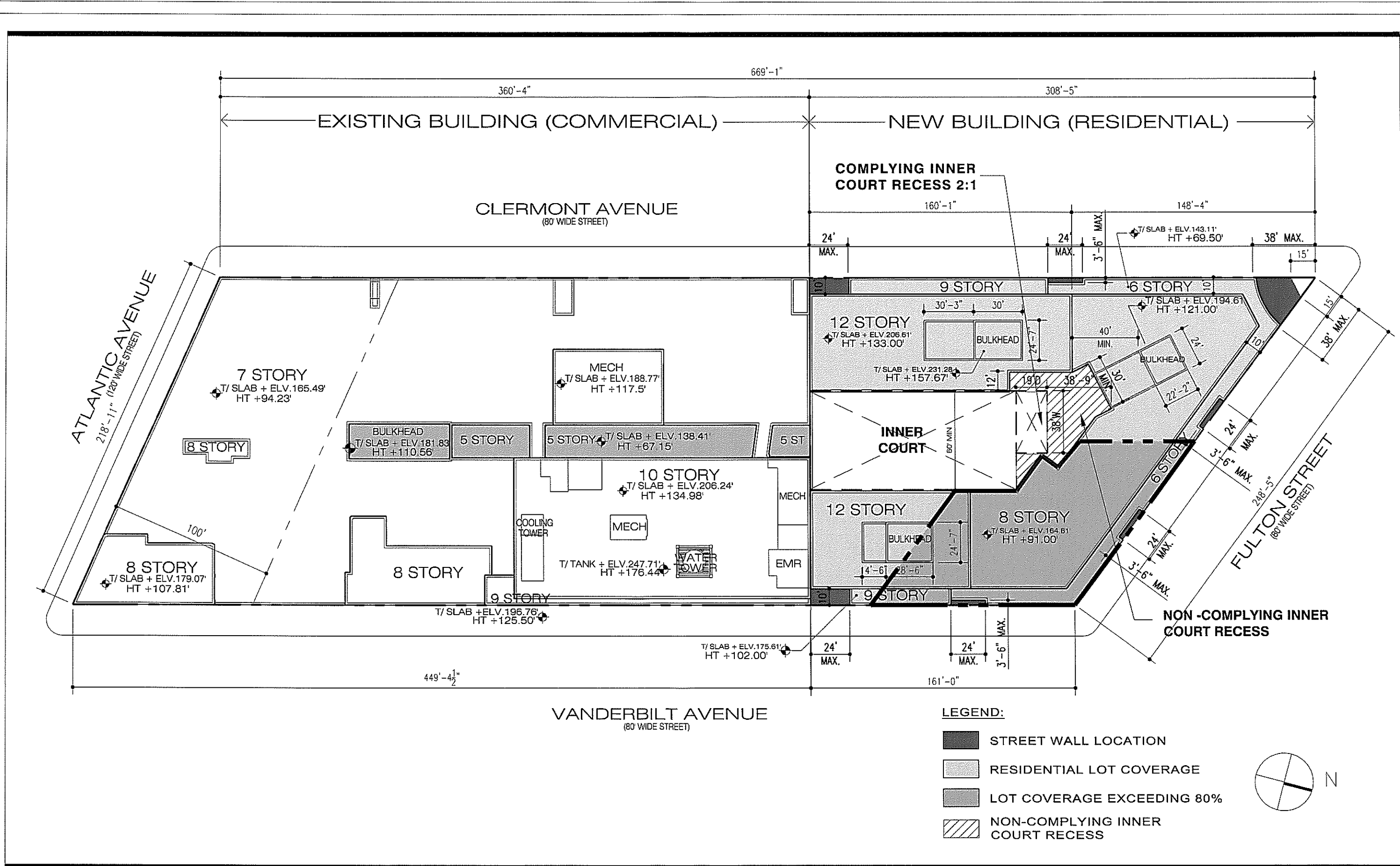
- | | | | | | |
|--|--------------------------|--|--------------------------|--|-------------------|
| | EXISTING BUILDING RETAIL | | COMMERCIAL LOBBY/SERVICE | | RESIDENTIAL LOBBY |
| | NEW BUILDING RETAIL | | LOADING AREAS | | ACCESSORY PARKING |
| | COURT INFILL | | MECHANICAL | | |

NOTE:
ILLUSTRATIVE

COSTAS KONDYLIS & PARTNERS LLP
ARCHITECTS
31 W. 27TH STREET, NEW YORK NY 10001
TEL 212.725-4655 FAX 212.725.3441

470 VANDERBILT AVENUE
UNIFORM LAND USE REVIEW PROCESS

GROUND FLOOR PLAN
SCALE 1"=30'-0"
MAY 20, 2009



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 31 W. 27TH STREET, NEW YORK NY 10001
 TEL 212.725-4655 FAX 212.725.3441

470 VANDERBILT AVENUE
 UNIFORM LAND USE REVIEW PROCESS

REQUESTED WAIVER DIAGRAM
 SCALE 1"=30'-0"
 MAY 20, 2009

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 1213 Res. No. _____

in favor in opposition

Date: 9/22

(PLEASE PRINT)
Name: RICHARD BASS

Address: _____

I represent: BRIARWOOD ORG

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 1190 Res. No. _____

in favor in opposition

Date: 9/22/09

(PLEASE PRINT)
Name: KENNY FURN

Address: 5814 7 AVE BROOKLYN NY 11220

I represent: myself

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. LV1191 Res. No. _____

in favor in opposition

Date: 9/22/09

(PLEASE PRINT)
Name: GINNIE WOOD MURPHY

Address: 413 43 ST. BKLYN, NY

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. LU1191 Res. No. _____

in favor in opposition

Date: 9/22/9

Name: THOMAS MURPHY (PLEASE PRINT) SUNSET PARK

Address: 413 43 STREET BROOKLYN NY

I represent: MYSELF

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. LU1191 Res. No. _____

in favor in opposition

Date: _____

Name: BRAD LANDER (PLEASE PRINT)

Address: _____

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1214, 1215, 1216 Res. No. _____

in favor in opposition

Date: 9-22-09

Name: CAROL CLARK to SP (PLEASE PRINT)

Address: 100 Gold

I represent: HPD

Address: 100 Gold

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1191 Res. No. _____

in favor in opposition

Date: 9/22/09

(PLEASE PRINT)

Name: Randolph Peers

Address: 4201 4th Ave

I represent: Community Board 7 - Chair

Address: SAME

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: JANCA (JOHN) BINDELA

Address: 3535 Riverdale Ave

I represent: my self

Address: 3535 Riverdale Ave

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 12-14, 12-15 + 12-16 Res. No. _____

in favor in opposition

Date: 9/22/09

(PLEASE PRINT)

Name: Martin Dunn

Address: _____

I represent: Dunn Development Corp

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1216, 1211 + 1212 Res. No. _____

in favor in opposition

Date: 9/22/09

(PLEASE PRINT)

Name: Doreen A. Carson

Address: 200 Park Avenue - 15th Floor

I represent: SK Capital - applicant

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Wendy Cheung

Address: 459 63rd St Brooklyn NY

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1190 Res. No. _____

in favor in opposition

Date: Sept 22, 2009

(PLEASE PRINT)

Name: JOHN HABIB

Address: 415 86th, Brooklyn NY

I represent: CB7 -

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1190-95 Res. No. _____

in favor in opposition

Date: 9/22/09

Name: David Galarza (PLEASE PRINT)

Address: PO Box 4, NYC 10272

I represent: SPAN

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. ^{LU} 1190 Res. No. _____

in favor in opposition

Date: Sept 22, 2009

Name: Raymond Figueroa (PLEASE PRINT)

Address: 5220 4th Ave Bklyn NY

I represent: Turning Point

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. ^{LU} 1190 Res. No. _____

in favor in opposition

Date: Sept 22, 2009

Name: EDGAR ALVAREZ (PLEASE PRINT) ^

Address: SUNSET PARK, BROOKLYN

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. SUNGLER PARK Res. No. _____

in favor in opposition

Date: 9/22/09

Name: ARUN AGUIAR (PLEASE PRINT)

Address: 4624 6th AVE BKN 11220

I represent: VERY MERRY FREE MARKET

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9/22/09

Name: Steven Hurwitz (PLEASE PRINT)

Address: 50 Broadway 4th Floor

I represent: GFT Development

Address: 50 Broadway 4th Floor

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: COREY JOHNSON (PLEASE PRINT)

Address: 50 BROADWAY

I represent: GFT DEVELOPMENT

Address: 50 BROADWAY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1213-2009 Res. No. _____

in favor in opposition

Date: 9/22/09

(PLEASE PRINT)

Name: Rev. Brian Hamer

Address: 36-01 Bell Blvd

I represent: Redeemer Luth. Church

Address: 36-01 Bell Bayside 11361

Briarwood
Rezoning

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1213 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Vincent Riso

Address: 36-35 Bell Blvd

I represent: Owner Briarwood Plaza

Address: 36-35 Bell Blvd

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9-22-09

(PLEASE PRINT)

Name: DARRELL CANAWER

Address: 38 FLEET WALK

I represent: RE build

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

12-14-12-16

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9-22-08

(PLEASE PRINT)

Name: THOMAS MONTFORT

Address: 393 CHURCH ST AVE

I represent: REBUILD

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

12-11-12-16

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9-22-09

(PLEASE PRINT)

Name: Seth Hakeem Hill

Address: 38 Fleetwalk

I represent: Rebuild

Address: 25 Monument

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

AIR I intend to appear and speak on Int. No. ^{SUNSET PARK} _____ Res. No. _____

in favor in opposition

Date: 9/22/09

(PLEASE PRINT)

Name: DURNIMA KAPUR

Address: _____

I represent: GAPS PLANNING

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. SUNSET PARK Res. No. _____

in favor in opposition

Date: 9/22/09

(PLEASE PRINT)

Name: AIKOR NOSE

Address: _____

I represent: CITY PLANNING

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. W 1190 Res. No. _____

in favor in opposition

Date: Sept 22, 2009

(PLEASE PRINT)

Name: BRAD LANDER

Address: BROOKLYN, NY

I represent: - SELF -

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1190 Res. No. _____

in favor in opposition

Date: 12/2/09

(PLEASE PRINT)

Name: Ruben Sosa

Address: 8414 4th AVE., Apt. B5, Bklyn., NY 11209

I represent: Sunset Park Alliance of Neighbors

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 1190 Res. No. _____

in favor in opposition

Date: 9/22/09

(PLEASE PRINT)

Name: COREY KULCU-ROCA

Address: 521 41 Street

I represent: the Friends of Sunset Park

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9/22/09

*UNLESS MAJOR MODIFICATIONS
ARE MADE BEFORE FINAL
VOTE*

(PLEASE PRINT)

Name: MARIA ROCA

Address: 501 41 Street 11232

I represent: League of Sunset Park Co-ops

Address: 501 41 Street 11232

Please complete this card and return to the Sergeant-at-Arms