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Gale A. Brewer, Borough President

**Testimony of Manhattan Borough President Gale A. Brewer**

**L.U. No. 438: Adorama, ULURP No. C 160082 ZSM by 42 West 18th Realty Corp.**

**Subcommittee on Zoning and Franchises, City Council**

**September 6, 2016**

Good morning Chair Richards and members of the Subcommittee on Zoning and Franchises. My name is Gale Brewer and I am the Manhattan Borough President. I am here to reiterate my strongly held belief that the Adorama special permit, for the development at 42 West 18<sup>th</sup> Street in the Ladies Mile Historic District, should trigger the requirements of the Mandatory Inclusionary Housing Program or “MIH.”

Our office was the first and only Borough President’s office to recommend approval of Mandatory Inclusionary Housing, and that was in large part because of its application to special permits. Only two Manhattan neighborhoods are likely to see neighborhood rezonings that will trigger MIH – East Harlem and Inwood. However, since I took office, Manhattan has had 30 applications for special permits – more than double the amount of all other boroughs combined. That is why I believe that any special permit that allows developers to build significantly more residential units and floor area than they would otherwise should trigger MIH. The special permit process is the only way most neighborhoods in Manhattan will see any affordable housing under the MIH program.

Now, the Department of City Planning has been clear in conversations with us that they did not intend for MIH to apply to this particular special permit, even though it would allow a much bigger and taller building. But it is not clear to us, or the Community Board, or to many more organizations and individuals who’ve weighed in on MIH why the text amendment we approved would not apply in this case.

The Zoning Resolution reads that “where a special permit application would allow a significant increase in **#residential floor area#**...., the City Planning Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program.”

The text does not make reference to an increase in **residential FAR** as being required for the applicability of MIH, nor does it state that an increase in **permitted** residential floor area is required. The bulk permit sought in this application facilitates more “**residential floor area**” and



should fall within the requirements for application of the MIH program. We do not think the wording of the text lends itself to another interpretation.

We know and appreciate the fact that the City Planning Commission spent a significant amount of time debating this issue. We appreciate the discussions my office has had with City Council Land Use staff and the consideration you are giving to this question as well as the efforts of your staff to take a more proactive approach to these applications in the future. We want to work with the City Council and the City Planning Commission to review future potential applications for special permits for residential development in Manhattan to make sure we take every opportunity we can to apply MIH. But, I stand firm in my belief that the language of the MIH zoning text covers this application.

Thank you for your time and consideration.



**TESTIMONY OF ADRIEN A. WEIBGEN BEFORE THE  
NEW YORK CITY COUNCIL SUBCOMMITTEE ON ZONING AND FRANCHISES  
REGARDING THE ADORAMA SPECIAL PERMIT APPLICATION**

*Wednesday, September 7, 2016*

Thank you for the opportunity to testify today. My name is Adrien Weibgen, and I am a Staff Attorney at the Community Development Project of the Urban Justice Center, or "CDP." CDP's mission is to strengthen the impact of grassroots organizations in New York City's low-income and other excluded communities. We partner with community organizations to win legal cases, publish community-driven research reports, assist with the formation of new organizations and cooperatives, and provide technical and transactional assistance in support of their work towards social justice. As part of its work around neighborhood change, CDP is working to ensure that Mandatory Inclusionary Housing is effectively and appropriately implemented throughout the City.

Today, Council has the opportunity to ensure that the Mandatory Inclusionary Housing policy does what it was intended to do – create permanently affordable housing for low- and moderate-income New Yorkers. MIH is especially critical as a tool to generate affordable housing in areas such as Chelsea, which are otherwise almost completely inaccessible to lower-income people.

As many of you know, CDP previously weighed in to explain its position that Mandatory Inclusionary Housing must be applied in special permit applications such as these, where the granting of a special permit will have the effect of increasing the residential floor area that can be built on a zoning lot. I have submitted a copy of CDP's letter to the City Planning Commission (CPC) on this matter along with my written testimony, but in summary, after reviewing the provisions of the Zoning Resolution (ZR) and relevant case law, we believe that MIH *must* be imposed on *all* special permits that result in a significant increase in residential floor area, whether that increase results from the granting of additional Floor Area Ratio (FAR) or – as in this case – from a different bulk modification. ZR § 74-32 states that CPC shall apply the requirements of MIH "where a special permit application would allow a significant increase in 'residential floor area'..." Importantly, the zoning text does *not* limit the Commission's duty to impose the requirements of MIH to instances where there is an increase in "maximum residential floor area permitted" or an increase in available FAR, but simply to an "increase in residential floor area." It is improper for the Commission to limit MIH's application to scenarios where FAR is increased, when no such limitation exists within the zoning text itself.

It is also improper to look beyond the zoning text to derive its meaning when the text itself is clear and unambiguous. The Commission's resolution on the Adorama Special Permit notes that "Department staff and the Commission were clear and consistent throughout public review that MIH would not apply to special permits of this type," citing both the CPC report for MIH and "statements made by Department staff at certification and by the City Planning Director in testimony before the City Council."



The Commission asserts that because "a CPC Report is the representation to the public and to the City Council of the scope of the law ... the Commission does not now have the discretion to act in a way that contradicts these representations or that goes beyond the law's explicit scope." But here, the law's "explicit scope" – the plain text of ZR § 74-32 – simply does not support the interpretation that the Commission has put forward. Though the Commission cites other sources to describe what the views of certain Department officials involved in the MIH approval process may have been, ultimately, as New York's highest court has explained, "the clearest indicator of legislative intent is the statutory text, [and] the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof."<sup>1</sup> The reason for this is clear: to do otherwise risks thwarting the democratic process through which the zoning text was reviewed, edited and adopted by the City Council. It is telling that the Commission's resolution on the Adorama Special Permit fails to address either the text of ZR § 74-32 or CDP's extensive discussion of the Commission's obligation to follow the law as written. The Commission appears to avoid the text of the Zoning Resolution in order to avoid the inescapable conclusion that text requires, but we urge the Council not to do the same. As the Commission stated in its resolution, "attempts to exceed the bounds of MIH as enacted could be self-defeating and would place the program in legal jeopardy." Here, the Commission has exceeded the scope of its powers not by applying MIH, but by refusing to do so where the text of the Zoning Resolution makes clear the Commission's duty to impose MIH.

Within this context, it is critical that the City Council correct the actions of the Commission and impose the MIH program requirements, as expressly required by the Zoning Resolution. As explained more fully in the legal memo submitted with my testimony, § 197-d(c) of the City Charter provides that the City Council "shall take final action on" CPC decisions subject to the Council's review. The Charter grants the Council the authority to "approve, approve with modifications or disapprove" such CPC decisions. Although the City Council has not yet faced a decision about whether to modify a Special Permit application in order to impose the requirements of MIH, the Charter expressly grants the Council the authority to "approve with modifications" any action of the Commission subject to the Council's review, and the Council has invoked this authority to modify numerous other special permit applications. Although the Charter grants the Commission the authority to determine that proposed modifications warrant additional environmental or land use review under § 197-c, the Commission rarely invokes this provision, and if it does not mandate further review, any recommendations the Commission might make about Council's proposed changes are purely advisory. Here, the imposition of MIH – a modification that would change the affordability levels of a small number of residential units, but not fundamentally alter the number of units or otherwise change the plans at issue – seems unlikely to warrant additional review. Moreover, even if the Commission were to determine that additional review is warranted, the determination would simply return the modified proposal to the process described under § 197-c; it would not necessarily block Council's proposed modifications. Thus, the Council should not be deterred from making whatever modifications it believes to be appropriate – in this case, the imposition of MIH.

Thank you for the opportunity to testify. If you have any questions about my testimony, I can be reached at [aweibgen@urbanjustice.org](mailto:aweibgen@urbanjustice.org) or 646-459-3027.

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<sup>1</sup> *Majewski v. Broadalbin-Perth Cent. Sch. Dist.*, 91 N.Y.2d 577, 583 (N.Y. 1998).



# URBAN JUSTICE CENTER

**From:** Community Development Project at the Urban Justice Center  
**Re:** **City Council Authority to Modify a Special Permit in Order to Impose the Requirements of Mandatory Inclusionary Housing**  
**Date:** September 7, 2016

This memorandum describes the scope of the New York City Council's authority to modify a special permit application in order to impose the requirements of the Mandatory Inclusionary Housing ("MIH") program.

## I. BACKGROUND

At issue is an application for a special permit for a proposed development in Chelsea, known as the "Adorama" site. At present, the Adorama Special Permit application does not encompass the MIH requirements. Although the zoning lot's "maximum residential floor area permitted" would remain the same, the special permit would allow for the construction of 26 residential units and 22,367 zoning square feet of residential floor area that could not otherwise be built.<sup>1</sup>

Urban Justice Center previously submitted testimony to the City Planning Commission explaining its view that the plain language of the MIH zoning text applies to significant increases in "residential floor area"—that is, the "actual amount of residential floor area that can be built on a zoning lot, taking into account available FAR [floor area ratio], bulk rules, and all other zoning constraints."<sup>2</sup> Thus, the MIH program requirements should apply to the Adorama Special Permit, as it would increase the developer's ability to access residential floor area beyond the significant threshold of 10 residential units or 12,500 square feet of residential floor area.<sup>3</sup> In a decision issued on August 15, 2016, the City Planning Commission rejected this legal interpretation and approved the special permit application by a vote of 7 in favor—the minimum number of affirmative votes required to approve an application<sup>4</sup>—with 3 abstentions.<sup>5</sup>

Pursuant to New York City Charter § 197-d(b)(2), the Adorama Special Permit is now subject to automatic review by the City Council due to the following "triple no":

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<sup>1</sup> Memorandum from Urban Justice Ctr. to N.Y.C. Planning Comm'n (July 22, 2016) ("Re: Adorama Special Permit, Land Use Application ID: C 160082 ZSM").

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> See N.Y.C. CHARTER § 197-c(h).

<sup>5</sup> Report on C 160082 ZSM, N.Y.C. PLANNING COMM'N (Aug. 15, 2016), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/160082.pdf>.



1. Manhattan Community Board 5 recommended disapproval of the special permit on May 16, 2016 (“no #1”);<sup>6</sup>
2. Manhattan Borough President Gale Brewer recommended disapproval on June 15, 2016 (“no #2”);<sup>7</sup> and
3. Manhattan Borough President Brewer filed an objection with the City Council and CPC within 5 days of CPC’s approval of the special permit (“no #3”).<sup>8</sup>

In the absence of this “triple no,” the Adorama Special Permit would have been subject to City Council’s discretionary review, as described at § 197-d(b)(3).<sup>9</sup> However, the “triple no” makes such review mandatory. Such “triple no” objections are rare; there have only been 21 since 1995.<sup>10</sup>

## **II. ANALYSIS**

### **A. Overview of Applicable Charter Provisions**

Chapter 2 of the New York City Charter establishes the City Council as “the legislative body of the city.”<sup>11</sup> As stated at Charter § 21, the mere enumeration of powers in the Charter “shall not be held to limit the legislative power of the council, except as specifically provided in this charter.”<sup>12</sup> Charter § 28(a) (“Powers of council”) provides one such limit for city planning: “The power of the council to act with respect to matters set forth in [§§ 197-c (“Uniform land use review procedure”) and 200 (“Zoning resolution”)] shall be limited by the provisions of [§ 197-d (“Council Review”)].”<sup>13</sup>

Charter § 197-c(a) provides that land use applications in enumerated categories shall be reviewed pursuant to a uniform land use review procedure (“ULURP”). For reference, the enumerated categories at § 197-c(a) include special permits<sup>14</sup> as well as designations of zoning districts under the Zoning Resolution (“ZR”) pursuant to §§ 200 (“Zoning resolution”) and 201 (“Applications for zoning changes and special permits”).<sup>15</sup>

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<sup>6</sup> Resolution on ULURP Application # C 160082 ZSM, MANHATTAN CMTY. BD. 5 (May 2016), <http://www.cb5.org/cb5/resolutions/may-2016/> (recommending denial of the Adorama application unless MIH is applied in accordance with Zoning Resolution § 23-92).

<sup>7</sup> Letter from Gale Brewer, Manhattan Borough President, to N.Y.C. Council and City Planning Comm’n (Aug. 16, 2016), <http://manhattanbp.nyc.gov/downloads/pdf/2016-08-15%20MBP%20Brewer%20Objection%20to%20CPC%20approval%20of%20Adorama.pdf> (“RE: Objection to ULURP Application No. C 160082 ZSM (Adorama) pursuant to Section 197-d(b)(2)”).

<sup>8</sup> *Id.*

<sup>9</sup> N.Y.C. CHARTER § 197-d(b)(3) (stating that City Council must vote by a majority of all Council members to review the decision of the CPC).

<sup>10</sup> *Brewer forces Council review of Chelsea development missing affordable housing*, REALESTATERAMA (Aug. 17, 2016), <http://newyork.realestaterama.com/2016/08/17/brewer-forces-council-review-of-chelsea-development-missing-affordable-housing-ID04742.html>.

<sup>11</sup> N.Y.C. CHARTER § 21.

<sup>12</sup> *Id.*

<sup>13</sup> Section 201(b) also notes that all applications for the issuance of special permits “shall be subject to review and approval pursuant to” §§ 197-c (“Uniform land use review procedure”) and 197-d (“Council Review”).

<sup>14</sup> N.Y.C. CHARTER § 197-c(a)(4).

<sup>15</sup> *Id.* § 197-c(a)(3).



## 1. City Planning Commission authority to approve, modify, or disapprove land use applications

Charter § 197-c(h) provides that the City Planning Commission “shall approve, approve with modifications, or disapprove” a land use application. Any CPC action that “modifies or disapproves a written recommendation of the community board, borough president or borough board shall be accompanied by a written explanation of its reason for such action.”<sup>16</sup> When the CPC decides to approve or approve with modifications an application falling under one of the enumerated categories at § 197-c(a), such as special permits, the Commission must file with the City Council and affected borough president a copy of its decisions. As noted above, a CPC decision that receives a “triple no” is automatically subject to “review and action” by the City Council, pursuant to § 197-d(b)(2).

## 2. City Council authority to approve, modify, or disapprove land use applications

Charter § 197-d(c) provides that the City Council “shall take final action on”<sup>17</sup> a CPC decision that is subject to the Council’s review. The affirmative vote of a majority of all Council members is required to “approve, approve with modifications or disapprove”<sup>18</sup> a CPC decision. If the Council fails to act within a certain time period or fails to achieve the required majority vote on a CPC decision subject to Council review, then the Council “shall be deemed to have approved the decision of the commission.”<sup>19</sup>

Before the City Council is able to approve with modifications a CPC decision, it must “file the text of any such proposed modifications with the commission.”<sup>20</sup> The CPC then has 15 days to file a written statement with the Council indicating whether the proposed modifications “are of such significance that additional review of environmental issues or additional review pursuant to [§ 197-c] is required.”<sup>21</sup> If such review is required, the matter proceeds anew through the ULURP process, as described in § 197-c. If no additional review is required, the CPC may include with its written statement an “advisory recommendation concerning the proposed modifications, together with any proposed amendments to the proposed modifications.”<sup>22</sup> Once the City Council has received the CPC’s written statement, it “may thereafter approve such proposed modifications, with or without the amendments proposed by the commission.”<sup>23</sup>

## **B. The Applicable Charter Provisions and Case Law Show the Breadth of City Council’s Authority to Modify or Disapprove a Special Permit**

As indicated at Charter § 21, the City Council is the “legislative body of the city” whose legislative power is only limited “as specifically provided in this charter.” A special permit is

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<sup>16</sup> *Id.* § 197-c(h).

<sup>17</sup> *Id.* § 197-d(c) (emphasis added).

<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* § 197-d(d).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*



“tantamount to a legislative finding.”<sup>24</sup> Thus, special permit applications are squarely within the City Council’s jurisdiction. Nothing within the City Charter appears to limit the City Council’s ability to modify a special permit application in order to meet MIH requirements, provided that the application itself is subject to the Council’s review. New York case law strongly supports this position.<sup>25</sup>

# 1. City Council has the authority to approve with modifications a special permit

## *a. The Council has frequently modified special permit applications*

Given the newness of the Mandatory Inclusionary Housing program, the City Council has not yet been faced with a decision about whether to modify a special permit application in order to impose the requirements of MIH. However, the City Council has previously invoked its authority to approve with modifications numerous special permit applications. For instance, in 2015, the Council approved with modifications at least nine special permit applications.<sup>26</sup>

Council has also approved modifications over the objections of CPC. For example, in 2013, the City Council Committee on Land Use approved with modifications a CPC decision to grant a special permit relating to Madison Square Garden’s continued presence in Midtown.<sup>27</sup> In that case, the City Council, eager to pressure MSG to relocate to another site, approved the grant of the special permit, but reduced its term from 15 to 10 years and removed a provision that would have allowed the relevant City, State, and federal agencies to jointly seek with MSG an extension of the special permit term. Although CPC questioned the wisdom of the Council’s proposed modifications, CPC determined that the modifications did not warrant additional review of environmental or land use issues pursuant to § 197-d(d). Thus, the CPC could do no more than provide advisory recommendations concerning the proposed modifications,<sup>28</sup> and the Council ultimately adopted its own proposed modifications.<sup>29</sup>

## *b. The Council has modified numerous other land use applications*

The City Council has previously exercised its authority to approve with modifications many other CPC decisions relating to land use applications that, like special permits, fall under the § 197-c(a) categories. For instance, in March 2016, the Council modified the CPC’s decision

<sup>24</sup> *Liska NY, Inc. v. City Council of New York*, 2014 WL 2531080 at \*5 (N.Y. Sup. Ct. 2014) (quoting *Framike Realty Corp. v. Hinck*, 220 A.D. 2d 501, 501–02 (2d Dep’t 1995)). As noted in *Liska*, “A special permit is ‘tantamount to a legislative finding that, if the special exception conditions are met, such use is in harmony with the general zoning plan and will not adversely affect the neighborhood and surrounding areas.’ ” *Id.*

<sup>25</sup> See *infra* Part II.B.3.

<sup>26</sup> See Resolutions 0647, 0661, 0680, 0684, 0685, 0725, 0726, 0727, and 0728, N.Y.C. COUNCIL (2015).

<sup>27</sup> Legislative details on ULURP No. C 130139 ZEM (L.U. No. 848), N.Y.C. COUNCIL, <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1450596&GUID=0FAB70D7-A787-49BA-8052-C561FFF15A3E&Options=ID%7cText%7c&Search=130139> (last visited Sept. 2, 2016).

<sup>28</sup> Letter from N.Y.C. Planning Comm’n to N.Y.C. Council (July 9, 2013), <http://legistar.council.nyc.gov/View.ashx?M=F&ID=2561889&GUID=66EBD0ED-8AED-4E63-BFA2-E09231000B68>.

<sup>29</sup> Resolution approving with modifications CPC decision on ULURP No. C 130139 ZEM (L.U. No. 848), N.Y.C. COUNCIL (July 24, 2013), [http://legistar.council.nyc.gov/ViewReport.ashx?M=R&N=Master&GID=61&ID=1450596&GUID=0FAB70D7-A787-49BA-8052-C561FFF15A3E&Extra=WithText&Title=Legislation+Details+\(With+Text\)](http://legistar.council.nyc.gov/ViewReport.ashx?M=R&N=Master&GID=61&ID=1450596&GUID=0FAB70D7-A787-49BA-8052-C561FFF15A3E&Extra=WithText&Title=Legislation+Details+(With+Text)).



to amend the Zoning Resolution to create the MIH program.<sup>30</sup> The CPC's decision was subject to automatic review by the City Council under § 197-d(b)(1), which refers to any decision by the CPC to approve a matter described in § 197-c(a)(3)—namely, designations of zoning districts under the Zoning Resolution. In that case, the CPC determined that the City Council's proposed modifications did not require additional review of environmental or land use issues.<sup>31</sup> Thus, the Council proceeded to adopt its own proposed modifications.<sup>32</sup>

*c. The Commission does not have the power to singlehandedly reject modifications sought by Council, and it rarely invokes its power to subject such modifications to further environmental or land use review under § 197-c*

As described above, per § 197-d(d) of the Charter, where the Council approves with modifications an action of the CPC, the Commission has the authority to determine whether modifications by the Council require additional environmental or land use review under § 197-c. If the Commission finds no additional review is warranted, the Commission may issue advisory recommendations about Council's proposed changes, but the Council is free to ignore such recommendations, as it did with the Madison Square Garden special permit. Alternatively, the Commission may determine that additional review is warranted pursuant to § 197-c, but even this power is unlikely to pose a meaningful barrier to any changes Council may wish to implement. First, the Commission rarely determines that additional review is warranted, even where the modifications by Council are fairly significant. For example, the Council made numerous changes in its approval of the East New York rezoning, but the Commission determined that none of the changes warranted additional environmental or land use review.<sup>33</sup> Of the nine special permit applications approved with modifications in 2015, none were returned for additional review.<sup>34</sup> Here, the imposition of MIH—a modification that would change the affordability levels of a small number of residential units, but not fundamentally alter the number of units or otherwise change the plans at issue—seems unlikely to warrant additional review. Second, even were the Commission to determine that additional review was warranted, the determination would simply return the modified proposal to the process described under § 197-c; it would not necessarily block Council's proposed modifications. Thus, the possibility that the Commission could subject any modifications made by the Council to further review should not deter the Council from making whatever modifications it believes to be appropriate.

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<sup>30</sup> Legislative details on Application No. N 160051 ZRY (L.U. No. 334), N.Y.C. COUNCIL, <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2636214&GUID=D09CF096-FD49-4DD9-BD65-91949FBF1D29&Options=ID%7cText%7c&Search=mandatory+inclusionary+housing> (last visited Sept. 2, 2016).

<sup>31</sup> Letter from N.Y.C. Planning Comm'n to N.Y.C. Council (March 21, 2016), <http://legistar.council.nyc.gov/View.aspx?M=F&ID=4317809&GUID=94476833-A37A-4FDC-B12E-B252879D3C98>.

<sup>32</sup> Resolution approving with modifications CPC decision on Application No. N 160051 ZRY (L.U. No. 334), N.Y.C. COUNCIL (March 22, 2016), [http://legistar.council.nyc.gov/ViewReport.aspx?M=R&N=Master&GID=61&ID=2636214&GUID=D09CF096-FD49-4DD9-BD65-91949FBF1D29&Extra=WithText&Title=Legislation+Details+\(With+Text\)](http://legistar.council.nyc.gov/ViewReport.aspx?M=R&N=Master&GID=61&ID=2636214&GUID=D09CF096-FD49-4DD9-BD65-91949FBF1D29&Extra=WithText&Title=Legislation+Details+(With+Text)).

<sup>33</sup> Letter from N.Y.C. Planning Comm'n to N.Y.C. Council (April 18, 2016), <http://legistar.council.nyc.gov/View.aspx?M=F&ID=4398099&GUID=E685761C-B0A0-4651-84E9-3631B8265F95>.

<sup>34</sup> See Resolutions 0647, 0661, 0680, 0684, 0685, 0725, 0726, 0727, and 0728, N.Y.C. COUNCIL (2015).



## 2. City Council has the authority to modify a special permit, notwithstanding the Zoning Resolution's exclusive reference to the CPC

The Zoning Resolution provisions relating to MIH and special permits refer to the CPC's authority and omit any specific reference to the Council's authority. For example, ZR § 74-32 ("Additional Considerations for Special Permit Use and Bulk Modifications"), which states when special permit applications must satisfy the MIH requirements, refers to the CPC as opposed to the City Council.<sup>35</sup> However, this grant of authority is necessarily subject to the Council's overarching legislative power as codified in the City Charter. The CPC has recognized the same, as it told the Council in March 2016: "[T]he City Charter, rather than the Zoning Resolution, establishes the land use review process and the role of the City Planning Commission, City Council, and other parties within it."<sup>36</sup> In other words, the Zoning Resolution does not trump the Charter as far as the Council's authority over land use applications. Here, the Charter at § 197-d(c) makes clear the City Council's authority to "take final action on"<sup>37</sup> the CPC's Adorama Special Permit decision, including by either "approv[ing] with modifications"<sup>38</sup> or "disapprov[ing]"<sup>39</sup> that decision. The Charter grants the Council the authority to approve the special permit modifications – namely, the imposition of MIH – even though the MIH zoning text refers only to the CPC.

This interpretation is consistent with past actions of the Council, which has modified CPC decisions when the applicable ZR provisions referred only to the CPC's authority. For instance, in the abovementioned case involving the special permit for Madison Square Garden, the Council approved with modifications the CPC's decision despite the fact that the applicable ZR provision, § 74-41 ("Arenas, Auditoriums, Stadiums or Trade Expositions") refers only to what the *Commission* may permit or prescribe.

## 3. City Council has the authority to disapprove a special permit

Should the Council determine that it lacks the authority to modify the Adorama Special Permit, it can instead exercise its authority to reject the application altogether. The City Council has previously disapproved CPC decisions to grant a special permit. For instance, in the 2014 case *Liska NY, Inc. v. City Council*,<sup>40</sup> a landlord petitioned the Supreme Court of New York, New York County, for an order reversing the City Council's denial of a special permit application. This special permit related to FAR regulations for a 32-unit residential building in the Bronx, which was leased by the city for use as a 57-unit homeless shelter.<sup>41</sup> In that case, the

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<sup>35</sup> N.Y.C. ZONING RESOLUTION § 74-32 ("[T]he *City Planning Commission*, in establishing the appropriate terms and conditions for granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions)" (emphasis added)).

<sup>36</sup> Letter from N.Y.C. Planning Comm'n to N.Y.C. Council (March 21, 2016), <http://legistar.council.nyc.gov/View.ashx?M=F&ID=4317809&GUID=94476833-A37A-4FDC-B12E-B252879D3C98>.

<sup>37</sup> N.Y.C. CHARTER § 197-d(c).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Liska NY, Inc. v. City Council of New York*, 2014 WL 2531080 (N.Y. Sup. Ct. 2014).

<sup>41</sup> See also *Landlord Seeks Permit for Illegal Bronx Homeless Shelter*, DNAINFO N.Y. (Aug. 29, 2013), <https://www.dnainfo.com/new-york/20130829/longwood/landlord-seeks-permit-for-illegal-bronx-homeless-shelter>.



CPC voted in favor of granting the special permit, but the City Council adopted a resolution disapproving the CPC's determination. The New York Supreme Court denied the landlord's petition, and the Supreme Court, Appellate Division, First Department, affirmed the lower court's judgment.<sup>42</sup> The New York Supreme Court in *Liska* stated that "[t]he final decision over the granting of a special permit has been legislatively committed to the City Council."<sup>43</sup> The court noted that the City Council is not required to "merely follow the recommendations of the City Planning Commission."<sup>44</sup> Rather, as expressly provided at Charter § 197-d(c), the Council can act by a majority vote to disapprove the CPC's decision.<sup>45</sup> The court further noted that the Charter "does not elaborate as to what reasons the Council must have when approving or disapproving a special permit."<sup>46</sup>

### **III. CONCLUSION**

For the foregoing reasons, the New York City Council has the legislative authority to approve with modifications or disapprove the CPC's decision as to the Adorama Special Permit application. The Council should not be deterred by the lack of precise precedent as to the MIH program, but rather should rely on its broad legislative power to take final action on CPC decisions subject to its review. The Council has previously exercised this authority to modify other special permits, and it should do so again to correct the CPC's erroneous interpretation of the mandates of the Mandatory Inclusionary Housing program.

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<sup>42</sup> *Liska NY, Inc. v. City Council of New York*, 134 A.D. 3d 461 (N.Y. App. Div. 2015).

<sup>43</sup> *Liska* (N.Y. Sup. Ct. 2014) at \*13.

<sup>44</sup> *Id.* at \*6.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*



# URBAN JUSTICE CENTER

July 22, 2016

Via email to CalendarOffice@planning.nyc.gov and facsimile to (212) 720-3488

New York City Planning Commission  
120 Broadway, 31<sup>st</sup> Floor  
New York, NY 10271

Re: Adorama Special Permit, Land Use Application ID: C 160082 ZSM

Dear Commissioners:

As longtime advocates for affordable housing in New York City and attorneys with significant experience in land use matters and legislative drafting and interpretation, we were gravely concerned to learn of the City's intent not to apply the requirements of Mandatory Inclusionary Housing to the Adorama Special Permit application for the proposed development in Chelsea. Failure to apply the requirements of MIH in this instance would both thwart the goals of the MIH program, and run contrary to the plain language of the MIH zoning text. Importantly, we do not feel that this is an instance where the City Planning Commission can exercise its discretion and elect *not* to apply the requirements of MIH. Instead, after reviewing the record pertaining to this application, provisions of the Zoning Resolution, and relevant case law, we believe that the Planning Commission is obligated to impose the requirements of MIH on this Special Permit – and all future Special Permits that result in a significant increase in residential floor area. Regardless of what the Department of City Planning may have intended with regard to the applicability of MIH to special permits, the fact remains that the text of the Zoning Resolution as passed requires the imposition of MIH to *all* special permits where the actual amount of floor area that can be built increases significantly – not only instances where the floor area ratio, or permitted floor area, is increased.

## **I. Legal Interpretation of Relevant Provisions of the Zoning Text**

The Urban Justice Center has concluded that the affordable housing requirement of Mandatory Inclusionary Housing must be applied to this special permit application, and to all future special permit applications that have the effect of significantly increasing a building's residential floor area. Importantly, this requirement applies not only to significant increases in the maximum Floor Area Ratio (FAR) of a given lot, but also to all increases in residential floor area resulting from the grant of a special permit, whether the result of a use modification or *any* type of bulk modification, including those at issue in the instant application.



A. Provisions within the Zoning Resolution Relevant to Mandatory Inclusionary Housing and Special Permits

Zoning Resolution (ZR) Section 23-933 provides that:

Inclusionary Housing Program shall ... apply as a condition of City Planning Commission approval of special permits as set forth in ZR Section 74-32...

ZR Section 74-32, called "Additional Considerations for Special Permit Use and Bulk Modifications," reads:

Where a special permit application would allow a significant increase in #residential floor area# and the special #floor area# requirements in #Mandatory Inclusionary Housing areas# of paragraph (d) of Section 23-154 (Inclusionary Housing) are not otherwise applicable, the City Planning Commission, in establishing the appropriate terms and conditions for granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions). However, where the Commission finds that such special permit application would facilitate significant public infrastructure or public facilities addressing needs that are not created by the proposed #development#, #enlargement# or #conversion#, the Commission may modify the requirements of such paragraph (d).

Paragraph (d) of Section 23-154 sets forth the special floor area provisions for zoning lots in MIH areas, including the affordable housing requirement. Finally, the objectives of MIH as described in Section 23-92 are as follows:

The Inclusionary Housing Program is established to promote the creation and preservation of housing for residents with varied incomes in redeveloping neighborhoods and to enhance neighborhood economic diversity and thus to promote the general welfare.

B. Analysis

Representatives from the Department of City Planning have insisted that MIH is triggered only by increases in *permitted* residential floor area, whether achieved by an increase in a lot's overall maximum FAR or a through a use conversion (from manufacturing or commercial to residential). For example, at the June 20, 2016 hearing on the subject application, John Mangin, an attorney for the Department of City Planning, stated that:

MIH applies to special permits that would significantly increase permitted residential floor area. So, the archetypal situation is, say, a 74-711 that was enabling new residential floor area within a manufacturing district... MIH does not apply when an applicant is just seeking bulk modifications to reconfigure residential floor area that's already permitted.



Mangin concluded that because (1) the subject development falls within an existing R-10 district, (2) the Commission's actions will not increase residential capacity at the site, and (3) bulk modifications alone do not trigger MIH, MIH should not apply to the application.

However, the Commission's actions *will* constitute bulk modifications and result in increased residential capacity, and there is nothing within the zoning text to support the notion that bulk modifications alone are insufficient to trigger MIH. The text does not justify limiting the application of MIH to increases in "permitted" or "maximum" residential floor area, to use rather than bulk modifications, or to bulk modifications that increase maximum FAR. Instead, the MIH affordability requirements must be applied to *all* instances where residential floor area is significantly increased through the issuance of a special permit.

1. *MIH Is Triggered Because the Actions Would Increase "Residential Floor Area"*

The phrase "#residential floor area#," as used in ZR Section 74-32, refers to the actual amount of residential floor area that can be built on a zoning lot, taking into account available FAR, bulk rules, and all other zoning constraints. The phrase comprises two terms defined in ZR Section 12-10:

- "'Residential' means pertaining to a #residence#"
- "'Floor area' is the sum of the gross areas of the several floors of a #building# or #buildings#, measured from the exterior faces of exterior walls or from the center lines of walls separating two #buildings#."

Importantly, the phrase "residential floor area," without more, does *not* refer to the maximum residential floor area that could potentially be achieved on a site based solely on the lot's floor area ratio<sup>1</sup> multiplied by the lot area – a concept described elsewhere within the MIH text by the phrase "maximum #residential floor area ratio#." Specifically, ZR Section 23-154(b) states:

The #residential floor area# of a #zoning lot# may not exceed the base #floor area ratio# set forth in the table in this paragraph (b), except that such #floor area# may be increased on a #compensated zoning lot# by 1.25 square feet for each square foot of #low income floor area# provided, up to the maximum #floor area ratio# specified in the table, as applicable.

In the first sentence of this section, the phrase "may not exceed" makes clear that a lot's "residential floor area" can range in size, with the base or maximum floor area ratio establishing the upper boundary of what is permissible. A range in the ultimate "residential floor area" is possible because this figure is affected both by the applicable FAR, *and by other factors* (such as height and setback limits). In contrast, the table that follows absolutely defines both the base and maximum floor area ratios for each zoning district – fixed figures that do not vary.

ZR Section 23-22 likewise supports the interpretation that the phrase "residential floor area," without more, refers to the actual residential floor area capable of being built on a site, taking into account both available FAR and other constraints. There, the phrase "*maximum #residential floor area# permitted*"

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<sup>1</sup> Defined in Section 12-10 as "the total #floor area# on a #zoning lot#, divided by the #lot area# of that #zoning lot#."



(emphasis added) is used to describe the figure used to determine the maximum number of dwelling units allowed in each residential district. It is a general principle of statutory interpretation that each word in a statute must be assumed to be meaningful, and that interpretations that would render certain words redundant or without content must be rejected. Here, an interpretation that the phrase “residential floor area” as used in Section 23-154(b) is synonymous with “maximum residential floor area permitted” as used in Section 23-22 would gut the words “maximum ... permitted” of their meaning.

Although the Commission’s actions would not increase the overall permitted FAR of the site or increase maximum permitted residential FAR via a use conversion from commercial or manufacturing to residential, it is beyond dispute that the Adorama Special Permit *would* allow for the construction of 26 residential units and 22,367 zoning square feet of residential floor area that could not otherwise be built. Because ZR Section 74-32 clearly calls for the application of MIH “[w]here a special permit application would allow a significant increase in #residential floor area#,” MIH must be applied.

2. *Any Bulk Modifications Are Sufficient to Trigger the Affordability Requirements of MIH*

As described above, DCP has testified that “MIH does not apply when an applicant is just seeking bulk modifications to reconfigure residential floor area that’s already permitted.” But ZR Section 74-32 is titled, “Additional Considerations for Special Permit Use *and Bulk Modifications*” (emphasis added), and within that Section, there is nothing that justifies limiting the application of MIH to bulk modifications where the maximum permitted residential FAR is increased. Instead, MIH applies to the full range of bulk modifications that result in a significant increase in residential floor area, with “bulk” defined in ZR Section 12-10 as:

- the term used to describe the size of #buildings or other structures#, and their relationships to each other and to open areas and #lot lines#, and therefore includes
- (a) the size (including height and #floor area#) of #building or other structures#;
  - (b) the area of the #zoning lot# upon which a #building# is located, and the number of #dwelling units# or #rooming units# within a #building# in relation to the area of the #zoning lot#;
  - (c) the shape of #buildings or other structures#;
  - (d) the location of exterior walls of #buildings or other structures# in relation to #lot lines#, to other walls of the same #building#, to #legally required windows#, or to other #buildings or other structures#; and
  - (e) all open areas relating to #buildings or other structures# and their relationship thereto.”

Because this Special Permit seeks “waivers in rear yard equivalent, rear setback, minimum distance between buildings, maximum base height and setback, and narrow buildings” – all of which will significantly alter the building envelope at the site in question – MIH must apply.

The principle of *expressio unius* – “inclusion of one thing implies the exclusion of the other” – further supports the interpretation that the application of MIH to special permits granting bulk modifications resulting in an increase in residential floor area is broad and unqualified. This is so because ZR Section 74-32 limits the application of MIH in numerous *other* ways that *are* enumerated, namely to situations where:

- There is a special permit application
- The permit application would allow an increase in residential floor area
- That increase would be significant



- The special floor area requirements in MIH housing areas are not otherwise applicable
- Application of the MIH requirements would be consistent with the objectives of the MIH program as set forth in ZR Section 23-92
- The special permit application does not facilitate significant public infrastructure or public facilities addressing needs that are not created by the proposed development, enlargement, or conversion

It is clear that numerous limitations to the imposition of MIH requirements in the context of special permits were considered and ultimately adopted; a limitation to particular types of bulk modifications from among all those that might produce a significant increase in residential floor area was not included. Therefore, it would be improper for the Commission to impose this new limitation at this stage by declining to impose MIH in the context of this special permit application.

### 3. The Adorama Special Permit Would Significantly Increase Residential Floor Area

ZR Section 74-32 does not define what constitutes a “significant increase” in residential floor area triggering the application of MIH within the context of a special permit. However, ZR Section 23-154(4) establishes a threshold of 10 units or 12,500 square feet of residential floor area as the threshold for applying MIH requirements to developments, enlargements or conversions in MIH areas, and it is reasonable to apply that same threshold to special permit applications, as “it is well settled that a statute must be construed as a whole and that its various sections must be considered with reference to one another.”<sup>2</sup> As the purpose of the application of MIH to special permits is the same as that for the application of MIH within MIH areas – i.e. “to promote the creation and preservation of housing for residents with varied incomes in redeveloping neighborhoods and to enhance neighborhood economic diversity and thus to promote the general welfare” (ZR Section 23-92) – there is no reason to think that developments, enlargements, and conversions resulting from the issuance of special permits, especially those in strong housing markets, would be subject to a different and less rigorous affordable housing requirement than projects in MIH areas. Therefore, the MIH zoning text supports the conclusion that MIH is triggered by any increase of 10 or more residential units or 12,500 square feet of residential floor area, whether in an MIH area or resulting from a special permit. Finally, within the context of this specific application, there has been little if any debate about whether the residential floor area resulting from the issuance of the Special Permit would be “significant;” instead, the discussion has centered around the question of whether the residential floor area (or maximum permitted residential floor area, as some insist) will be increased at all. In light of the text of the Zoning Resolution and the specific facts of this application, the Urban Justice Center concludes that the increase in residential floor area is “significant” and warrants application of MIH.

### 4. Applying the MIH Affordability Requirement Would Advance the Goals of MIH

ZR Section 74-32 calls for the Planning Commission to apply the MIH affordability requirements to special permit applications where “consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92.” Per Section 23-92, the objectives of MIH are “[1] to promote the

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<sup>2</sup> Albany Law School v. New York State Office of Mental Retardation and Developmental Disabilities, 968 N.E.2d 967, 974 (NY 2012) (citing Friedman v. Connecticut Gen. Life Ins. Co., 877 N.E.2d 281 (2007)).



creation and preservation of housing for residents with varied incomes in redeveloping neighborhoods and [2] to enhance neighborhood economic diversity and thus to promote the general welfare.” It is clear that applying MIH to the development at 38-42 West 18th Street would advance both of these objectives.

First, the application of MIH to any and every development where such application is legally and financially sustainable advances the goal of creating and preserving housing for residents with varied incomes. This is so because MIH is one of the few tools that the City can leverage to secure permanently affordable housing for moderate- and low-income people, including individuals and families below 40% AMI. Market pressures, past policies that have failed to adequately produce and protect affordable housing, and present failures to establish and enforce policies sufficient to preserve the City’s existing affordable housing stock have created a housing landscape from which low- and moderate-income residents are rapidly disappearing. Even neighborhoods that today have ample housing stock accessible to lower-income people desperately need the long-term protection that Mandatory Inclusionary Housing can provide. Therefore, the Urban Justice Center believes that MIH must apply to all special permit applications resulting in a significant increase in residential floor area, wherever the proposed development, enlargement, or conversion may occur.

Applying MIH to the Adorama Special Permit, and to special permit applications within landmark districts more generally, would also advance the second objective of MIH: the enhancement of neighborhood economic diversity. As noted in the Environmental Assessment Statement for the MIH Zoning Text Amendment:

[T]here have been approximately 180 applications for landmark special permits since 1977, the earliest date for which data are available ... The vast majority (93 percent) of 74-71 applications have occurred in community districts in Manhattan below 96th Street. According to the *Market and Financial Study* conducted by BAE, these neighborhoods contain some of the strongest housing real estate markets in the city. They also represent some of the least economically diverse neighborhoods in the city, according to analysis provided in the DCP report, *Mandatory Inclusionary Housing: Promoting Economically Diverse Neighborhoods* ... [T]he community districts where 74-71 applications are concentrated overlap substantially with the neighborhoods where the majority of households are concentrated within higher income brackets.<sup>3</sup>

The subject site’s census tract, Manhattan 54, is a powerful illustration of this trend. Though the 2009-2013 American Community Survey estimates that 17.3% of New York City’s population has income below the poverty rate, only 2.0% of the subject site’s census track has income below that threshold. By applying MIH to this and future special permit applications, including 74-711 applications, the City can generate affordable housing construction in areas that are among the least accessible to low-income New Yorkers today.

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<sup>3</sup> Environmental Assessment Statement for the Mandatory Inclusionary Housing Zoning Text Amendment, p.42-43 (EAS Attachments).



5. Because the Conditions of 74-32 Have Been Met, The Planning Commission Does Not Have Discretion to Decline to Apply MIH to This Application

Regarding the role of the Planning Commission in applying the requirements of MIH to special permit applications, ZR Section 74-32 states, in relevant part:

Where a special permit application would allow a significant increase in #residential floor area# [and the other conditions for applying MIH to special permits, as described above, have been met] ... the City Planning Commission ... *shall apply* such requirements [emphasis added] ... However, where the Commission finds that such special permit application would facilitate significant public infrastructure or public facilities addressing needs that are not created by the proposed #development#, #enlargement# or #conversion#, the Commission *may modify* [emphasis added] the requirements of such paragraph (d).

ZR Section 12-01, “Rules Applying to Text of Resolution,” establishes that “shall” denotes a mandatory action. That Section provides that, “The word ‘shall’ is always mandatory and not discretionary. The word ‘may’ is permissive.” Per ZR Section 74-32, the *only* instance in which the Commission “may” exercise discretion and modify the affordability requirements of MIH is “where the Commission finds that such special permit application would facilitate significant public infrastructure or public facilities addressing needs” not created by the subject application. Suggesting that the Commission may exercise discretion under other circumstances not expressly enumerated would again violate the principle of *expressio unius* – “inclusion of one thing implies the exclusion of the other.”

C. Legal Conclusion

Having clarified the meaning of the relevant provisions of the Zoning Resolution through basic principles of statutory interpretation, it is evident that the City Planning Commission *must* apply the affordability requirements of the Mandatory Inclusionary Housing program to any special permit for modification of use or bulk (including height, setback, rear yard or other regulations that limit the shape of a building) that results in a significant increase in actual residential floor area.

Regardless of what the intent of certain officials within the Department of City Planning may have been – a subject that is itself open to debate, as the administrative record includes evidence of intent supportive of the Urban Justice Center’s interpretation that the application of MIH is always required where special permits, including 74-711 permits, result in a significant increase in residential floor area<sup>4</sup> – rules of statutory interpretation require that we look primarily to the law as written. As the Court of Appeals has

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<sup>4</sup> For instance, Environmental Assessment Statement for MIH (p.44) described the Future With-Action Condition – i.e., the future in which MIH was adopted – as follows: “Developers could continue to pursue bulk modifications under 74-71 to facilitate a *fully commercial or community development without triggering a MIH requirement* [emphasis added]. It is possible that some property owners who might otherwise choose to apply for 74-711 might instead pursue as-of-right redevelopment options for their property, such as commercial or community facility use, where these offer superior returns to those of mixed-income housing.” The language in this section strongly conveys an intent that bulk modifications under 74-41 resulting in an increase in residential floor area would – *unlike fully commercial or community developments* – trigger the affordability requirements of MIH.



explained, “As this is a question of statutory interpretation, we turn first to the plain language of the statutes as the best evidence of legislative intent.”<sup>5</sup> If the law as written is clear and unambiguous, as in this case, there is no need to look to the administrative record to determine the meaning of words or phrases in the Zoning Resolution. Should this matter come before a court,

Courts are constitutionally bound to give effect to the expressed will of the Legislature and the plain and obvious meaning of a statute is always preferred to any curious, narrow or hidden sense that nothing but a strained interpretation of legislative intent would discern. . . . If, as here, the terms of a statute are plain and within the scope of legislative power, it declares itself and there is nothing left for interpretation.<sup>6</sup>

We therefore urge the Planning Commission to adopt the interpretation of 74-32 we have described, as we believe this interpretation is both the only legally permissible option, and the most desirable option from a policy perspective, as described more fully below.

## **II. The Importance of Implementing Mandatory Inclusionary Housing in Wealthy Areas**

Prior to the passage of the MIH policy, the City consistently underscored MIH as a critical tool in its fight “to promote economically diverse neighborhoods at locations throughout the city and in the wide range of housing market conditions that exist in various neighborhoods.”<sup>7</sup> Within that context, the City placed particular emphasis on the importance of MIH as a tool to secure permanently affordable housing in well-resourced areas – communities that offer numerous employment, educational, and other opportunities, but remain largely inaccessible to low-income New Yorkers today, the result both of rising rents and of previous policy decisions that failed to adequately prioritize affordable housing. Recognizing that “the technical requirements of dense development, scarcity of sites, cost of land, and high costs of materials and labor” meant that “unsubsidized new construction occurs at housing prices that are accessible only to more affluent households,”<sup>8</sup> the City insisted that MIH was a valuable tool to combat the “trends [that] threaten the access that low- and moderate-income households have to many of city’s neighborhoods.”<sup>9</sup> In its MIH policy study, the City provided significant evidence of the benefits of programs that permit low-income people to access housing in wealthier areas, relying on research that suggests that programs like these can increase adult employment rates, improve high school graduation rates, improve mental and physical health, and increase academic performance.<sup>10</sup> Before MIH was passed, Commissioner Vicki Been

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<sup>5</sup> *Malta Town Centre I, Ltd. v. Town of Malta Board of Assessment Review*, 822 N.E.2d 331, 333 (N.Y. 2004).

<sup>6</sup> *Finger Lake Racing Ass’n, et al., v. New York State Racing & Wagering Board*, 382 N.E. 1131, 1136 (N.Y. 1978).

<sup>7</sup> *New York City Mandatory Inclusionary Housing: Promoting Economically Diverse Neighborhoods*, Dep’t of City Planning, City of New York (Sept. 2015), p.10.

<sup>8</sup> *Id.* at 8.

<sup>9</sup> *Id.*

<sup>10</sup> The programs cited by the City include “the nation’s first mobility experiment ... the court-ordered relocation of Chicago Public Housing Authority residents from racially segregated, high poverty neighborhoods to communities with a higher degree of racial and economic integration,” a program found to increase adult employment rates and improve high school graduation rates; the HUD-sponsored Moving to Opportunity program, which “found that among households that moved to neighborhoods with lower poverty rates, adults had both physical and mental



also told the press that, “The goal [of the program] is to harness the private market”<sup>11</sup> – a goal that can be achieved only in strong housing markets, where the income from market-rate apartments is sufficient to cross-subsidize affordable housing units without additional investment from the City. Taken together, the City’s statements around MIH prior to its passage suggested that a primary purpose of the policy is to secure affordable housing in wealthy communities, including the community where the development that is the subject of this application would be sited.

But so far, the City has named only low-income communities of color as target areas for neighborhood rezonings – areas where residents have faced generations of structural exclusion, exploitation, and neglect. Although the Urban Justice Center’s clients in these communities welcome long-overdue investments in the resources and infrastructure other areas take for granted, many have come to regard Mandatory Inclusionary Housing as a Trojan horse that is being used to justify aggressive neighborhood rezoning policies that will hasten gentrification and displacement from these areas. If a core purpose of MIH is to increase the access of low-income residents to high-opportunity areas, it is unclear why the City has elected to roll out MIH almost exclusively in neighborhoods where median incomes and rents are significantly below the citywide average. For example, rezoning communities include East New York, where the median income is less than \$35,000 a year (roughly 40% AMI), and the Southwest Bronx, which includes the poorest Congressional district in the nation and where the median income is just \$25,000 a year.

Within this context, questions regarding the applicability of MIH to individual developments in communities like Chelsea are of critical importance. Although the Urban Justice Center will continue to vigorously advocate for a more equitable distribution of neighborhood rezonings and the selection of higher-income, majority-white neighborhoods for future rezonings, should the City retain its exclusive focus for area-wide rezonings on low-income communities of color, individual site rezonings and special permit applications that increase residential floor area will represent the *only* avenues through which MIH may generate affordable housing in high-income communities. In turn, if the Commission declines to apply the requirements of MIH to the full universe of individual site developments that result in significant increases in residential floor area – an interpretation that we believe cannot be supported by the zoning text itself – MIH will fail to fulfill its promise of generating affordable housing units in the wealthy neighborhoods that are least accessible to low-income New Yorkers today.

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health improvements” and young girls had significant improvements in health and other outcomes, even years later; and a 2010 study of “the academic performance of students living in publicly-owned inclusionary housing units in Montgomery County, Maryland - one of the wealthiest counties in the nation and home to the country’s largest and oldest inclusionary housing program,” which found that students who attended the most advantaged schools far outperformed those who attended the least advantaged schools. Id. at 48-49.

<sup>11</sup> Steven Wishnia, “What Does ‘Affordable Housing’ Really Mean in de Blasio’s New York? We’re About to Find Out,” GOTHAMIST (Feb. 10, 2016), [http://gothamist.com/2016/02/10/affordable\\_housing\\_battle.php](http://gothamist.com/2016/02/10/affordable_housing_battle.php).



### **III. Conclusion**

Given the text of the Zoning Resolution and the set of facts in this case, the Urban Justice Center has concluded that the City Planning Commission must and should apply the requirements of the Mandatory Inclusionary Housing program to the Adorama Special Permit.

Sincerely,

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RULES

**Testimony of State Senator Liz Krueger  
Before the New York City Council Subcommittee on Zoning and Franchises  
Regarding ULURP Application No. C 160082, Adorama, 38-42 West 18th Street  
September 7, 2016**

My name is Liz Krueger and I represent the 28th State Senate District, which includes the Midtown and Upper East Side neighborhoods of Manhattan and the location which is the subject of today's hearing. I regret that due to a hearing taking place in Albany today I am not able to testify in person.

Thank you Chairman Richards, and members of the City Council Subcommittee on Zoning and Franchises, for the opportunity to submit testimony on the application by 42 West 18<sup>th</sup> Street ("the applicant") for a special permit to facilitate a mixed-use development at 38-42 West 18<sup>th</sup> Street. I am extremely pleased that the Council is reviewing the City Planning Commission's decision since it will establish an important precedent and help determine the applicability of the city's recently enacted Mandatory Inclusionary Housing (MIH) Program to similar applications in the future.

I strongly support the position expressed by Manhattan Borough President Gale Brewer, Manhattan Community Board 5, The Municipal Art Society of New York, and other land use experts that the applicant must meet the requirements of the MIH Program as laid out in Zoning Resolution Section 74-32.

ZR Section 74-32 is quite clear. It reads:

"Where a special permit application would allow a significant increase in #residential floor area# and the special #floor area# requirements in #Mandatory Inclusionary Housing areas# of paragraph (d) of Section 23-154 (Inclusionary Housing) are not otherwise applicable, the City Planning Commission, in establishing the appropriate terms and conditions for granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-29 (General Provisions)."



The Department of City Planning has defined a "significant increase" as 10 residential units or 12,500 sq. ft. of residential floor area. The applicant has indicated that the alterations to rear yard, height and setback, and street frontage requirements that they have requested would result in the creation of an additional 26 residential units, easily meeting the "significant increase" threshold.

The applicant has stated that MIH should not apply, "because the bulk waivers requested under the ZR Section 74-711 Special Permit application simply facilitate the use of permitted residential floor area." This is an erroneous interpretation of the law. ZR Section 74-32 makes no reference to the requirement for an increase in *permitted* residential floor area; instead it clearly states that a permit that allows a significant increase in *actual* residential floor area, as this prospective permit would, must meet the requirements of MIH. This straightforward interpretation is bolstered by the Environmental Assessment Statement for the proposed MIH text amendment, which read, "the MIH program would also apply outside of MIH areas in zoning districts as a condition of granting future special permits for use or bulk modifications that facilitate the creation of a significant number of additional dwelling units."

The decision reached on this special permit application will set a precedent that will significantly impact the amount of permanently affordable housing produced in neighborhoods throughout New York City through the MIH program. The failure to apply MIH to special permits such as this one would weaken the effectiveness of the MIH program that the City Council recently worked so hard to implement. I strongly urge the Council to abide by a plain reading of the law, and mandate the inclusion of affordable housing under MIH for 38-42 West 18<sup>th</sup> Street.

Thank you for your consideration of my views.



# THE NEW YORK LANDMARKS CONSERVANCY

September 7, 2016

STATEMENT OF THE NEW YORK LANDMARKS CONSERVANCY AT THE NEW YORK CITY COUNCIL  
SUBCOMMITTEE ON ZONING AND FRANCHISES PUBLIC HEARING REGARDING THE ADORAMA SITE AT 42  
WEST 18<sup>th</sup> STREET, NEW YORK

Good day Chair Richards and Council members. I am Andrea Goldwyn speaking on behalf of the New York Landmarks Conservancy. The Conservancy is a private, independent, not-for-profit organization founded in 1973. Our mission is to preserve and protect historic resources throughout New York.

The Conservancy supports the City Planning Commission's position that Mandatory Inclusionary Housing does not apply to the Adorama proposal, as it requests modifications of use and bulk under Section 74-711, but not an increase in floor area ratio. The Landmarks Preservation Commission had previously approved an application for the design of a new building at the site that uses setback and bulk modifications so that it will be appropriate within the Ladies' Mile Historic District. That design and associated alterations to historic buildings on the lot will not increase FAR; in fact, the approved design does not utilize the full FAR.

City Planning's explanations of MIH indicate that this policy would not apply to bulk transfers requested under 74-711. As the CPC's report for this application states,

*The Applicability section of the CPC Report for MIH anticipates precisely this type of project:*

*The program is not expected to be applied in conjunction with special permit applications that would reconfigure residential floor area that is already permitted under zoning, without increasing the amount of residential floor area permitted.*

The 74-711 special permit was established to incentivize restoration of landmarked properties by offering flexibility in utilizing existing floor area via waivers so that any addition or new construction can be appropriate for a historic district and by then requiring that owners undertake exemplary restoration work and agree to maintain the buildings at the same level in perpetuity. It has been a valuable tool leading to appropriate new buildings in historic districts and to the restoration and maintenance of landmarks.

The owners of 42 West 18th Street will be required to complete a first-class restoration of the two historic buildings. The current, and all future, owners of the property will be required to maintain the historic structures in sound, first-class condition under a binding Continuing Maintenance Plan.

We share concerns that, if MIH is applied in this case, it will discourage future 74-711 projects. Creating affordable housing is a laudable goal. For over fifty years, the City has recognized that historic preservation is also a laudable goal. It would be most unfortunate if developers abandoned 74-711 and its preservation purpose because of a new interpretation of MIH requirements.

Thank you for the opportunity to express the Landmarks Conservancy's views.





**Testimony of Monti Sanders  
SEIU 32BJ Member  
In Opposition to 42 w 18<sup>th</sup> Street Application  
New York City Council Zoning & Franchise Hearing  
September 7, 2016**

My name is Monti Sanders. I have been working as a porter in Midtown for the past 15 years. I am here testifying on behalf of my union. SEIU 32BJ is the largest property service union in the nation. We work to raise industry standards for building service workers in schools and commercial and residential buildings across the city.

We know that the city has an affordable housing crisis, and we believe that new developments can benefit our communities only if they are developed by responsible actors and provide both affordable housing and good jobs. This is why I am here today speaking in opposition to the proposed development at 42 West 18th Street.

The applicants have not yet committed to creating good building service jobs on the site. Workers in this city need jobs that provide family sustaining wage and benefits. New residential development can be a source of these good permanent. Unfortunately, Acuity Capital Partners has not yet made that commitment.

Even with good jobs, it has become increasingly difficult for service workers to live in New York as the cost of housing has risen. For that reason, 32BJ fought hard to ensure that new residential housing in New York City be affordable to working people. Without Mandatory Inclusionary Housing, the affordable housing commitment at this site is unclear to us and that raises concerns.

In addition to this, we have concerns about the track record of the applicant. One of entities through which they do business, the Noam Corporation, owns five buildings on the Public Advocate's Landlord Watchlist. Also, an agent affiliated with Noam Corporation, Solomon Gottlieb, ranked 37 out of 100 of the Public Advocate's list of New York City's worst landlords.

32BJ wants to see responsible development in this city and we don't believe that this project meets the standard for the community. I urge you to vote no on this project.

Thank you.





**Testimony before the Subcommittee on Zoning and Franchises  
of the New York City Council  
Real Estate Board of New York  
September 7, 2016**

The Real Estate Board of New York, Inc. is a broadly based trade association of over 17,000 members, comprised of owners, developers, brokers, managers and other real estate professionals active throughout the five boroughs of New York City. We believe that the City Planning Commission properly approved a special permit pursuant to Zoning Resolution Section 74-711 to facilitate the construction of a new building on a vacant parking lot located at 42 West 18th Street in Manhattan. REBNY supports the Commission's well-considered decision which found that the applicant had satisfied all of the required findings for a Section 74-711 special permit. The City Council should respect the Commission's decision and should not deny the special permit or impose additional conditions that are not supported by the Zoning Resolution.

The Manhattan Borough President has objected to the special permit, stating that the Commission was obligated to apply the requirements of the recently enacted Mandatory Inclusionary Housing ("MIH") program in establishing the terms and conditions of the special permit. This objection is based on a misinterpretation of Zoning Resolution Section 74-32 and directly contradicts the documented intent of the MIH program. Applying MIH to a special permit that merely rearranges otherwise permitted residential floor area on a zoning lot is not required under Section 74-32, would defeat the purpose of Section 74-711 and would endanger the restoration and continuing maintenance of landmarks throughout the City.

The Section 74-711 special permit is meant to encourage new development and facilitate the restoration and maintenance of historic structures. It provides economic relief to property owners of zoning lots that include landmarked structures by allowing use and bulk modifications. In order to qualify for a special permit, the Landmarks Preservation Commission must first issue a



Certificate of Appropriateness for the new development and a report stating that the proposed bulk modifications relate harmoniously to the historic building(s) and that the required restoration work contributes to a preservation purpose. In this regard, the property owner must execute and record a deed restriction that ensures that the historic buildings will be restored and maintained in sound first-class condition in perpetuity. Section 74-711 thus allows property owners to benefit from context-appropriate zoning modifications in exchange for a commitment to restore and maintain historic buildings.

The bulk waivers available under Section 74-711 allow an owner to utilize available floor area on a zoning lot which is encumbered by landmark buildings. In turn, this new construction provides an owner of an underbuilt historic building(s) financial resources to restore and maintain it. If these bulk waivers are available only in combination with MIH, it may not be financially feasible for property owners to commit to a costly preservation plan. As a result, property owners will be less inclined to utilize the landmarks special permits for residential projects, which will result in more commercial and as-of-right development and less restoration and maintenance of historic structures—an unfortunate result that would not further the goals of historic preservation or MIH.

Moreover, the text of the MIH statute is ambiguous, meaning that it must be understood in the context of its legislative history. Section 74-32 provides that the Commission “shall apply” MIH “[w]here a special permit application would allow a significant increase in residential floor area.” The Borough President argues that this language is “clear” on its face. In fact, the statute is inherently ambiguous, because “increase in residential floor area” is susceptible to reasonable interpretation. The Borough President criticized the statute’s lack of clarity when it was before the Commission, but has now changed course. REBNY also raised the question of the applicability of MIH to special permits during the public review process. The ambiguity in Section 74-32 primarily results from the fact that nothing in this section defines the baseline from which “a significant increase in *residential floor area*” is to be measured.



However, there is a clear answer in the legislative history, because the issue was specifically addressed during the ULURP process leading to enactment of the MIH legislation. The Commission's February 3, 2016 report on the legislation makes clear that the MIH program's requirements would not be triggered by a special permit application that – like the Adorama application – did not seek to increase the maximum residential FAR allowable on a zoning lot. In its report, the Commission acknowledged that testimony had “raised questions about how the Commission will decide whether or not to apply MIH in conjunction with future land use applications,” and the Commission specifically recognized the view of “[t]he Manhattan Borough President” favoring “the application of MIH within future special permit projects in Manhattan.” However, the Commission made clear that “The program is not expected to be applied in conjunction with special permit applications that would reconfigure residential floor area that is already permitted under zoning, without increasing the amount of residential floor area permitted” because “the program should not discourage types of actions with a valid land use rationale that may facilitate residential development but would not themselves increase residential capacity.”

This legislative history clearly demonstrates that the Commission did not intend the MIH program to apply to special permits that merely rearrange residential floor area. The Commission handled this application consistently with the interpretation of the statute that it has supported throughout the ULURP process. In contrast, the Borough President's claim that the text of the statute is unambiguous and requires the provision of MIH is contradicted by the legislative history that supports the Commission's position. Applying the MIH program to the Adorama special permit would defeat the intent of the statute, deny the applicant a special permit to which it is entitled, and endanger landmarked structures throughout the City. REBNY respectfully urges the City Council to affirm the Commission's grant of the special permit without any modification or conditions.



Good Morning Chairman Richards and members of the Subcommittee on Zoning and Franchises. My name is Dan Gaspar and I am a resident and unit owner at 32 W 18<sup>th</sup> Street, a condominium property directly impacted by the proposed development at 42 West 18th Street.

The City Planning Commission (CPC) issued a decision on August 16 advising that the special permits at issue were appropriate. I strongly disagree. In the months leading up to the CPC decision, Community Board 5 (CB5) adopted a resolution *opposing* the special permits for this project. While a lot of attention was paid to CB5's focus on Mandatory Inclusionary Housing, it seems much less attention was afforded to their finding that "the waiver of rear yard requirements would result in a negative impact to adjacent buildings." Similarly, the Manhattan Borough President also issued an unfavorable recommendation, citing, amongst other concerns, that the heights of the proposed development would decrease light and air to 32 W 18<sup>th</sup> Street.

I had previously submitted testimony to the CPC highlighting my concerns and those of the rest of my condominium. In its written decision, the CPC kindly acknowledged each of our concerns, and then summarily dismissed each of them. I submit that they dismissed these concerns without any further investigation and more importantly, without regards to the applicable Zoning Law.

Because my time is limited, I will quickly address the CPC's findings with regard to our concerns (I'll boil it down to 4 short points).

First, we had objected to the developer's argument that ZR Section 33-281 permits them to build a three-story, 30-foot high retail space in the through-lot. As we pointed out in our letter, the stated section does not apply to mixed-use buildings, and that by-right, the through-lot building should be limited to two stories or 23 feet. I live on the second floor of my condominium with my wife and two children and the third story of this building would have the effect of "boxing us in" and eliminating all natural light from our bedroom windows.

Second, we had objected to the developer's proposal to reduce the rear yard from 60 feet to 50 feet. We pointed out that our building and the building directly behind us on 17<sup>th</sup> Street already have a non-conforming rear yard of about 15 feet. This limited rear yard already results in significantly reduced access to light and air to all of the bedrooms in my building. It should be noted that the 15 feet of space is currently occupied by HVAC and rear exhaust equipment for Basta Pasta and a Korean BBQ restaurant on the 17<sup>th</sup> Street side, so in addition to limited light our rear yard is already noisy and smelly. Our claim to CPC was that the limited light that we do enjoy in our rear facing bedroom windows come from the adjacent lot on 17<sup>th</sup> Street, and reducing that rear yard by an incremental 10 feet further than what is allowed by code would significantly further impact our access to light and air. CPC's conclusion, inexplicably, was that the proposal of 50 feet is bigger than the current non-conforming rear yard in our lot. This seems to me to be a case of two wrongs not making a right. Because the rules were ignored decades ago for one lot, that is now being used as precedent for another? They are using an existing state of non-compliance to justify creating a new, increased state of non-compliance.

Third, the developer's requested height and setback waivers would allow the northern tower (facing 18th Street, just west of our building) to rise above the 60 foot maximum building height applicable to narrow lots and would allow the tower facing 18th Street to rise to 170 feet. Our building has spent considerable expense to develop and outfit a roof deck that is used daily by residents to relax, enjoy views of the



skyline and eat outdoor meals on our two rooftop picnic tables. It is important to note that with the existing non-conforming rear-yard of less than 10 feet, our roof deck is the *only* usable outdoor recreation space and an important respite from our already dark apartment bedrooms. With the waiver, the proposed tower on 18th Street would extend about 21 feet above our roof deck, blocking views and sunlight in the critical afternoon and early evening hours. The proposed tower will have a *significant* adverse impact on all residents who regularly take advantage of this important common space. Note that the as-of-right 60 foot height of the tower, and even a reasonable waiver to extend beyond that, would have minimal impact on our residences, but the proposed waiver of an additional 110 feet (almost triple the allowed height) is excessive and creates a *significant* adverse impact.

Lastly, CPC concludes, erroneously, that the building “will not have adverse effects on the structures or open space in the vicinity in terms of scale, location, or access to light and air.” This is asserted without any measurable evidence. Our consultant has suggested that we could demonstrate the impact on our rear windows and roof by using lighting simulation tools that measure the amount of light that we would lose. However, I am quite hesitant to invest more of my personal money to try and sway what appears to be a pre-determined decision.

As I understand it, the standard for waivers under 74-711 is that “such #bulk# modifications shall have *minimal* adverse effects on the structures or #open space# in the vicinity in terms of scale, location and access to light and air.” Had the CPC paid any attention to the concerns raised by me and other members of our building, as well as by CB5 and the Manhattan Borough President, they would understand that the impact of these bulk waivers is in fact, substantial – far greater than the “minimal impact” threshold. I humbly request that the special permit waivers be rejected, as I believe that the *substantial* adverse impact of the current plans would be meaningfully limited were the plans limited to only what they could build “as-of-right.”

Thank you very much for your time,

Dan Gaspar

GASPAR@GMAIL.COM



Samuel Biagetti  
Spokesperson, Uptown for Bernie  
36 Ellwood St., Apt D7  
New York, NY 10040  
Testimony to Zoning and Franchise Subcommittee  
Adorama project  
September 7, 2016

Two months ago, I came to this chamber in order to testify against a proposal to up-zone and apply MIH to a single lot on Sherman Avenue in Inwood. I argued that the Sherman up-zoning would represent a misuse of MIH. In wealthier parts of the city with high prevailing rates of rent and few to no rent-stabilized units, MIH could help bring middle-income housing to places where it does not otherwise exist. On the other hand, in working-class areas like Inwood with many rent-stabilized units, high-density projects under MIH would mainly cause gentrification and displacement.

For these reasons, I believe it was a mistake for some in the media to speak of the Sherman proposal in Inwood as the “test case” for MIH. Rather, it was always a misguided and misdirected application of the new law. More properly, *this* proposal under consideration today is the true test case for MIH. This is precisely the type of area and type of development that ought to be harnessed to the production of middle-income housing stock in places where it is currently unavailable. MIH requirements at the very least – if not more – ought to be applied to this proposal if the policy is to maintain any potential to make New York more affordable, and if MIH is to maintain any modicum of public support, rather than be regarded as merely a vehicle for the gentrification of working-class New York.



## Nancy Aber Goshow City Council Testimony on MIH at Adorama Site 7Sep2016

I am a long time member of CB5's Landuse and Zoning Committee. I am a Licensed Architect. I work in this district and live one block west and two blocks south of the site. Our Board supports the MIH Law as written and find historic buildings compatible with MIH. My Key Point is this. The City is obligated to apply the Mandatory Inclusionary Housing program if it wants to approve this special permit. Manhattan Borough President, Gale Brewer, The Urban Justice Center, The Municipal Arts Society, State Senators Krueger and Hoylman and many others agree with our position on this matter.

Either the City Council must apply the MIH requirements to this site or the City Council must deny this special permit. The number of incremental units and the amount of residential square feet allowed by the proposed bulk changes require that the City either require the provision of affordable units on site, off site or require a contribution to an affordable housing fund.

While the City may decide how to apply the MIH program here, it does not have the discretion as to whether to apply the program given that the applicability threshold for MIH is exceeded.

ZR Section 23-933 on Mandatory Inclusionary Housing Areas states: the "Inclusionary Housing Program shall also apply as a condition of City Planning Commission approval of special permits as set forth in Section 74-32. ZR section 74-32 entitled: "Additional Considerations for Special Permit Use and Bulk Modifications" states: "[ w ]here a special permit application would allow a significant increase in residential floor area, the City Planning Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions).

Residential Floor Area, according to the defined terms in the Zoning Resolution, refers to the actual amount of floor area on a site and does not refer to the maximum permitted FAR multiplied by the zoning lot. The text does not make reference to an increase in "maximum permitted residential Floor Area" being required for the applicability of MIH.

The bulk permit sought in this application allows more residential units and therefore DOES fall within the requirements for application of the MIH program.

Our Community Board holds that the bulk modifications and special permits trigger the MIH requirements. Pursuant to the City Charter, The City Council has the authority to approve, approve with modifications or deny a special permit. The application of any of the MIH options is always considered to be within the subject matter of an application pursuant to ZR Section 23-154(d)(3). That section states: "Regardless of whether every option specified in this paragraph (d) (3), inclusive, is included in a land use application for applicability to a proposed Mandatory Inclusionary Housing area or as a term of condition of a special permit pursuant to this Resolution, all affordability options available under the provisions of this paragraph (d)(3), inclusive, shall be part of the subject matter of each such application throughout the land use review process."

The City Council is both authorized to and in fact, obligated to correct The City Planning Commission error and apply MIH. If MIH is not applied, The Council must deny this special permit.



**MAS Testimony to the NYC Council Subcommittee on Zoning and Franchises  
regarding ULURP Application No. C 160082, Adorama, 38-42 West 18th Street**

September 6, 2016

The Municipal Art Society of New York (MAS) welcomes the chance to comment on the application by 42 West 18th Street Realty Corp. for a special permit to facilitate a mixed-use development at 38-42 West 18th Street. MAS has carefully reviewed this application and opposes this project unless the requirements of the Mandatory Inclusionary Housing Program (MIH) are applied.

38-42 West 18th Street, located in a C6-4A District within the Ladies' Mile Historic District in Manhattan, has the potential to be a precedent-setting project for which special permit applications would need to meet the affordable housing requirements outlined in MIH. In this case, the applicant is proposing to build a mixed-use primarily residential building and expand an existing commercial building, as well restore the facades of two historic buildings on the same zoning lot. To build the project, the developer has asked for adjustments to rear yard, height and setback, and street frontage requirements. These changes would facilitate a project with 66 residential units, a net increase of 26 residential units in addition to the 40 permitted in the as-of-right development evaluated in the project's Environmental Assessment Statement.

The question before the Council today is whether those additional units trigger the application of MIH requirements. The applicable language of the zoning code (ZR § 74-32) states that a project is subject to MIH when a special permit application would allow a "significant increase in residential floor area" than would otherwise be permitted. The Department of City Planning has stated that MIH is triggered only by the granting of new residential floor area rather than the facilitation of floor area already permitted. The intention notwithstanding, the text as written is not clear on this distinction.

MAS recognizes that housing affordability has reached crisis levels in New York, with over half of renter households citywide classified as "rent-burdened" and 30 percent are "extremely rent burdened." Average rents have gone up dramatically in the last decade, while incomes have not risen proportionally. As such, MAS supported the City's efforts to address this crisis through the passing of MIH as part of the administration's Housing New York plan.

MAS therefore agrees with the conclusions drawn by Manhattan Borough President Gale Brewer and Manhattan Community Board Five that the additional 26 residential units allowed by this special permit represents a "significant increase" in residential floor area and would be subject to MIH requirements. In order to facilitate the goals outlined in the administration's housing plan, we urge the Council to mandate that this application include affordable housing as specified under MIH.

*OFFICERS*

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VIN CIPOLLA, *TREASURER*  
EARL D. WEINER, ESQ., *GENERAL COUNSEL*  
GINA POLLARA, *PRESIDENT*

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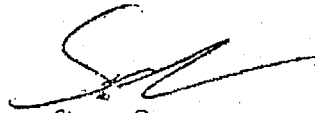


**The Montrose**  
47 FIFTH AVENUE BROOKLYN 11217

September 3, 2016

To whom it may concern:

In accordance with our meeting with representatives of Brooklyn Community Board 6 and the City Council, we will be reducing the number of tables from 21 to 9. This is in accordance with Brooklyn Community Board 6's guidance that the number of tables in a sidewalk café does not exceed half of the number of tables inside of a given establishment. We also agree that we will close the sidewalk café at 10pm on Sunday through Thursday night, and at midnight on Friday and Saturday nights.



Steven Owen

The Montrose



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THE COUNCIL OF  
THE CITY OF NEW YORK  
**BRAD LANDER**  
DEPUTY LEADER FOR POLICY  
39<sup>TH</sup> DISTRICT, BROOKLYN

CHAIR  
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COMMITTEES  
LAND USE  
STANDARDS AND ETHICS  
STATE AND FEDERAL LEGISLATION

*Testimony to the City Council Subcommittee on Zoning and Franchises  
Regarding Sidewalk Café Application 20165477 TCK  
for Duke of Montrose at 47 5<sup>th</sup> Avenue in Brooklyn*

Chair Richards, Members of the Subcommittee, thank you for considering the application from Duke of Montrose for a revocable consent to establish, maintain, and operate an unenclosed sidewalk café at 47 5<sup>th</sup> Avenue in Park Slope, Brooklyn.

In light of the applicant's willingness to collaborate with their neighbors and revise their original proposal, I am pleased to support a sidewalk café at this location. Specifically, after learning that the local Community Board—Brooklyn Community Board 6—recommends that sidewalk cafés contain no more than half the total number of tables inside an establishment, the applicant reduced the number of tables within the sidewalk café from twenty-one (21) to nine (9). In addition, the applicant has agreed to shorten the hours of operation of the sidewalk café, in accordance with the general guidance of Brooklyn Community Board 6: from Sunday to Thursday, the sidewalk café will close by 10:00 pm and, on Friday and Saturday, it will close by midnight.

Thank you for the opportunity to provide written testimony today, and I respectfully encourage my colleagues to join me in supporting this application.

###



# La Piñata Mexican Cuisine

711 West 181st, NY, NY 10033

646-918-7432 | Fax 646-918-6218 |

Lapinata711@gmail.com

9/2/16

To Ydanis Rodriguez & Donovan Richards:

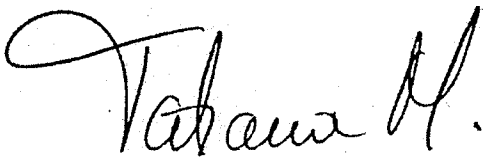
I, Tatiana Martinez, sole proprietor of La Fiesta 95 Inc. DBA La Piñata Mexican Cuisine, located at 711 West 181<sup>st</sup> Street, pledge a continuation of a positive relationship with not only our patrons, but the community as a whole.

I also agree to remove the ATM, which is not in use, so that customers and passerby's have more space when the café is operational.

Not having a sidewalk café this summer has negatively impacted the business and will be a key factor to our success going forward.

La Piñata is here to partner with the community and last thing we want is to cause problems for the city council, our neighbors, or our dedicated patrons.

Regards,

A handwritten signature in black ink, appearing to read 'Tatiana M.', with a large, stylized initial 'T'.

Tatiana Martinez  
347.697.3407



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CO-CHAIR WOMEN'S CAUCUS

Council Member David Greenfield  
Chair, Committee on Land Use

Council Member Donovan Richards  
Chair, Subcommittee on Zoning and Franchises

Re: N 160069 ZRM - 625 West 57th Street Auto Showroom Text Amendment

Dear Chairs Greenfield and Richards,

Based on Community Board 4's recommendation, I support the proposed text amendment at 625 West 57th Street, Item N 160069 ZRM.

Both Manhattan Community Board 4 and the City Planning Commission issued well-considered recommendations for approval of the amendment. In its recommendation, Community Board 4 wrote that, "The provision of a full-service dealership at the Development Site would be consistent with similar uses in the area and would complement the existing automotive-related uses in the area." However one feels about the individual use in question, this analysis strikes me as fundamentally correct. I also appreciate that the applicant has committed to working with the Community Board to address the quality of life concerns that come along with this type of use.

The amendment is generally appropriate in terms of the neighborhood context and the specific application in question is supported by the Community Board. As such, I believe it is appropriate for the City Council to approve this amendment.

Sincerely,

*Helen Rosenthal*



**FERNANDO CABRERA**

COUNCIL MEMBER, 14<sup>TH</sup> DISTRICT, BRONX

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PARKS & RECREATION  
CO-CHAIR  
GUN VIOLENCE TASK FORCE

September 6, 2016

Hon. Donovan Richards  
Chair, Subcommittee on Zoning and Franchises  
New York City Council

Dear Council Member Richards:

I am writing to express my support for proposed text amendment to ZR Section 122-20E to allow indirectly illuminated signage at the property located at 1775 Grand Concourse Bronx, NY.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be "F. Cabrera", written over a horizontal line.



Adorama LU 0438-2016  
9/07/16 City Council Subcommittee on Zoning & Franchises

Good morning, I am Valerie Campbell, Counsel with Kramer Levin, land use counsel to the applicant.

We believe that this application is consistent with the purpose of a 74-711 Special Permit and satisfies all of the required findings. The project will restore two historic buildings and improve a parking lot with an architecturally distinguished new building that is appropriate to the Ladies Miles Historic District.

We have prepared a legal memorandum addressing the issue of whether this project should be required to provide Mandatory Inclusionary Housing (MIH) pursuant to ZR Section 74-32. A copy of this memorandum has been sent to all of the Land Use Committee members. We believe that the text of ZR Section 74-32 is not clear. However, the administrative record and the legislative history of MIH makes it clear that the “significant increase in residential floor area” is meant to apply to an action that increases residential capacity on a zoning lot, not to an action that allows for bulk waivers with respect to existing residential capacity. We concur with the City Planning Commission’s conclusion that this special permit application does not result in “a significant increase” because the requested bulk waivers simply facilitate the use of permitted residential floor area on the project’s zoning lot.

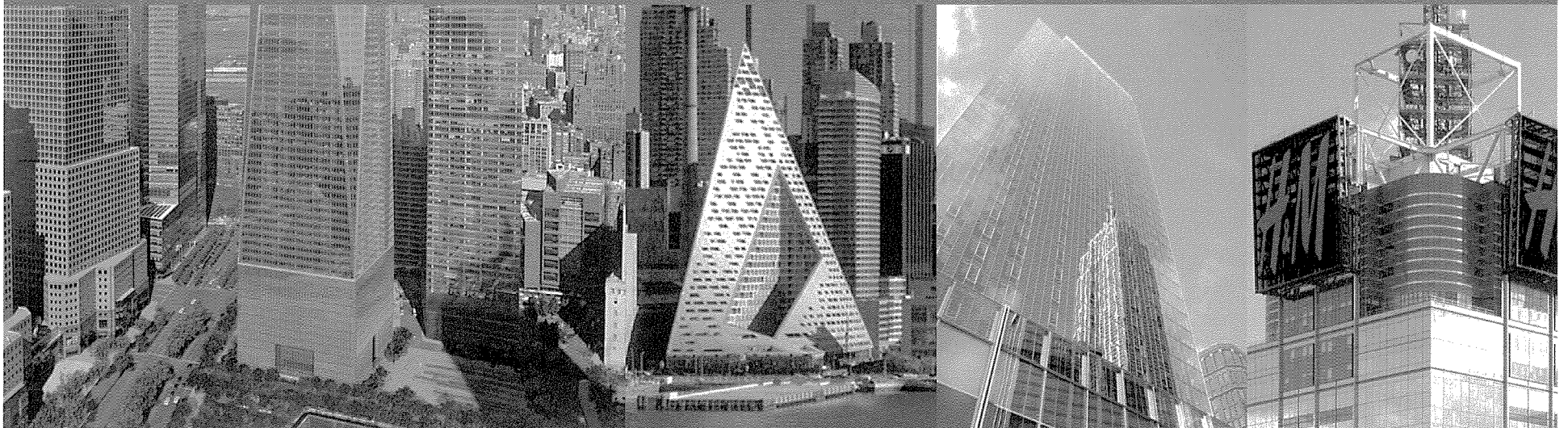
In this regard, we note that the proposed building has a FAR of 8.71 and only utilizes a portion of the total available floor area on the zoning lot. The assertion that there is an increase in residential floor area is based on the erroneous assumption that the increase in residential floor area is calculated on the basis of the difference in the residential floor areas shown in the “as-of-right” scenario and the proposed scenarios analyzed for the EAS. This is not consistent with the Commission’s statement that the increase in residential floor area refers to an increase in residential capacity. Moreover, the EAS “as-of right” scenario is just one of many possible as-of-right scenarios. Other as-of-right scenarios would result in a smaller or no increase in the residential floor area.

The purpose of the bulk waivers available under a 74-711 special permit is to allow an owner of a zoning lot encumbered with landmark buildings more flexibility in utilizing the available floor area. These waivers preserve the integrity of historic buildings by facilitating the design of appropriate new buildings and additions. 74-711 special permits have proved to be a highly effective tool to ensure restoration and the creation of architecturally distinguished new buildings. Applying MIH in a 74-711 special permit application such as this one will create a significant financial disincentive for future applicants who may elect to develop hotels or offices instead of a residential building or to just forego the bulk waivers that could be used to create a more appropriate building for the historic district. We urge the City Council to respect the Commission’s findings on the applicability of MIH and to consider this application in accordance with the findings set forth in Section 74-711.

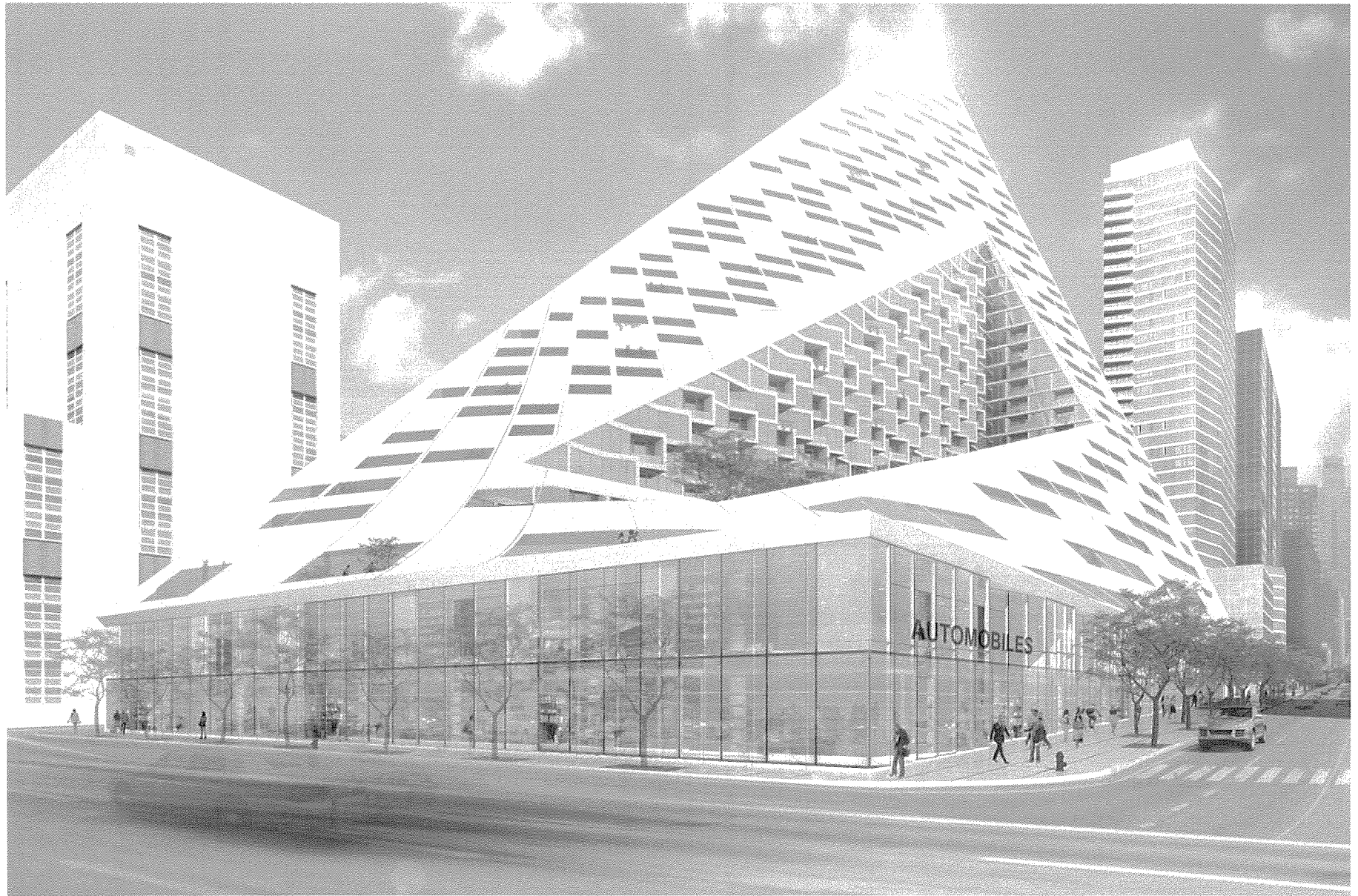




VIA 57 WEST  
625 West 57<sup>th</sup> Street  
9/7/2016

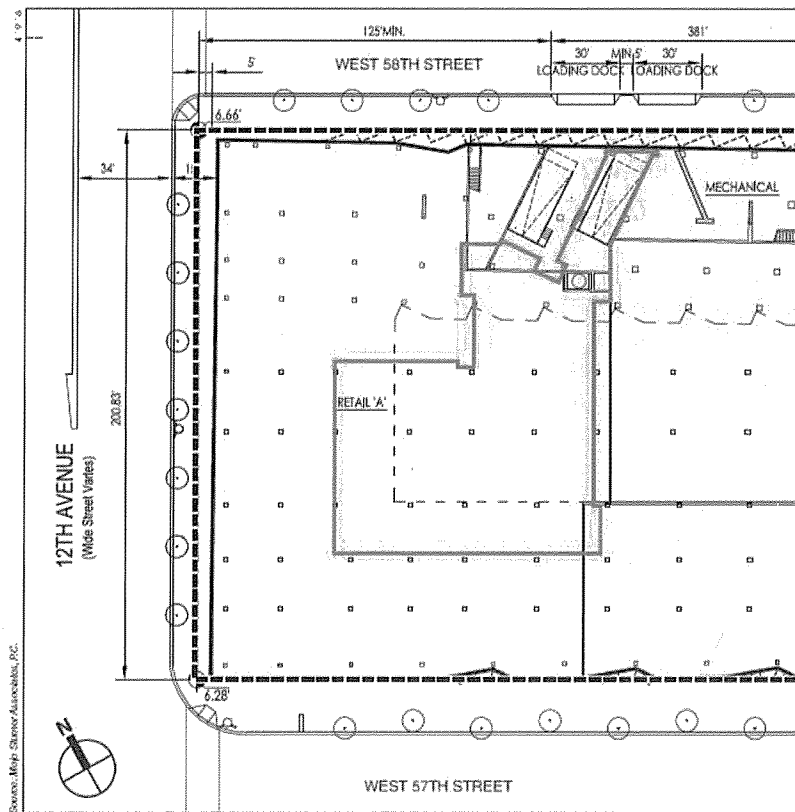








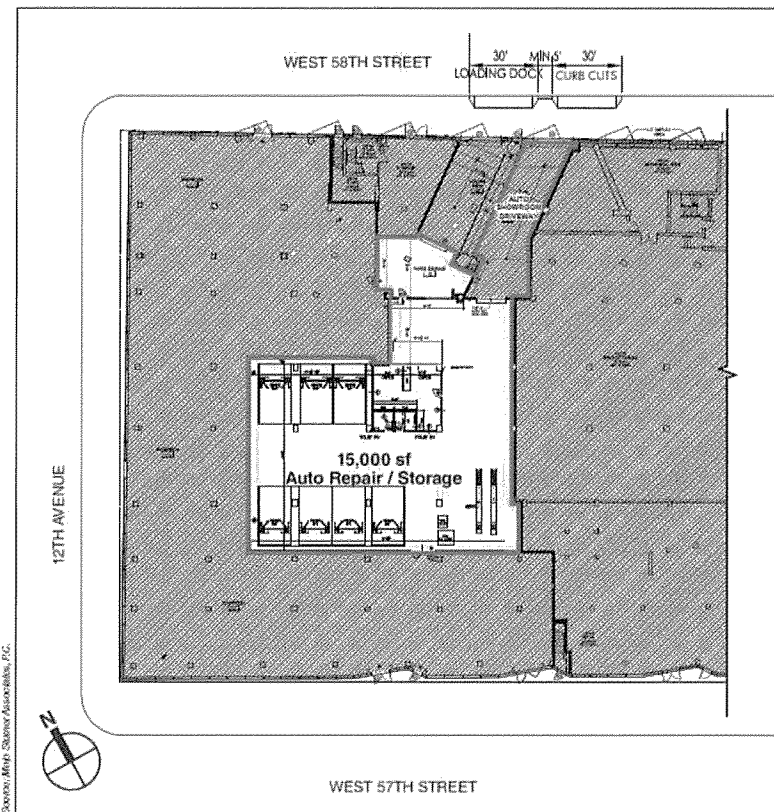
Previously Approved Illustrative Ground Floor Plan



Source: Map Shimmer Associates, P.C.

Proposed Auto Repair Use

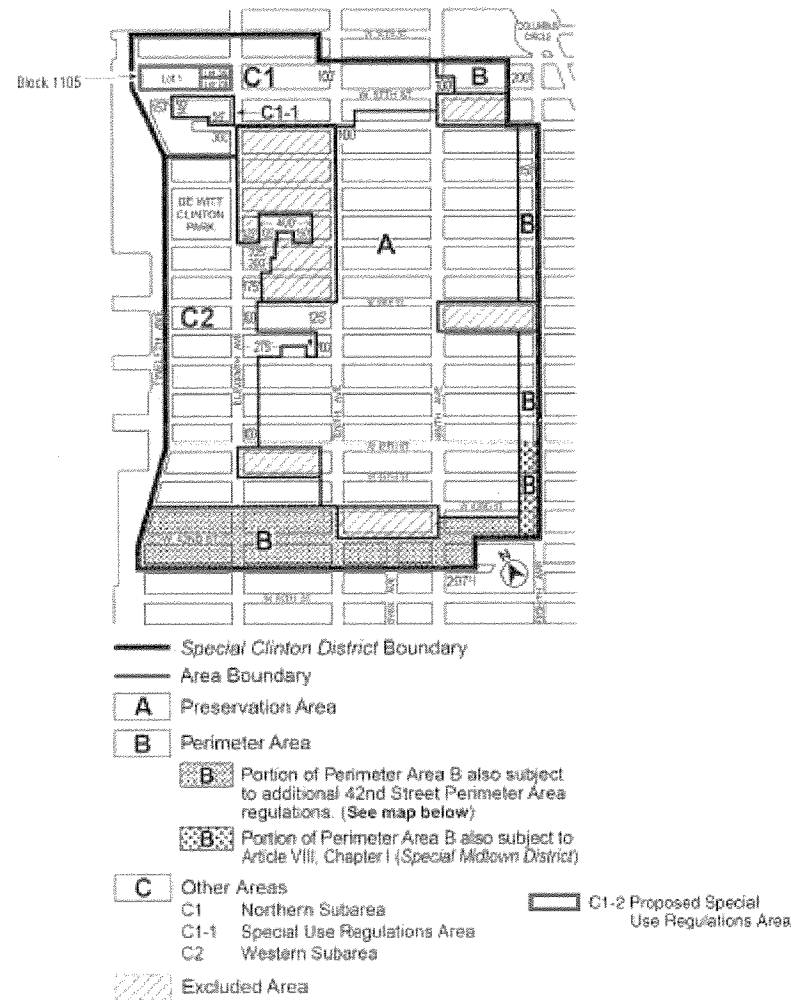
2015 Proposed Illustrative Ground Floor Plan



Source: Map Shimmer Associates, P.C.

Proposed Auto Repair Use





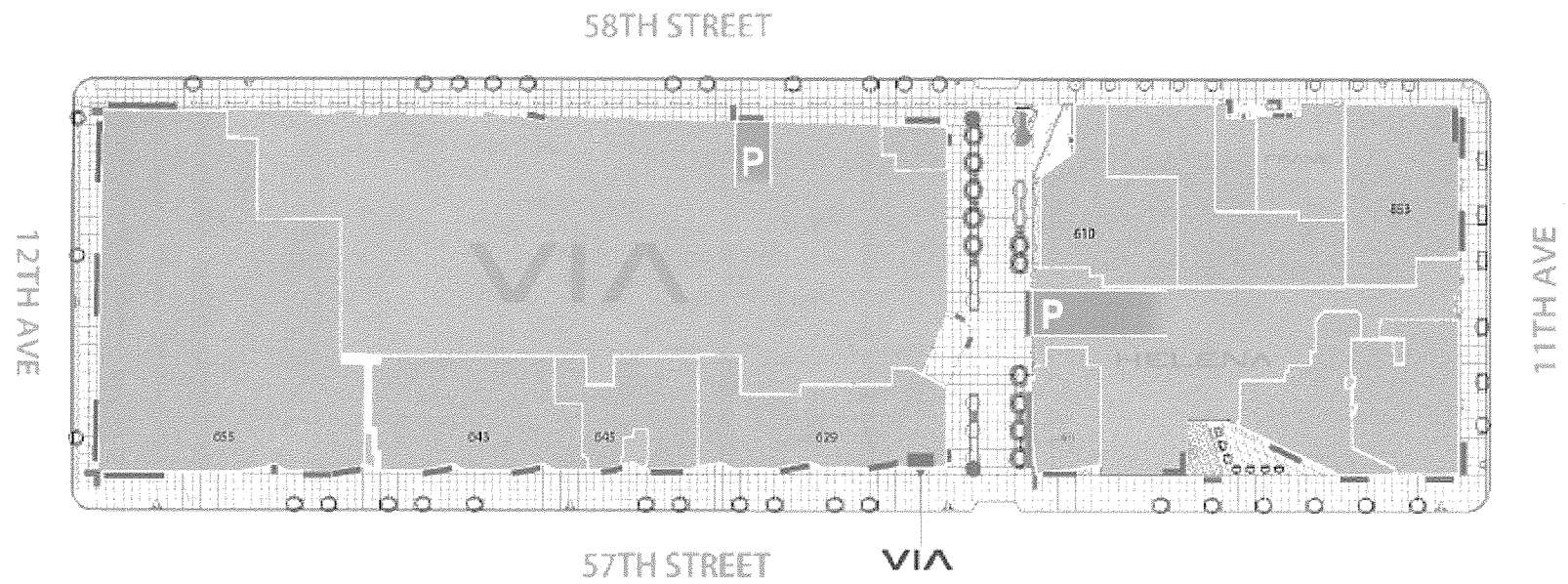


**SPACES**

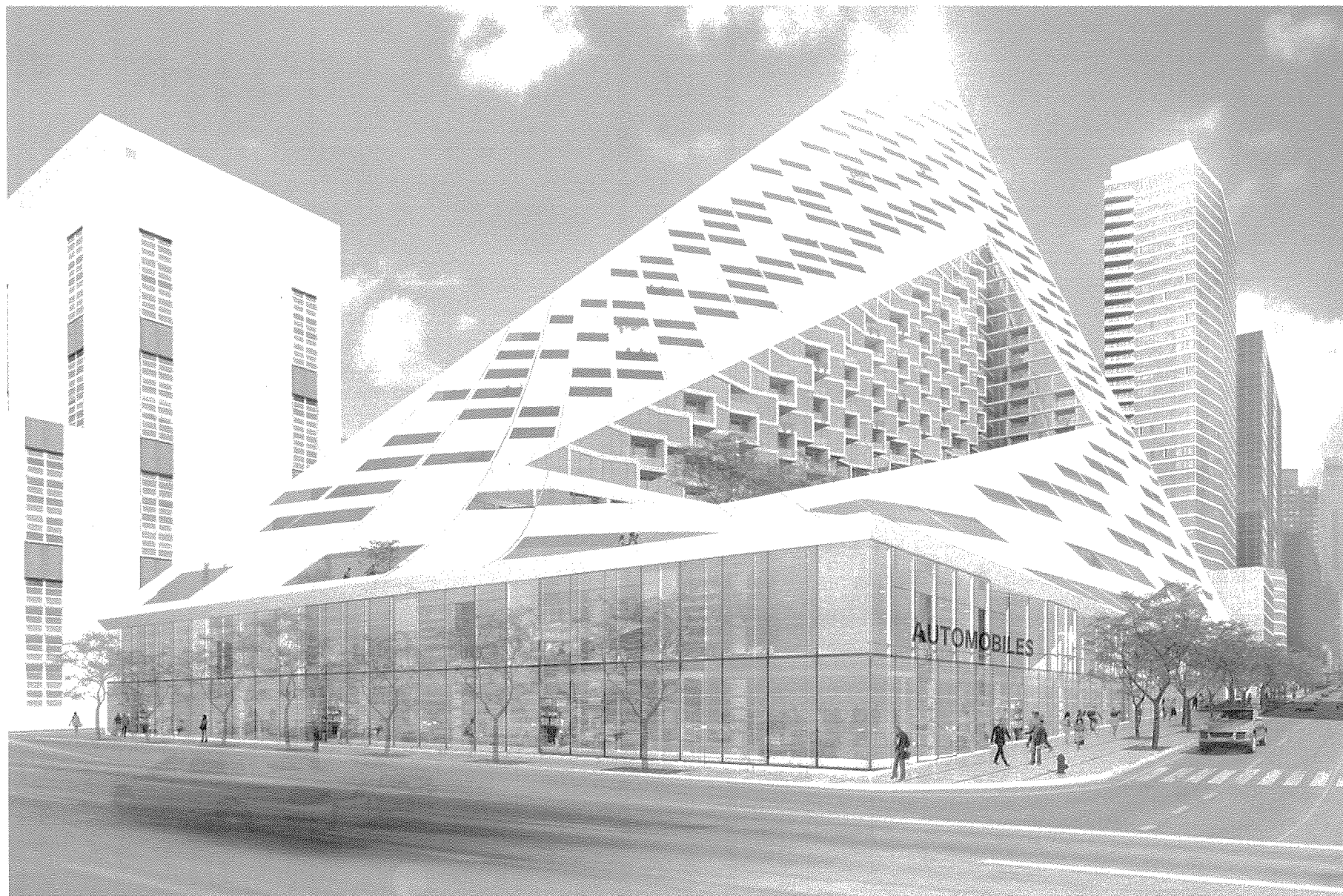
 RESIDENTIAL

 RETAIL

 PARKING









**41-45 W. 17<sup>th</sup> Street &  
38-42 W. 18<sup>th</sup> Street**

**Presentation to  
NEW YORK CITY COUNCIL  
SUBCOMMITTEE ON ZONING & FRANCHISES**

**September 7, 2016**



# Application Overview

## Section 74-711 Special Permit:

- Provides modifications of underlying zoning regulations for a zoning lot encumbered with landmark buildings and restores and preserves the landmarks.
- Provides bulk waivers for the LPC approved new building to be constructed on existing parking lot.
- Requires the restoration and continuing maintenance of historic buildings in perpetuity.

## Site Overview

BLOCK:	819
LOTS:	14,15 & 66
DISTRICT:	C6-4A (R10A EQUIV.)
PERMITTED:	138,000 ZFA (10.00 FAR)
PROPOSED:	118,831 ZFA (8.61 FAR)
RESIDENTIAL:	68,097 ZFA (4.93 FAR)
RETAIL:	50,734 ZFA (3.68 FAR)

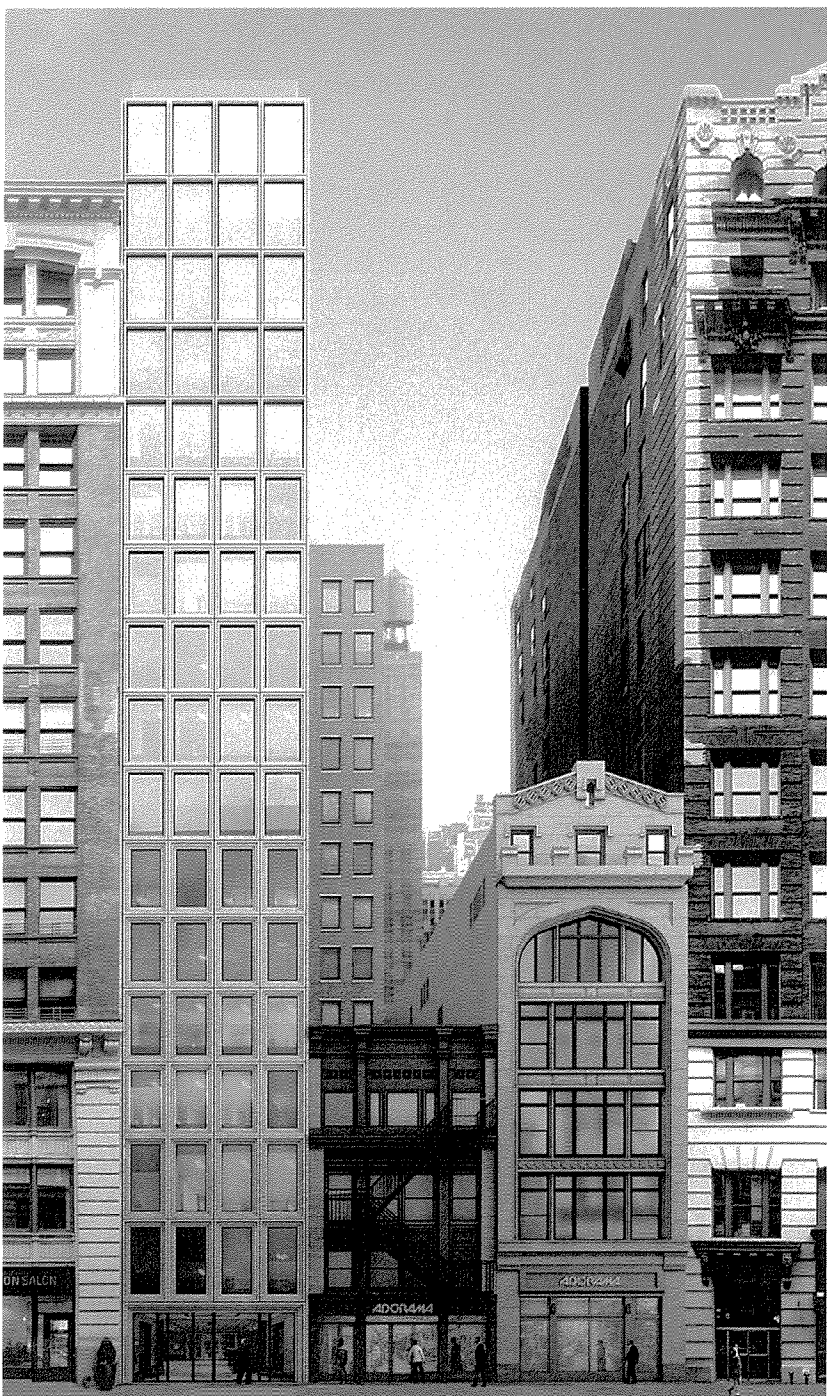
W. 17<sup>th</sup> Street



**LOT 14**  
6 STORIES  
HISTORIC  
BUILDING

**LOT 15**  
16 STORIES  
LPC APPROVED  
NEW BUILDING

W. 18<sup>th</sup> Street



**LOT 15**  
17 STORIES  
LPC APPROVED  
NEW BUILDING

**LOT 66**  
4 STORIES  
HISTORIC  
BUILDING

**LOT 14**  
6 STORIES  
HISTORIC  
BUILDING



# Project Description

3

## 40 West 18<sup>th</sup> Street (Lot 66):

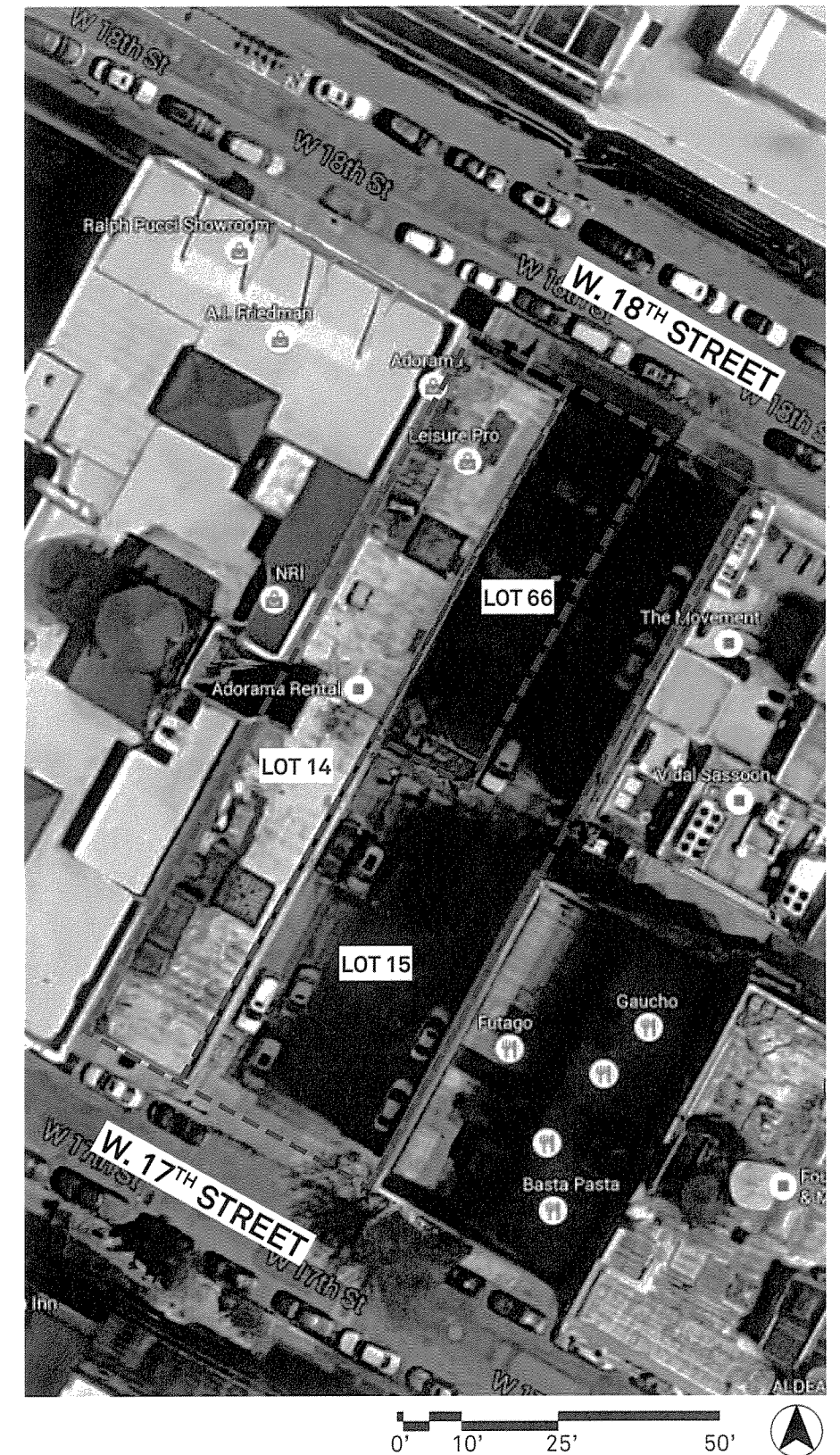
Facade restoration of existing 4-story commercial building and 292 sf enlargement at rear of second & third stories

## 42 West 18<sup>th</sup> Street & 45 West 17<sup>th</sup> Street (Lot 14):

Facade restoration of existing 6-story, block-through commercial building

## 38 West 18<sup>th</sup> Street & 41-43 West 17<sup>th</sup> Street (block-through Lot 15):

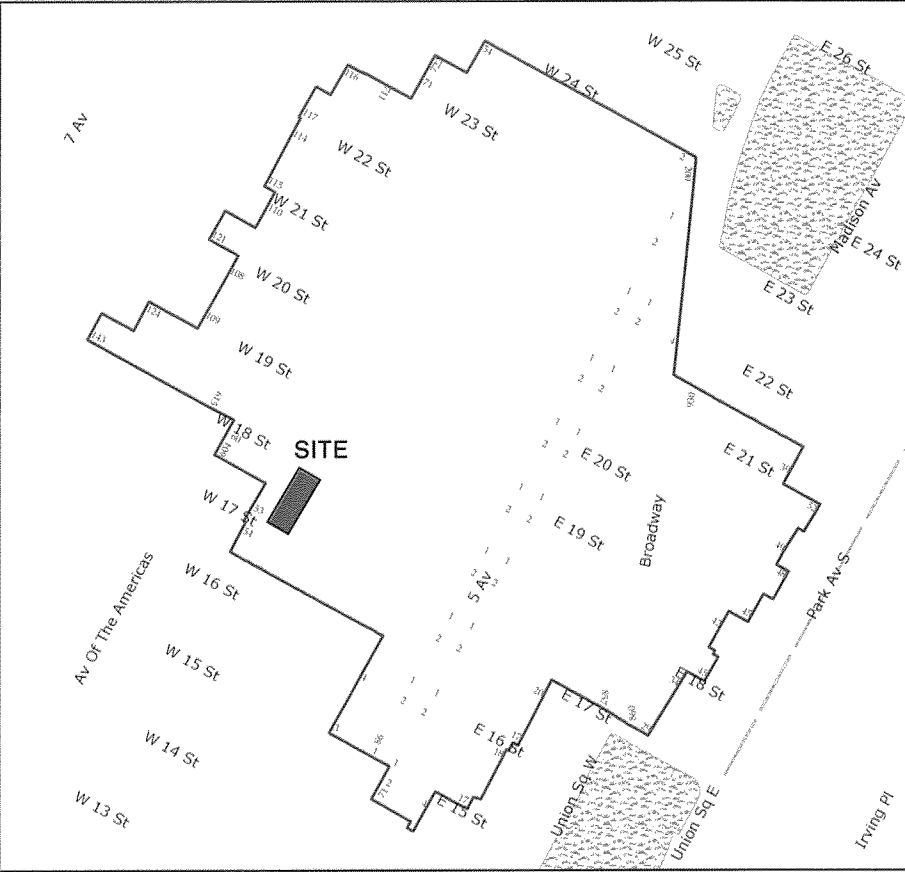
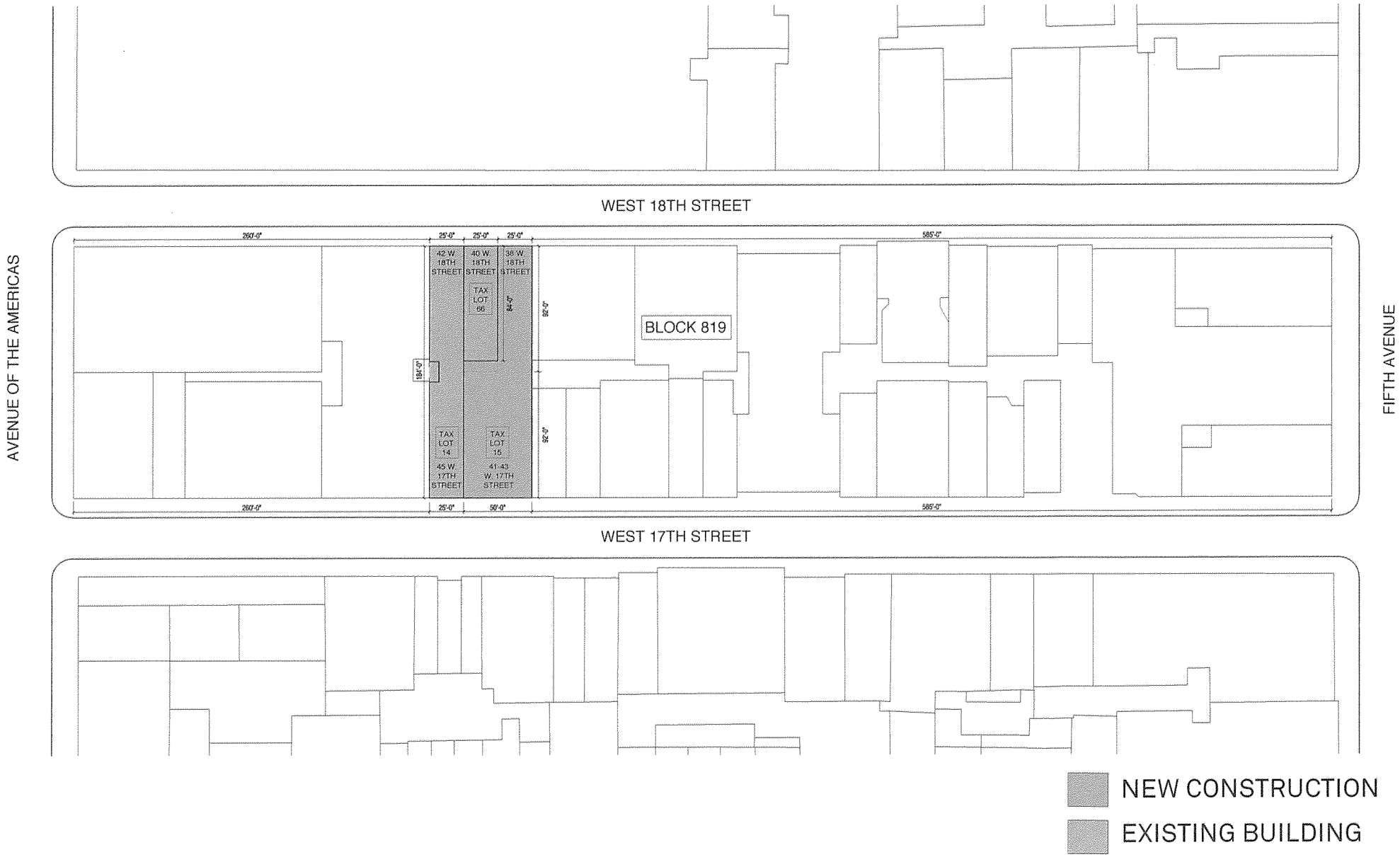
- New 84,024 sf, mixed-use building with 66 apartments
- North Wing: 17-stories, 170' high, at 42 West 18<sup>th</sup> Street
- South Wing: 16 stories, 166' high, at 42 West 17<sup>th</sup> Street
- North and South wings connected by 3-story base
- 15,926 sf of Commercial / Retail space accessed from West 17<sup>th</sup> Street
- As-of-right Parking Garage in cellar & sub-cellar: 13 residential spaces, 4 commercial spaces, 39 bicycle spaces; entrance/egress on 17<sup>th</sup> Street



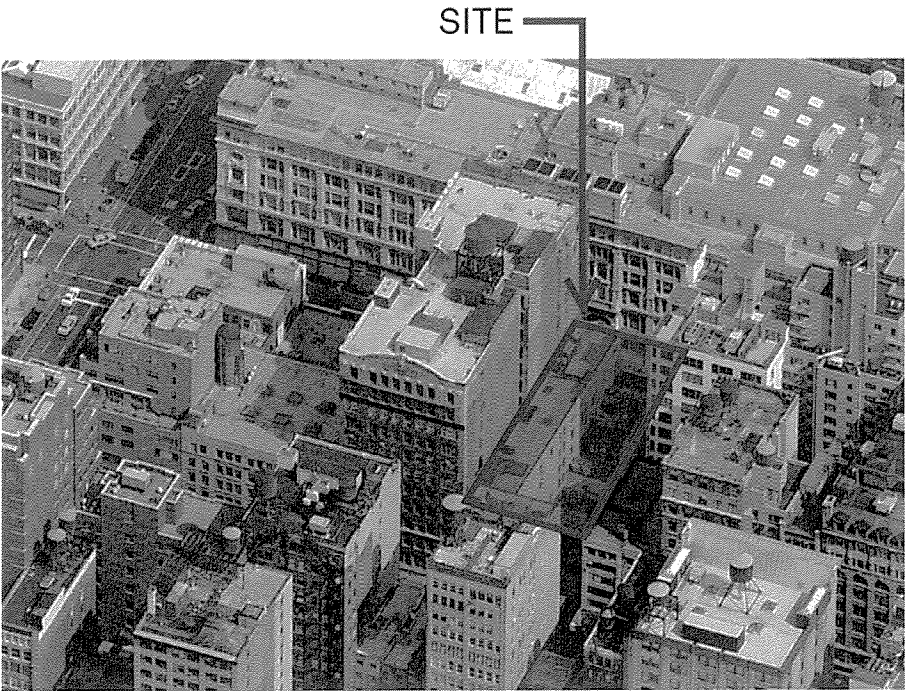
NOTE: TAX LOT BOUNDARIES FOR ILLUSTRATIVE PURPOSES.  
AERIAL PHOTOGRAPH FROM GOOGLE MAPS.



# Area Plan

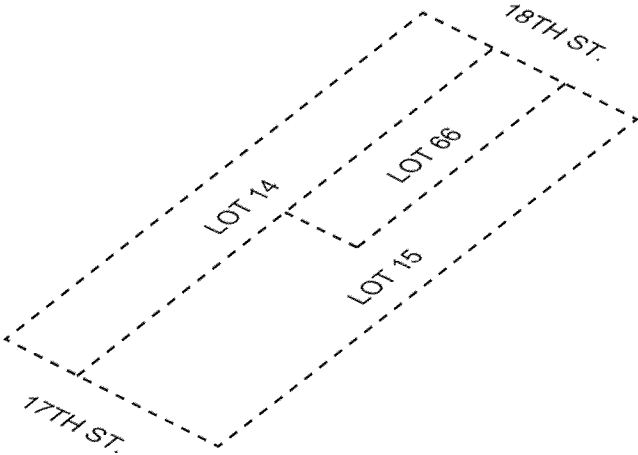


LADIES' MILE HISTORIC DISTRICT

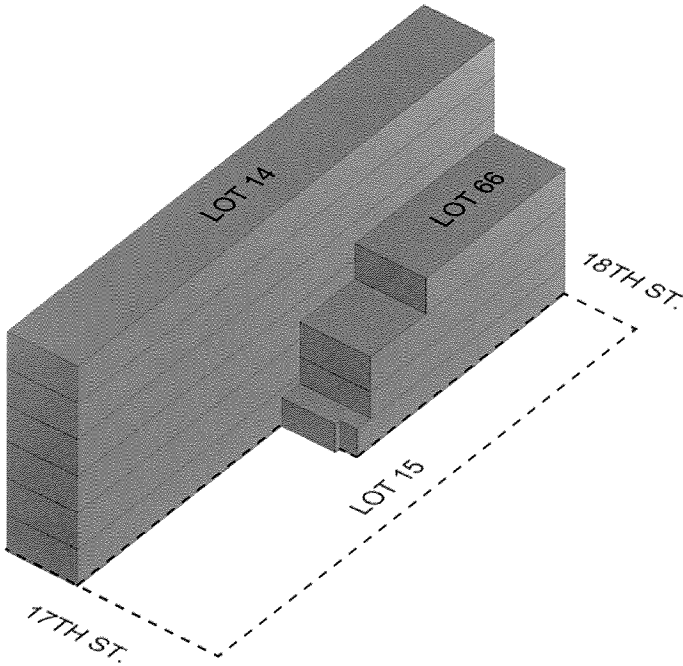


AERIAL VIEW OF SITE

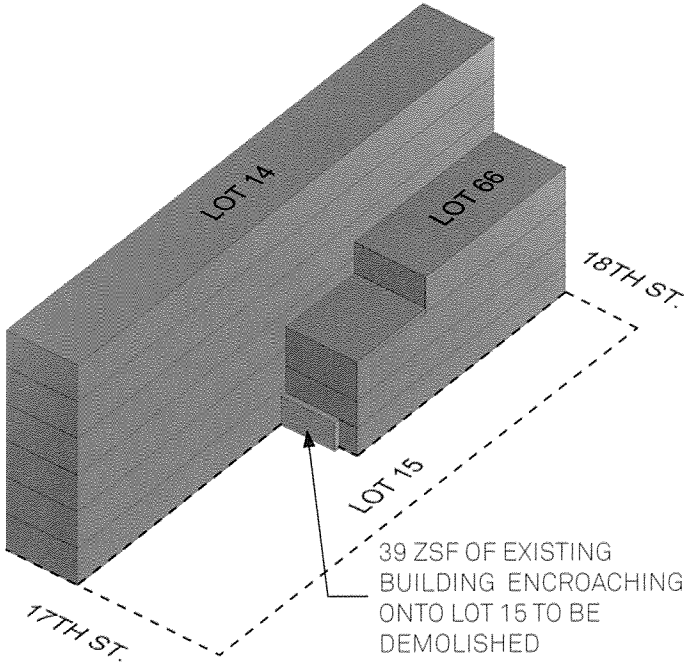




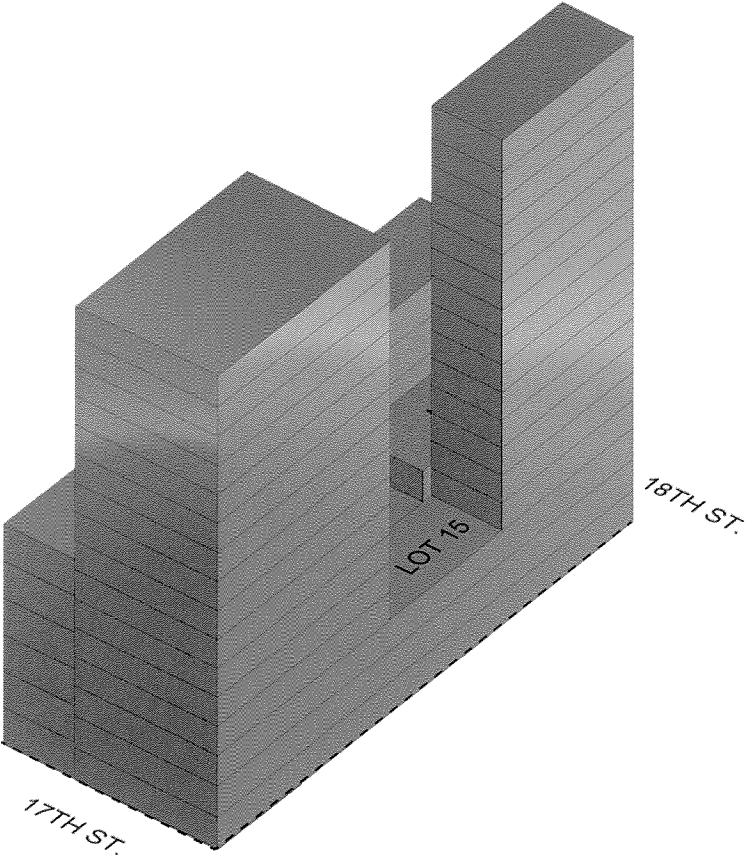
TAX LOTS IN ZONING LOT



HISTORIC BUILDINGS ON SITE



ALTERATIONS TO HISTORIC BUILDING



LPC APPROVED NEW BUILDING

**LOT AREA**

LOT 14 - 4,600 SF
LOT 15 - 6,900 SF
LOT 66 - 2,300 SF
<b>TOTAL - 13,800 SF</b>

**ZONING INFORMATION**

DISTRICT:	C6-4A (R10A EQUIVALENT)
ALLOWABLE FAR:	10.0 (138,000 SF)
PROPOSED FAR:	8.61 (118,831 SF)

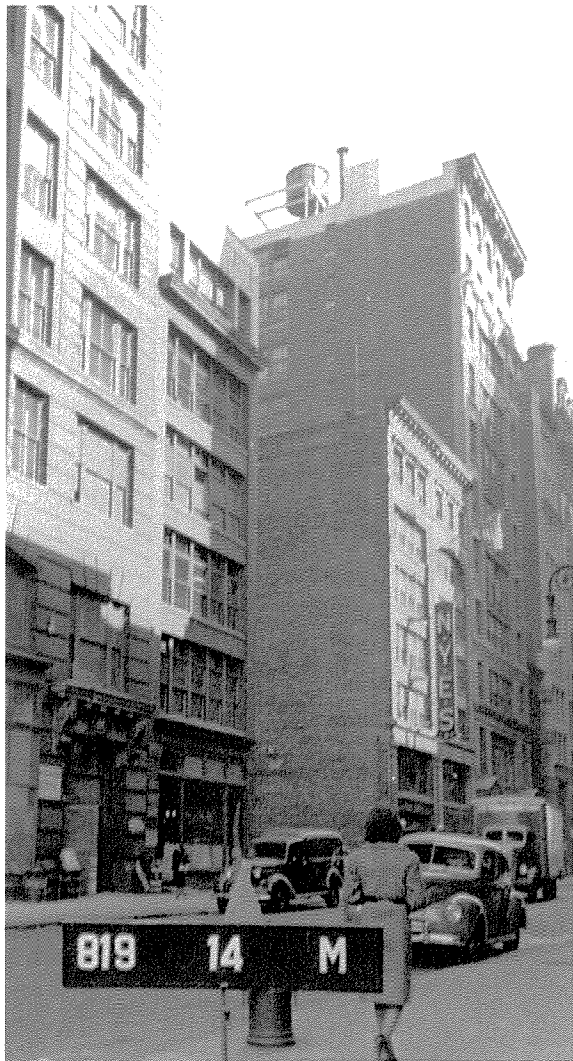
**LEGEND**

	HISTORIC BUILDINGS TO BE RESTORED
	LPC APPROVED NEW BUILDING



# 17<sup>th</sup> Street Development Site

## HISTORIC 1930s TAX PHOTOS



VIEW FROM 17<sup>TH</sup> STREET



VIEW FROM 17<sup>TH</sup> STREET

## EXISTING CONDITIONS



VIEW OF 17<sup>TH</sup> STREET LOOKING WEST  
(PHOTO TAKEN 01/21/2015)



VIEW OF SITE FROM 17<sup>TH</sup> STREET LOOKING  
NORTH TOWARDS 18TH STREET (PHOTO TAKEN  
01/21/2015)



# 18<sup>th</sup> Street Development Site

## HISTORIC 1930s TAX PHOTOS



VIEW FROM 18<sup>TH</sup> STREET

## EXISTING CONDITIONS



VIEW OF 18<sup>TH</sup> STREET LOOKING EAST  
(PHOTO TAKEN 01/21/2015)



VIEW OF SITE FROM 18<sup>TH</sup> STREET LOOKING SOUTH  
TOWARDS 17TH STREET (PHOTO TAKEN 01/21/2015)



# LPC Certificate of Appropriateness 16-5428 (excerpts)

8

With regard to the design, the Commission found that:

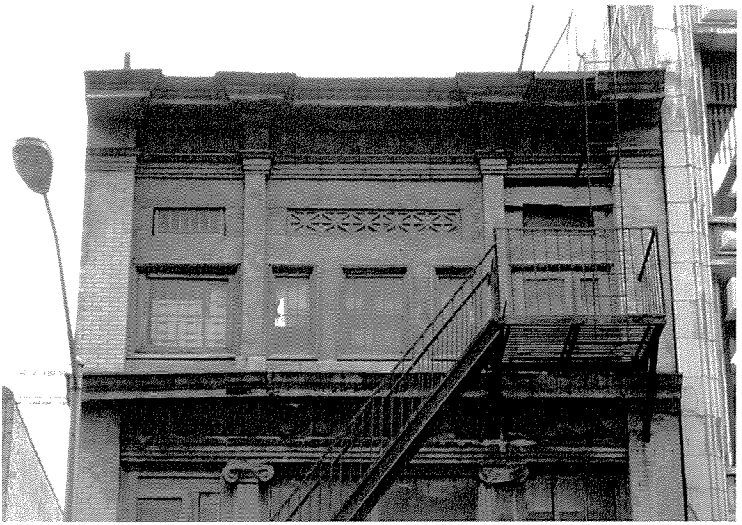
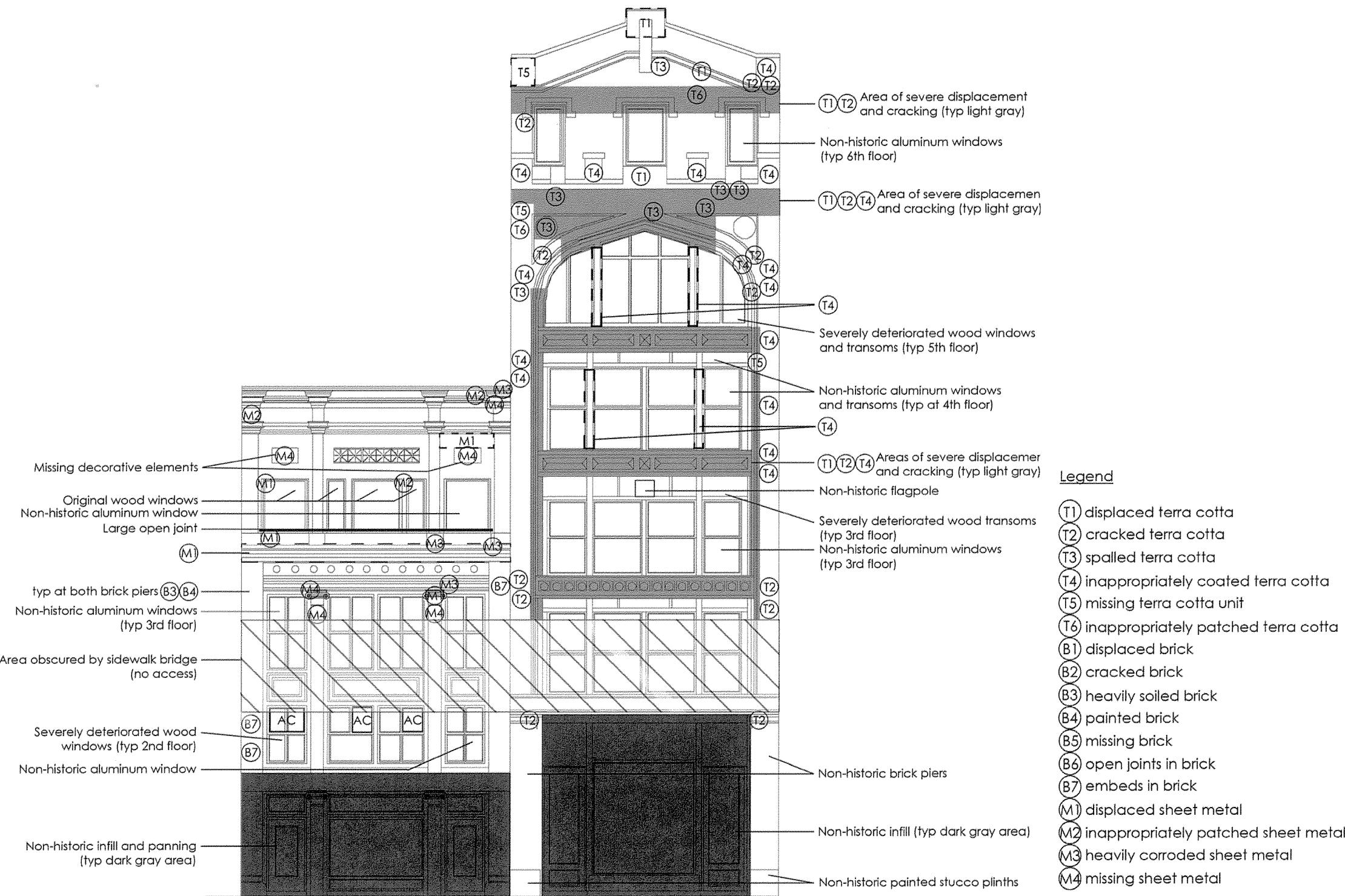
- the construction of a new building on the site will complete the streetwall on West 17th and West 18th Streets....
- both façade designs incorporate an interplay of façade planes and smooth and textured surfaces, and will therefore display a level of depth and articulation comparable to what is found on historic buildings within this historic district;..

With regard to the historic buildings, the Commission found that:

- the restorative work to be approved pursuant to LPC 15-8949 will return the building closer to its original appearance; ...
- a restrictive Declaration (“Declaration”) will be filed against the property which will bind the applicants and all heirs, successors and assigns to maintain the continuing maintenance program in perpetuity.



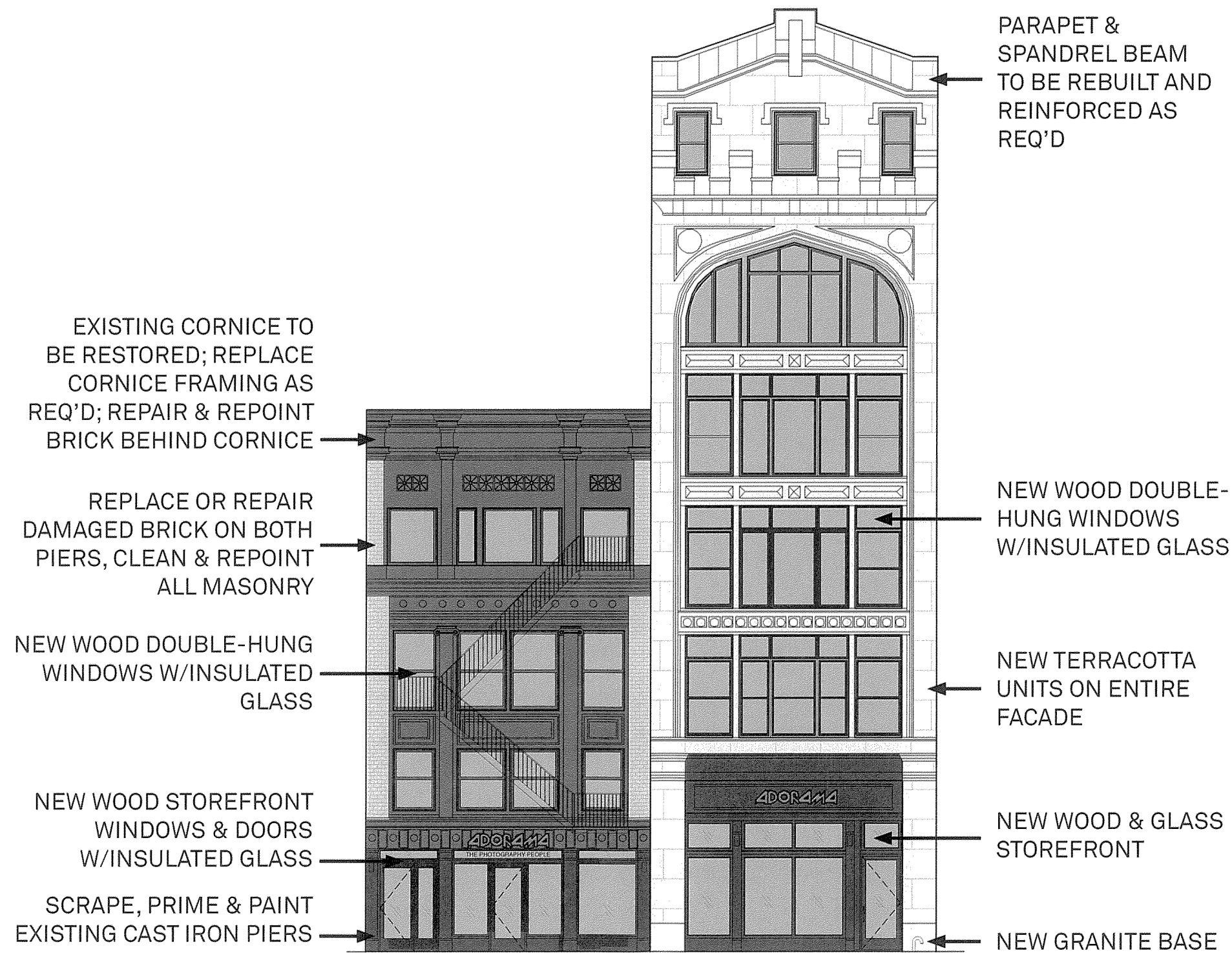
# Existing Conditions 40 & 42 W. 18<sup>th</sup> Street





# Proposed \$4 million Restoration of Two Historic Buildings

## RESTORATION ELEVATION - 40 & 42 W. 18<sup>TH</sup> STREET

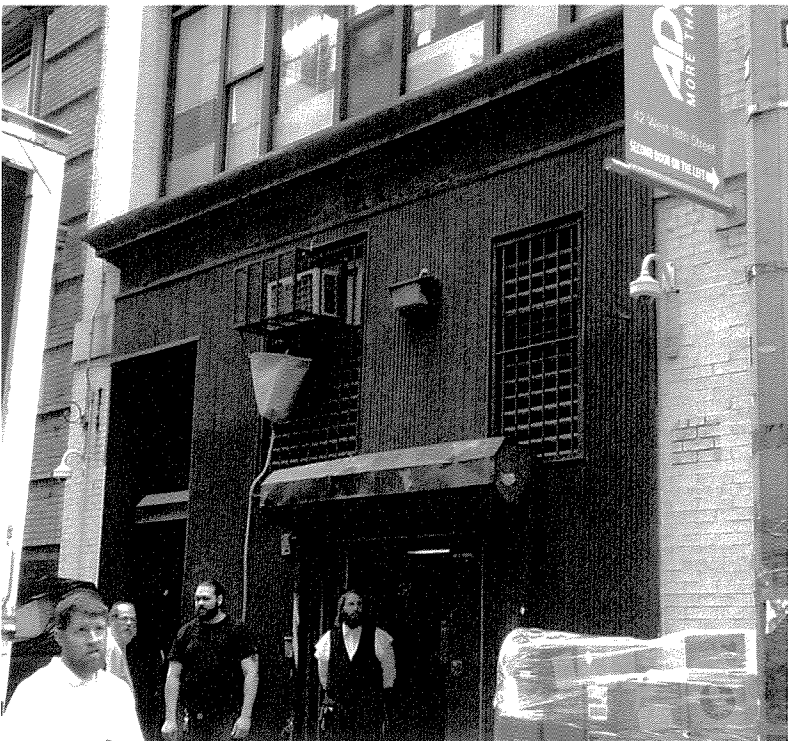
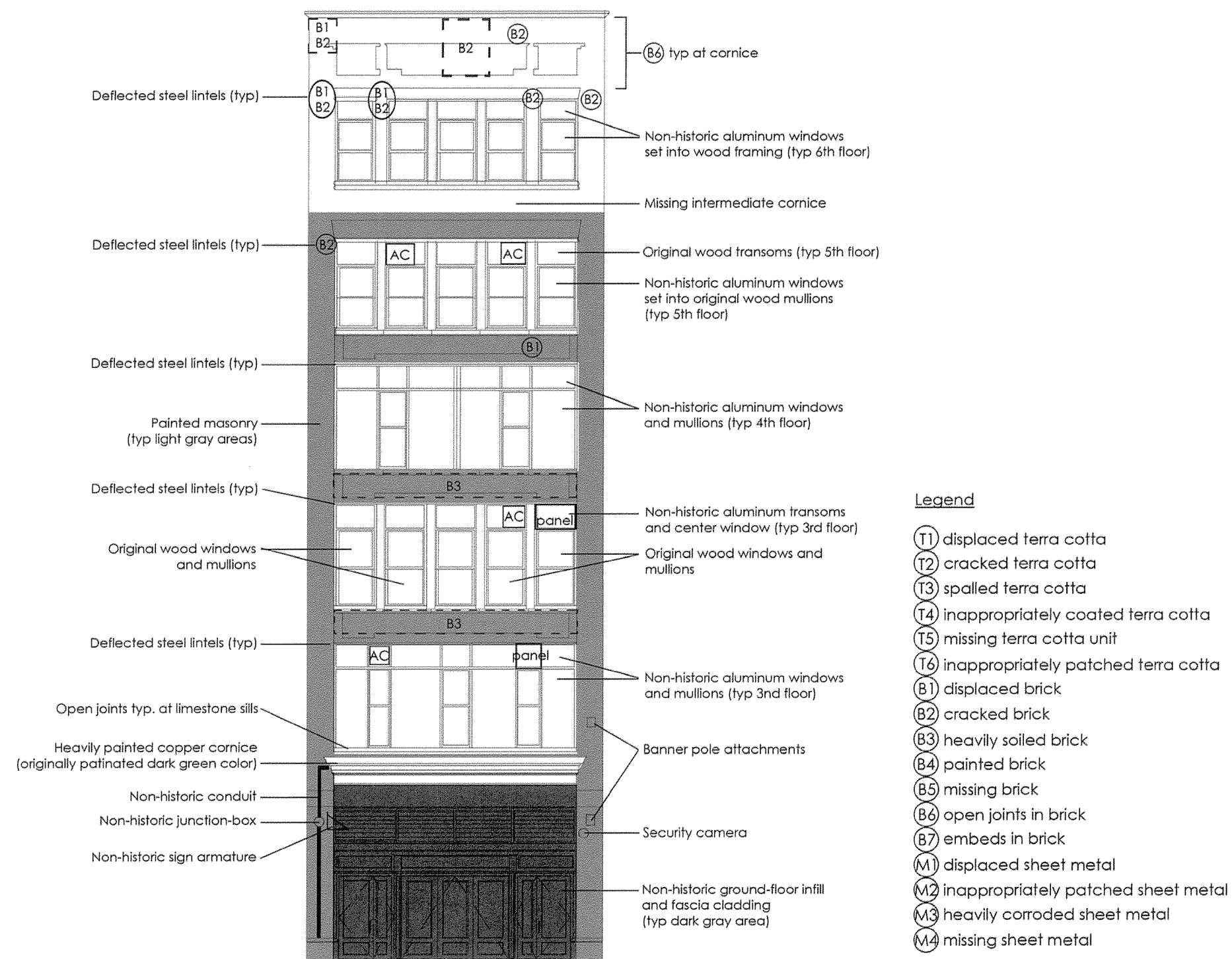


NOTE: SELECTION OF SIGNIFICANT RESTORATION ELEMENTS

SCALE: 3/32" = 1'-0"



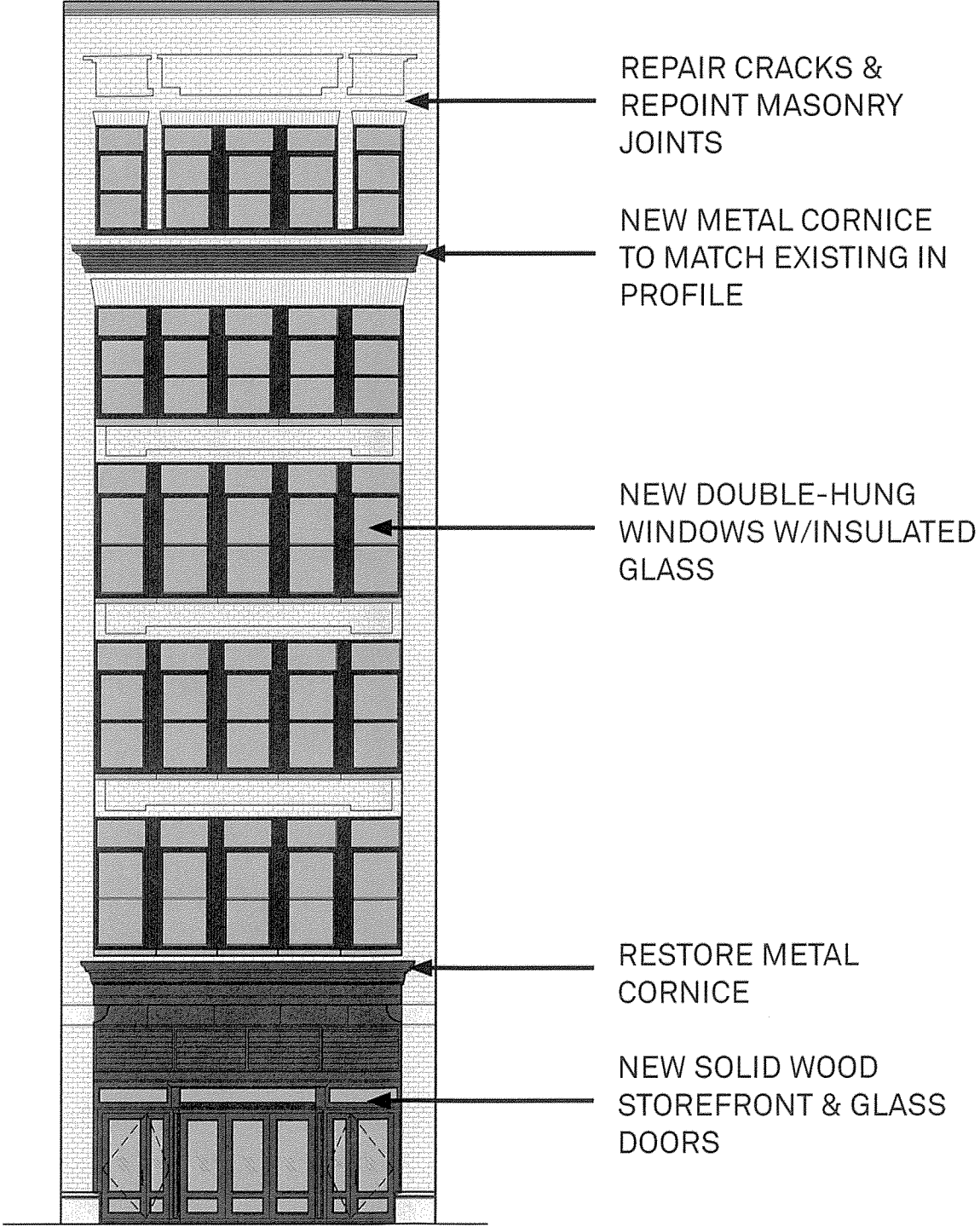
# Existing Conditions 45 W. 17<sup>th</sup> Street





# Proposed \$4 million Restoration of Two Historic Buildings

## RESTORATION ELEVATION - 45 W. 17<sup>TH</sup> STREET



NOTE: SELECTION OF SIGNIFICANT RESTORATION ELEMENTS

SCALE: 3/32" = 1'-0"

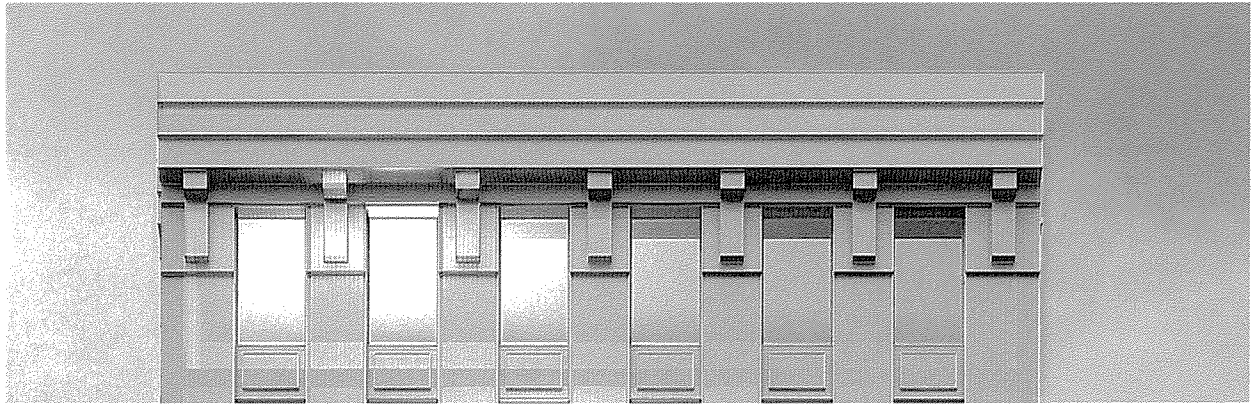


# LPC Approved Design - 17<sup>th</sup> Street



**LOT 14**  
6 STORIES  
HISTORIC  
BUILDING

**LOT 15**  
16 STORIES  
LPC APPROVED  
NEW BUILDING



CORNICE DETAIL



ARCH DETAIL



ENTRY DETAIL

NOTE: FOR ILLUSTRATIVE PURPOSES ONLY.



# LPC Approved Design - 18<sup>th</sup> Street



<b>LOT 15</b>	<b>LOT 66</b>	<b>LOT 14</b>
17 STORIES	4 STORIES	6 STORIES
LPC APPROVED	HISTORIC	HISTORIC
NEW BUILDING	BUILDING	BUILDING

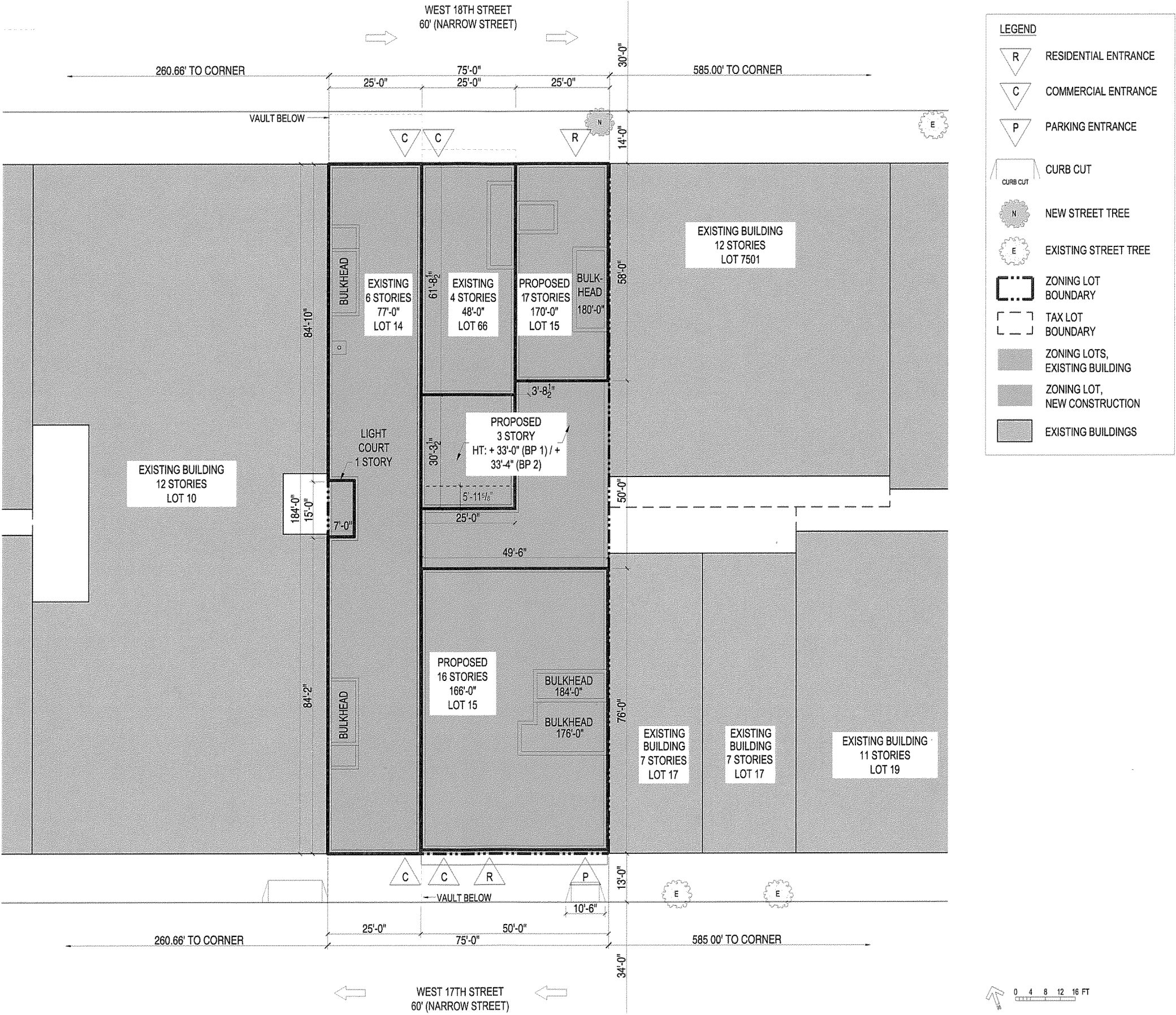


FACADE DETAIL

NOTE: FOR ILLUSTRATIVE PURPOSES ONLY.



Site Plan





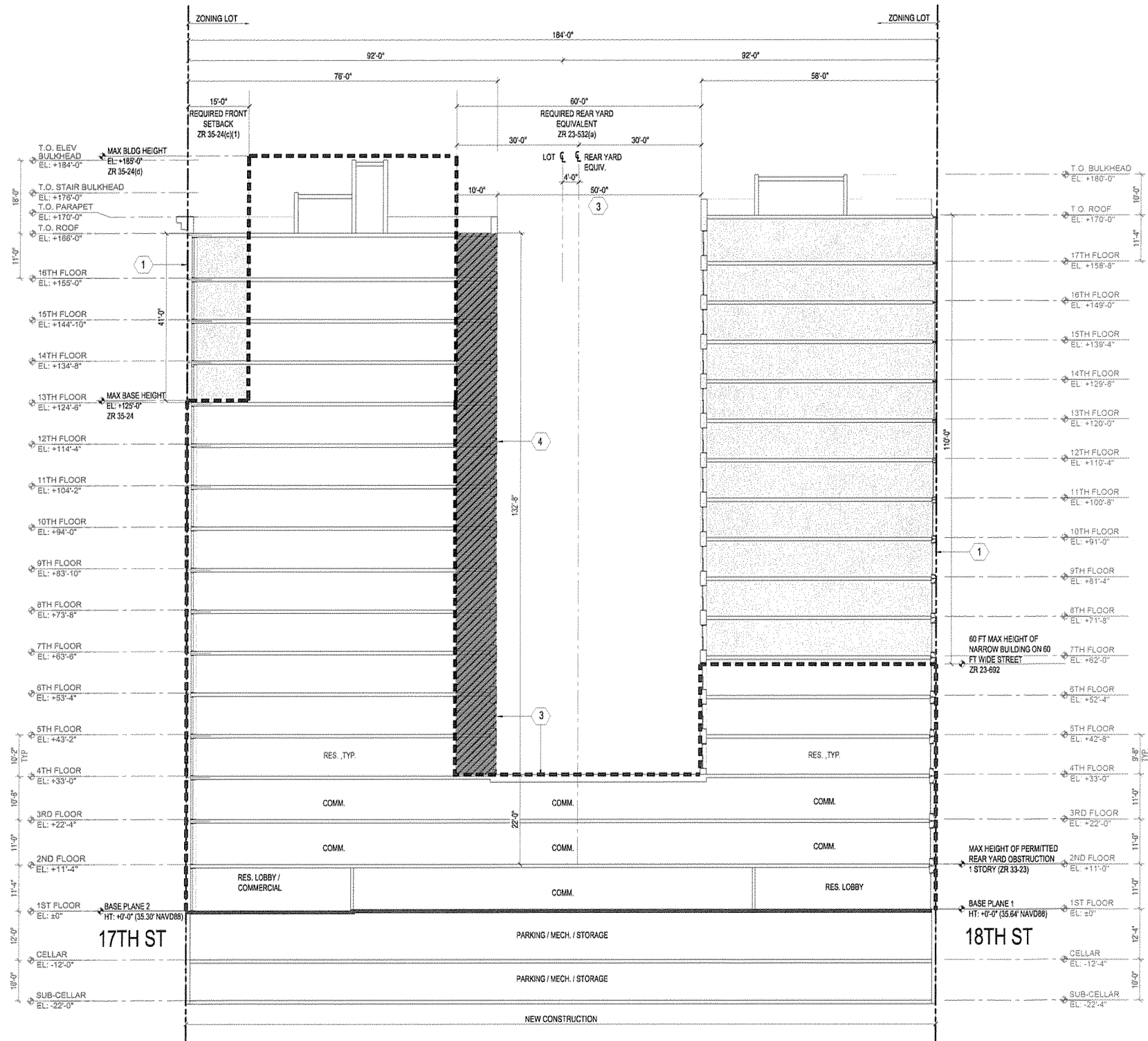
## Section 74-711 Waivers for LPC Approved Design

16

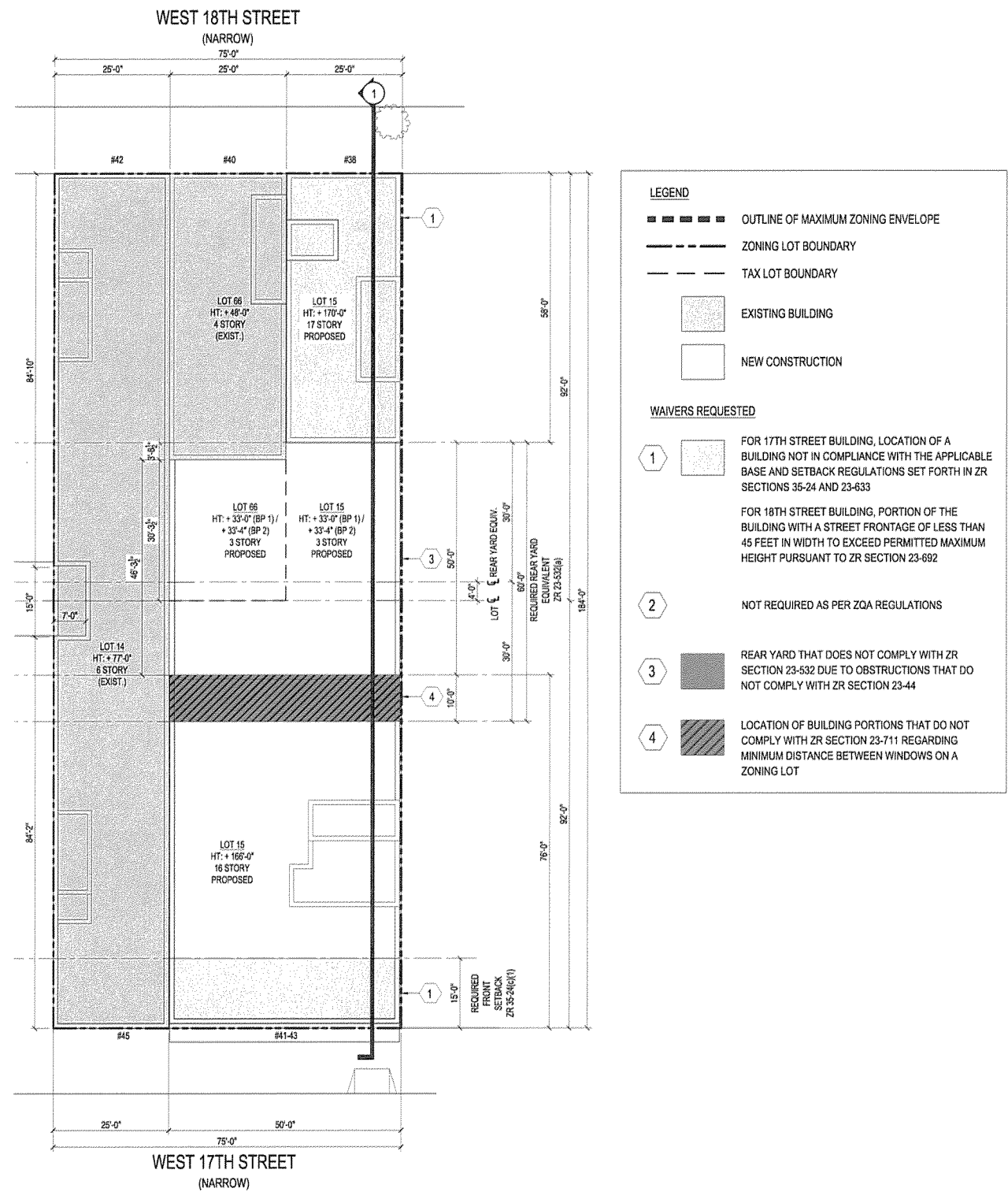
- **Base and setback waiver** to allow building to rise without 15' setback at 125 feet to match typical street walls characteristic of existing loft buildings in Ladies' Mile Historic District.
- **Rear-yard waiver** to allow 50' rear yard equivalent instead of required 60 feet, reflecting constraints of a 184-foot-deep block (typical block 200' deep).
- Location of building portions that have a **minimum distance between windows** of 50' rather than 60', reflecting constraints of shallow lot.
- **Height waiver** to permit a building with 25' of street frontage to be 170' rather than 60' in height, consistent with other historic buildings in Ladies Mile District.



# Bulk Waiver Plan & Section



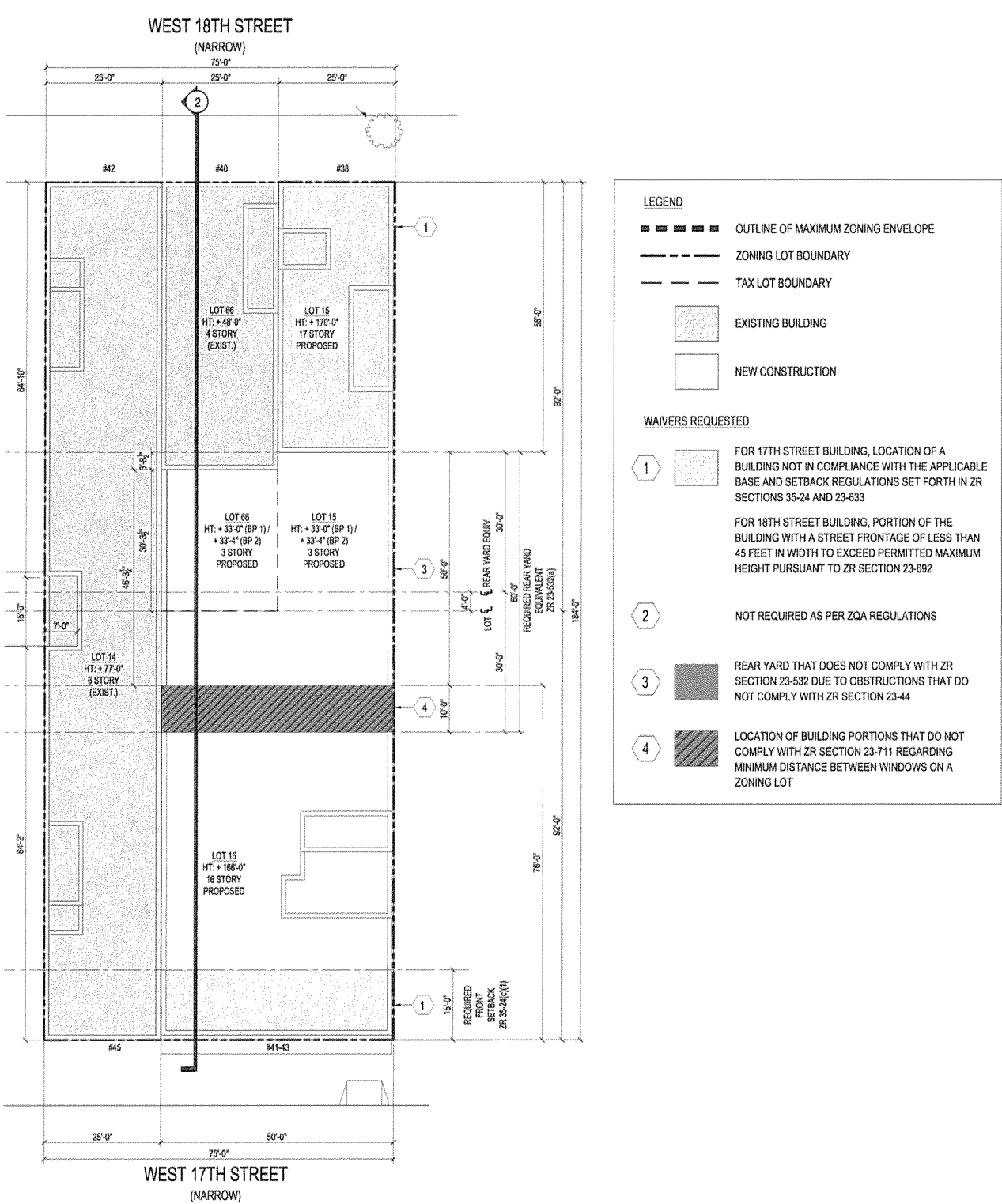
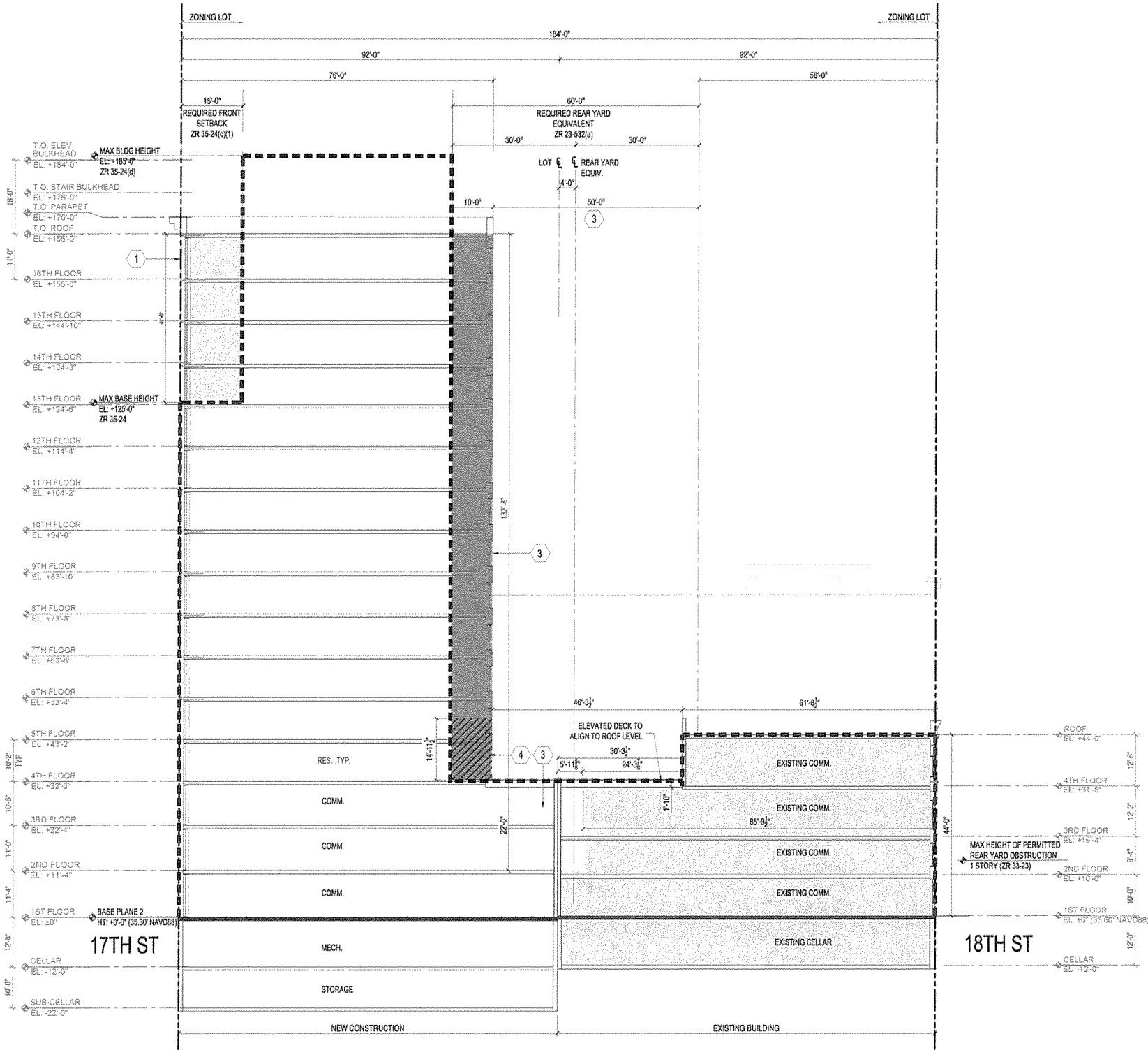
BULK WAIVER SECTION 1



BULK WAIVER PLAN



# Bulk Waiver Plan & Section



BULK WAIVER SECTION 2

BULK WAIVER PLAN



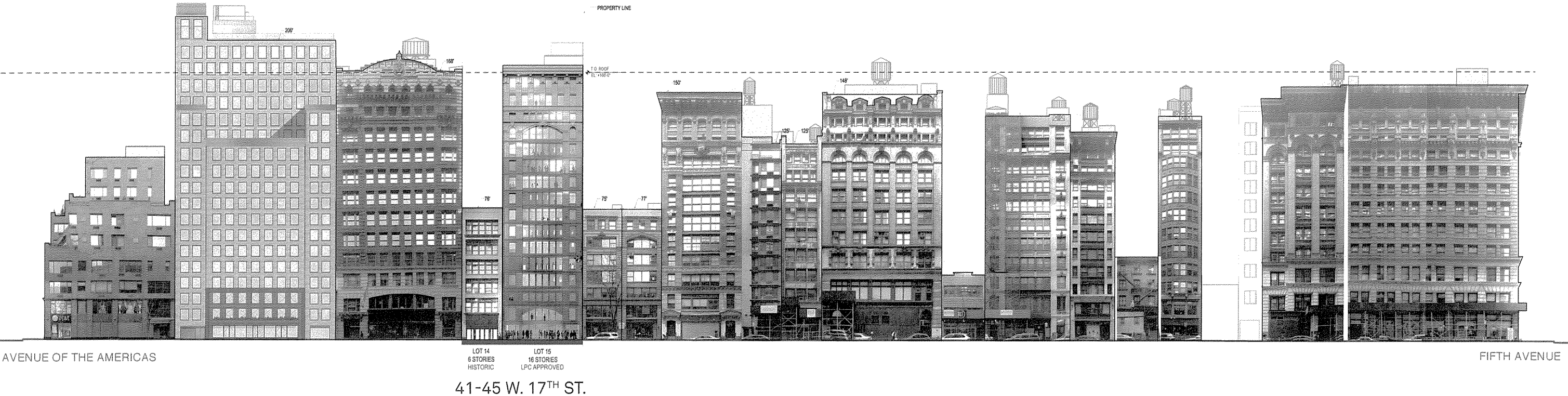
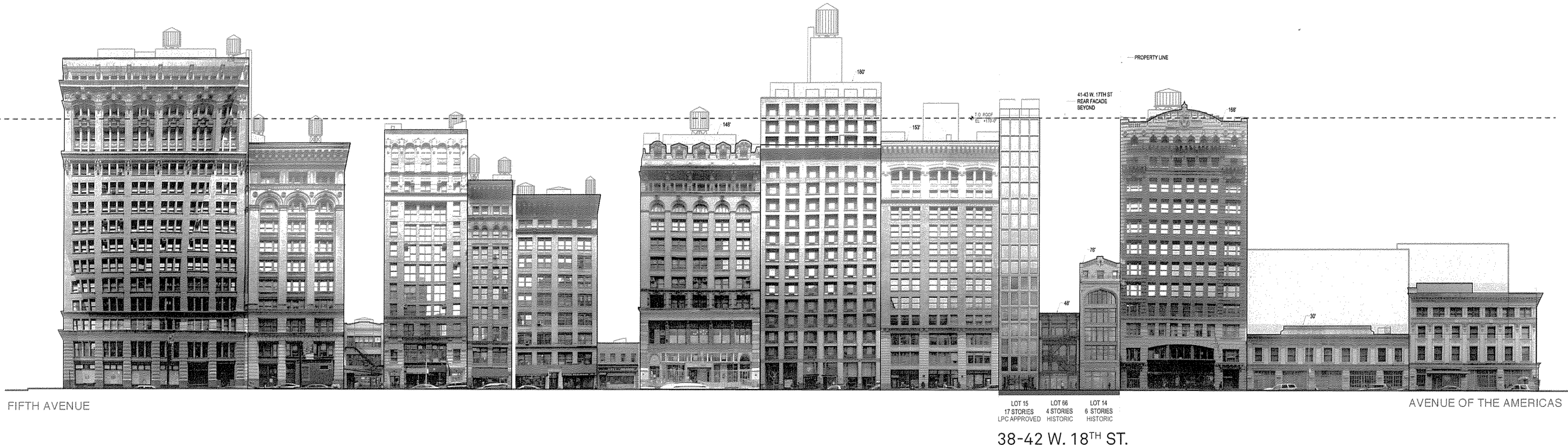
# Block Rear Yard Comparison

The 5-blocks rezoned pursuant to the Ladies’ Mile Rezoning have a lot depth of 184’, shallower than the typical 200’ lot depth throughout Manhattan. Most new residential development in the rezoned area has occurred through conversion of commercial and manufacturing buildings, which does not require a 30’ rear yard.





# Proposed Elevations





# Residential Floor Area

DISTRICT: C6-4A (R10A EQUIVALENT)  
ALLOWABLE FAR: 10.0 (138,000 SF)

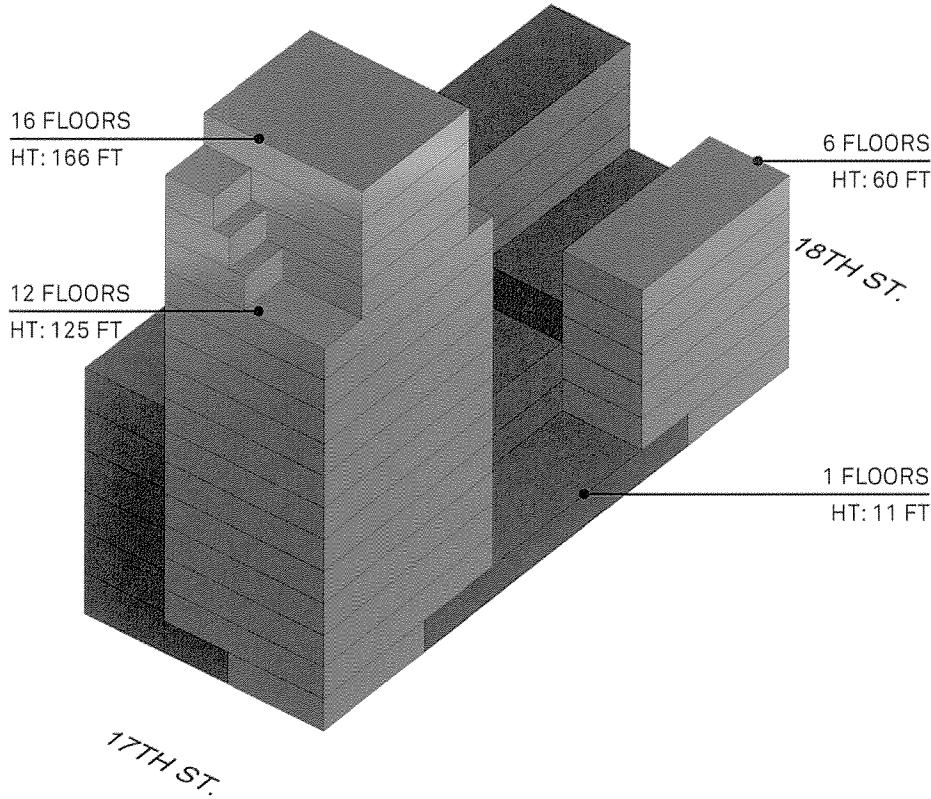
LEGEND

COMMERCIAL

RESIDENTIAL

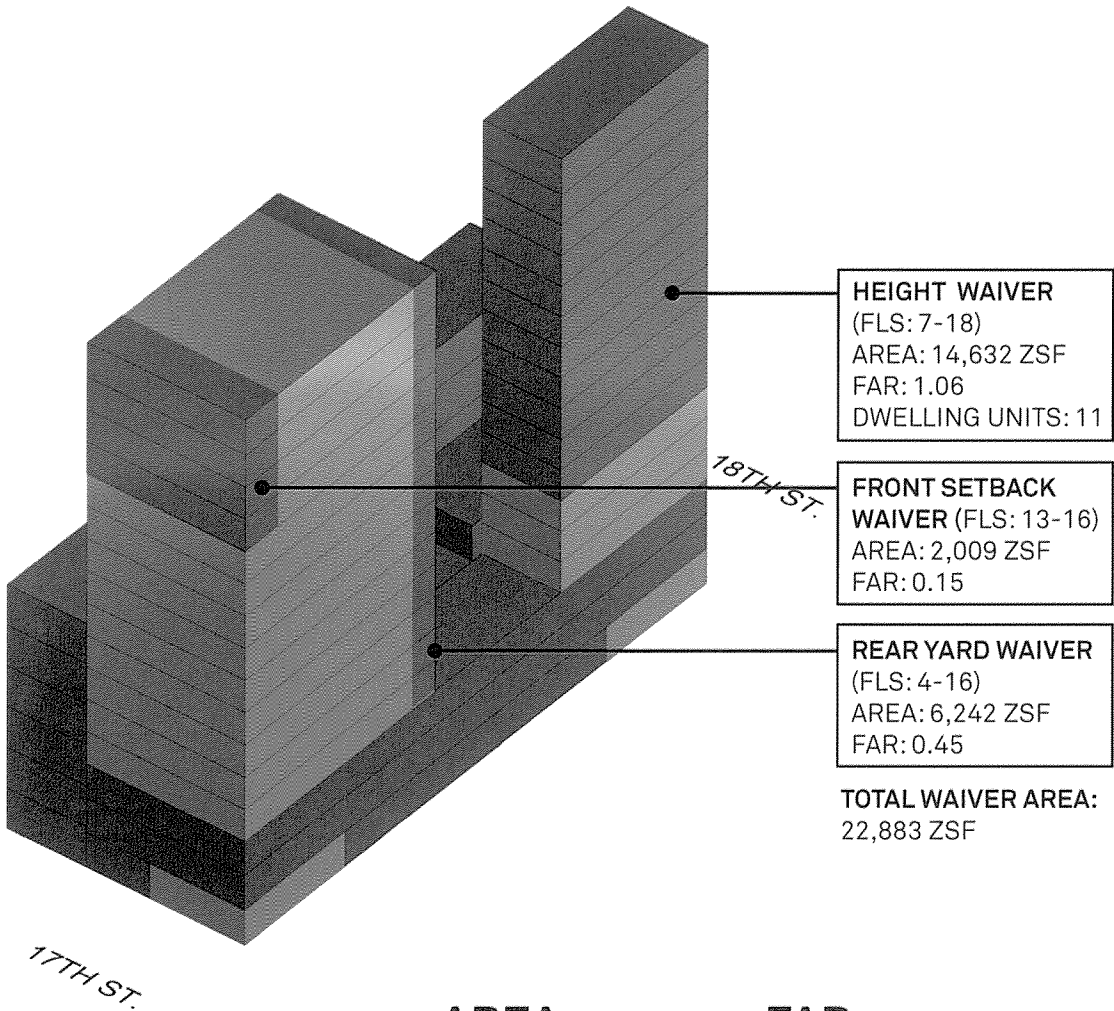
21

## AS-OF-RIGHT EAS SCENARIO



	AREA	FAR
RETAIL:	45,807 ZSF	3.32
RESIDENTIAL:	45,730 ZSF	3.31
TOTAL:	91,537 ZSF	6.63
DWELLING UNITS:	40 (OR 44*)	

## PROPOSED SCENARIO BULK WAIVERS



	AREA	FAR
RETAIL:	50,734 ZSF	3.68
RESIDENTIAL:	68,097 ZSF	4.93
TOTAL:	118,831 ZSF	8.61
DWELLING UNITS:	66*	

\* CALCULATION BASED ON  
1031 ZSF/DWELLING UNIT



# As-of-Right Comparison

DISTRICT: C6-4A (R10A EQUIVALENT)  
ALLOWABLE FAR: 10.0 (138,000 SF)

LEGEND

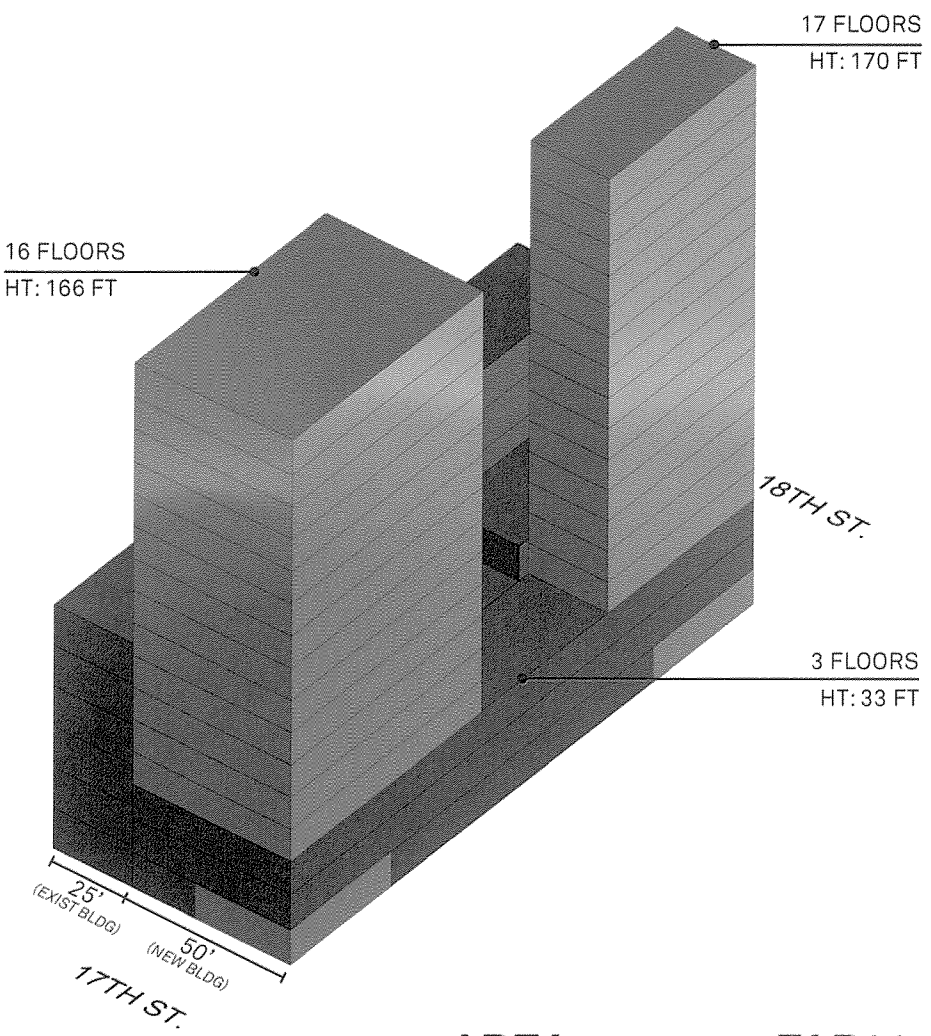
COMMERCIAL

22

RESIDENTIAL

## PROPOSED SCENARIO

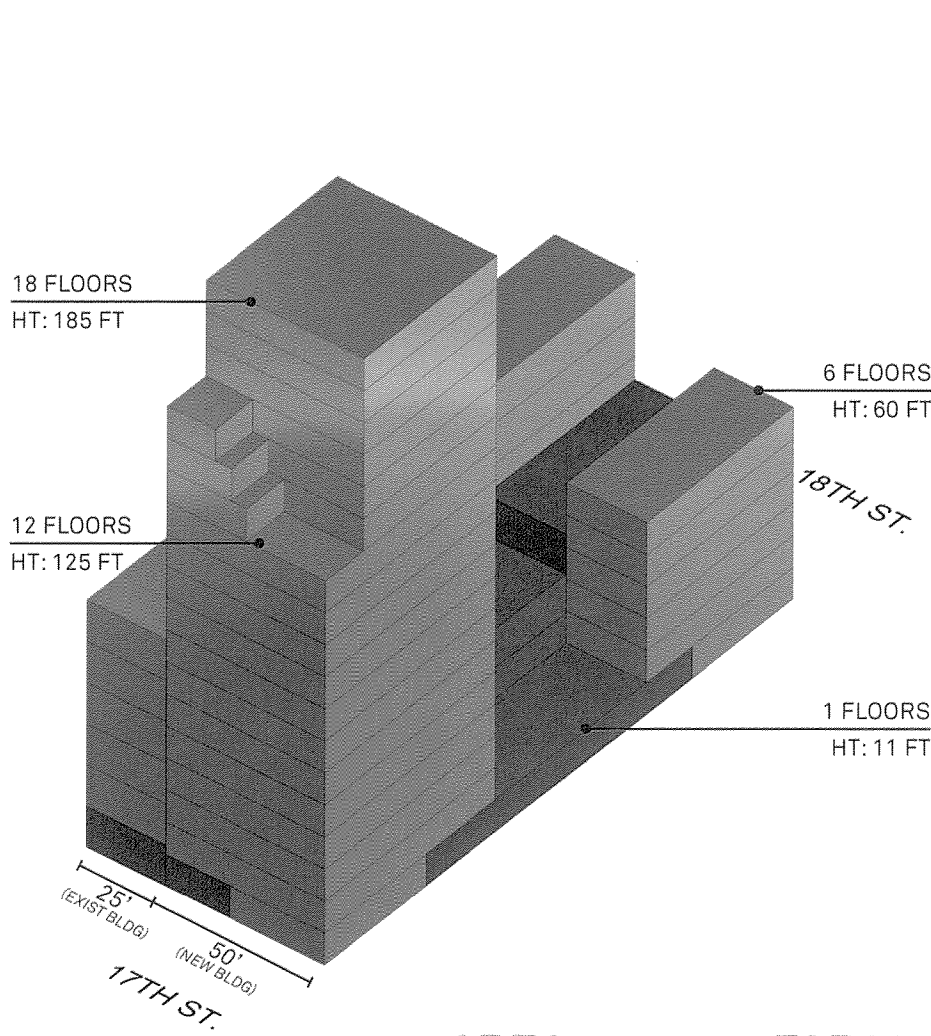
LPC APPROVAL REQUIRED &  
74-711 BULK WAIVERS



	AREA	FAR**
RETAIL:	50,734 ZSF	3.68
RESIDENTIAL:	68,097 ZSF	4.93
TOTAL:	118,831 ZSF	8.61
DWELLING UNITS:	66*	

## AS OF RIGHT BULK ENVELOPE

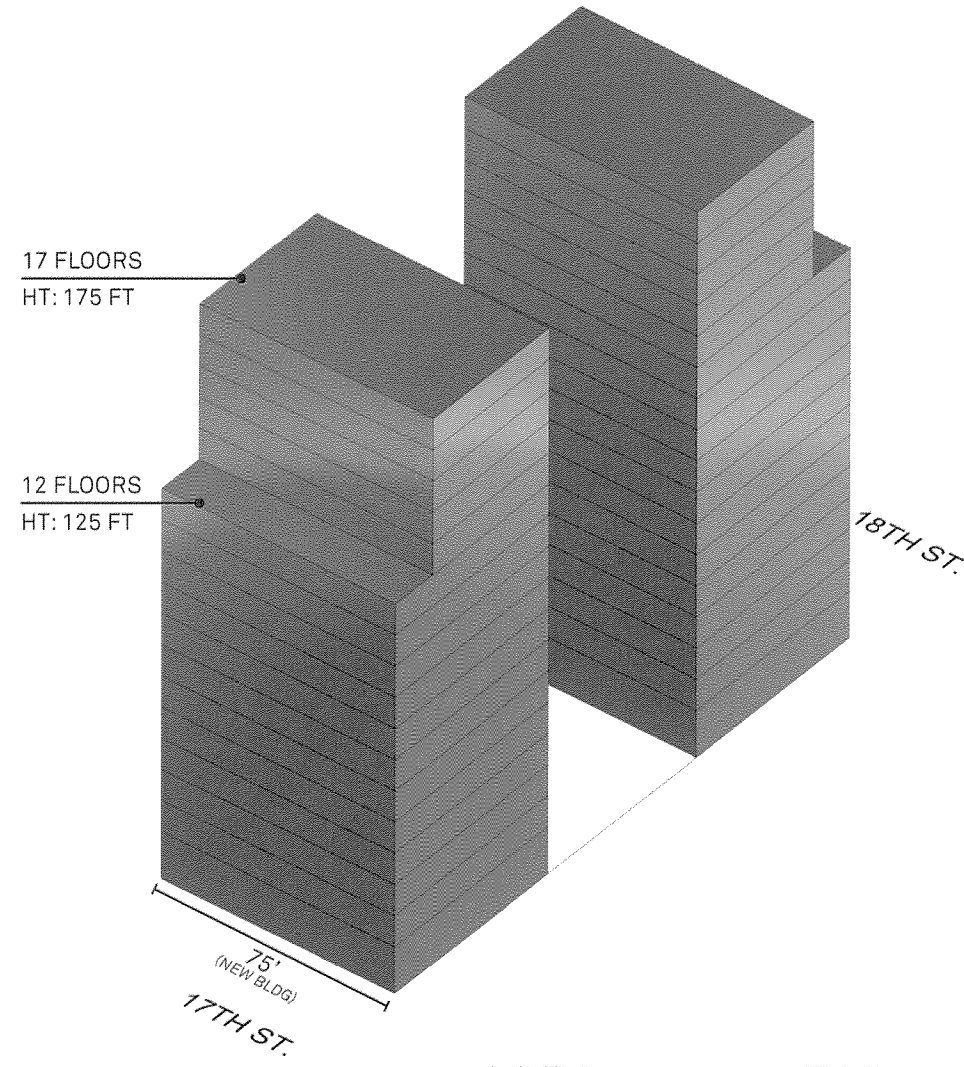
WITH CONVERSION OF EXISTING  
STRUCTURES



	AREA	FAR**
RETAIL:	16,612 ZSF	1.20
RESIDENTIAL:	73,738 ZSF	5.34
TOTAL:	90,350 ZSF	6.54
DWELLING UNITS:	72*	

## AS OF RIGHT BULK ENVELOPE

WITHOUT HISTORIC BUILDINGS ON SITE



	AREA	FAR**
RESIDENTIAL:	138,000 ZSF	10.00
TOTAL:	138,000 ZSF	10.00
DWELLING UNITS:	134*	

\* CALCULATION BASED ON 1,031 ZSF/DWELLING UNIT  
\*\* FAR BASED ON 13,800 SF DEVELOPMENT SITE



## W. 17<sup>th</sup> Street



## W. 18<sup>th</sup> Street



NOTE: FOR ILLUSTRATIVE PURPOSES ONLY.



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. L4738 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 9/7/16

(PLEASE PRINT)

Name: LAURENT DROGIN

Address: 1350 Broadway, NY, NY 10018

I represent: 42 West 18th Realty Corp.

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. LU 438

☐ in favor ☒ in opposition

Date: 9/7/16

(PLEASE PRINT)

Name: Jim Gras

Address: \_\_\_\_\_

I represent: Manhattan BP Gale Breach

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 437 Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 9/7/16

(PLEASE PRINT)

Name: CAROL ROSENTHAL

Address: \_\_\_\_\_

I represent: FRIED FRANK / THE DURST ORG.

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. 437 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 9/27/16

(PLEASE PRINT)

Name:

JORDAN BARONIDE

Address:

ONE BRYANT PARK NY NY 10036

I represent:

TUE DURST ORGANIZATION

Address:

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Adorama Res. No. \_\_\_\_\_

☐ in favor ☐ in opposition

Date: 9/7/2016

(PLEASE PRINT)

Name: Edith Hsu-Chen, Director, Manhattan Office

Address: 120 Broadway

I represent: Department of City Planning

Address:

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

LU 439

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 9/7/16

(PLEASE PRINT)

Name: RICHARD LOBEL

Address: SHELDON LOBEL P.C.

I represent: APPLICANT

Address: 38TH ST + 31ST AVE, ASTORIA, ONS

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. Lu 438 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 9/7/2016

(PLEASE PRINT)

Name: Eric Edward Stern

Address: \_\_\_\_\_

I represent: Manhattan CBS

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. Lu 438 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 9/7/2016

(PLEASE PRINT)

Name: Matt Gornick

Address: 300 Coles Street, Jersey City, NJ 07310

I represent: Urban Justice Center

Address: 123 William Street, New York, NY 10038

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. Lu 438 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: John Murray

Address: \_\_\_\_\_

I represent: Manhattan CBS

Address: \_\_\_\_\_



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. LU 438 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 9/7/2016

(PLEASE PRINT)

Name: Layla Law - G. S. K.

Address: \_\_\_\_\_

I represent: Manhattan CB5

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. LU 438 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

Name: Clayton Smith (PLEASE PRINT) [to go right before Meller]

Address: \_\_\_\_\_

I represent: Manhattan CB5

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. LU 438 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

Name: Samuel Meller (PLEASE PRINT) [to go right after Smith]

Address: \_\_\_\_\_

I represent: Manhattan C

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. CU 438 Res. No. \_\_\_\_\_  
☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Nancy Goshaw

Address: \_\_\_\_\_

I represent: Manhattan CBS

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. T2016-4889 Res. No. \_\_\_\_\_  
☒ in favor ☐ in opposition 1775 Grand Concourse

Date: 9/7/16

(PLEASE PRINT)

Name: DAN EGGERS

Address: 200 Park Avenue

I represent: Applicant - 1775 Grand Concourse LLC

Address: 1775 Grand Concourse

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
☒ in favor ☐ in opposition Adorama

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Andrea Goldwyn

Address: \_\_\_\_\_

I represent: NT Landmarks Conservancy

Address: 1 Whitehall St -

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. 42 W 185 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Monti Saunders

Address: 241 Clermont Brooklyn NY

I represent: 3285

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. wine 34 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Volkan Mutic

Address: 127 E. 34th St., NY, NY 10016

I represent: VER34 LLC, SBA Wine 34

Address: 127 E. 34th St., NY, NY 10016

**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: Patricia Sullivan

Address: 47 5th Ave, Brooklyn

I represent: Duke of Montrose Inc.

Address: 47 5th Ave, Brooklyn

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. 42 W 18 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

438

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Dan Gaspar

Address: 32 W 18th Street

I represent: Residents of 32 W 18

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 438 Res. No. (Adoramy)

☐ in favor ☒ in opposition

Date: 7 Sep. 2016

(PLEASE PRINT)

Name: Samuel Biagetti

Address: 36 Ellwood St. Apt. D7

I represent: Uptown for Bernie

Address: 181st Street, Wash. Heights

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 435 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: GAIL PARENTEAU

Address: 132 East 25th St. # 35 NYC 10016

I represent: myself co-op shareholder

Address: \_\_\_\_\_



**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 438 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: MIKE Slattery

Address: \_\_\_\_\_

I represent: Real Estate Board of New York

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. LU 438 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: MARCEL NEGRET

Address: 483 MADISON AVE - SUITE 1900

I represent: MUNICIPAL ART SOCIETY

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Lu 438 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Ava Farkas

Address: \_\_\_\_\_

I represent: Met Council on Housing

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. LU 438 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 11/1/16

(PLEASE PRINT)

Name: MORRIS ADJM  
Address: 60 BROAD STREET 32ND FLR NY, NY 10004  
I represent: 42 W 18 REALTY CORP  
Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. LU 438 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 9/7/16

(PLEASE PRINT)

Name: Valerie Campbell  
Address: Kramer Levin, 1177 Ave of Americas  
I represent: 42 W 18 th Street  
Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. LU 438 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 9/7/16

(PLEASE PRINT)

Name: Elliot Neumann  
Address: \_\_\_\_\_  
I represent: 42 W 18th St Realty  
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. LU 438 Res. No. \_\_\_\_\_

☒ in favor ☐ in opposition

Date: 9/7/16

(PLEASE PRINT)

Name: Marcie Kesner

Address: Kramer Union, 1177 Ave. of the Americas

I represent: 42 W 18th Realty Corp

Address: ~~W 18th St~~

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. LU 438 Res. No. \_\_\_\_\_

☐ in favor ☒ in opposition

Date: 9/7/16

(PLEASE PRINT)

Name: MARY CROSBY

Address: ~~W 18th St~~

I represent: METROPOLITAN COUNCIL HOUSING

Address: \_\_\_\_\_

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