BENJAMIN J. KALLOS
COUNCIL MEMBER, 5TH DISTRICT

244 East 93rd Street
New York, NY 10128
(212) 860-1950 Voice
(212) 980-1828 Fax
www.BenKallos.com

BKallos@BenKallos.com

THE COUNCIL OF THE CITY OF NEW YORK

CHAIR
Governmental Operations

VICE-CHAIR
Jewish Caucus
Progressive Caucus

COMMITTEES
Courts & Legal Services
Education
Land Use & Landmarks
State & Federal Legislation
Women's Issues

May 16, 2016

Rick Chandler, Commissioner
Department of Buildings
280 Broadway
New York, NY 10007

Re: 180 East 88th Street, BIN 1048054, Manhattan Block 1516, Lot 37

Dear Commissioner Chandler,

It has come to our attention that the above mentioned building planned and permitted for the west side of Third Avenue between 87th and 88th Street used a questionable subdivision strategy so that it could circumvent the explicit intent of the Zoning Resolution Section 12-10. The resultant building does not have the tower-on-base building form intended by zoning, leaves the City of New York with an unbuildable lot, and treats the development lot and unbuildable lot as separate despite single ownership thereby creating a precedent for a new and dangerous loophole. We request an immediate stop work order and reopening of determinations and approvals for errors and omissions.

The applicant shaved off a tiny 4 foot portion of their lot that fronts on 88th Street so that they could claim that their building does not front 88th Street, despite using the address of 180 East 88th Street, so that no base would be required on that part of the building. This development must be required to build a contextual base 60 to 85 feet high that extends continuously along the street line as is required by applicable tower-on-a-base zoning regulations, including along East 88th Street.

The Department of Buildings approved Zoning Determination number 33088 on the above referenced development site on March 27, 2014 with less than 48 hours of review ignoring obvious errors in the application that erroneously referred to a project on "18 *West* 88th Street" (emphasis added). The approved "out-parcel" in question was nearly 10 times larger at 30.25 feet by 22 feet and would be "left unimproved or developed with a complying commercial or community facility building." However, instead the applicant created a tiny out-parcel, lot 138, just 4 feet by 22 feet, and at only 88 square feet, it might be the smallest lot in New York City created in modern times and is not practically usable. As you know it is not in the City of New York's interest to see applicants create unbuildable lots that have no legitimate purpose. After the development is built, it is likely this parcel will end up permanently undeveloped, as it has served its sole purpose to frustrate the intent of the zoning resolution.

However, despite the fact that the tiny 4 foot lot was useless or perhaps because no one would buy it other than to sell the developer a multi-million dollar easement as the sole entrance to its building, the applicant has maintained ownership of the "out-parcel." Both the tiny 4 foot lot and the development site are owned by the by the applicant and is therefore a part of the applicant's project. The tiny 4 foot lot is even part of the collateral used to obtain the mortgage for the applicant's project, along with the other lots. While the applicant may be able to define their zoning lot, in part, with a Zoning Lot Development Agreement (ZLDA), the Department of Buildings must still follow the zoning laws when determining the ultimate zoning lot for the project. Section 12-10 of the Zoning Resolution addresses this issue on point when it defines "Zoning lot" in paragraph (b) (emphasis added):

"a tract of land, either unsubdivided or consisting of *two or more contiguous lots* of record, located within a single #block#, which, on December 15, 1961 or any applicable subsequent amendment thereto, was in *single ownership*;"

In this case, the text of the Zoning Resolution is clear with contiguity between the two lots and single ownership the tiny 4 foot lot, Lot 138, must be considered part of the zoning lot that includes the applicant's development on lot 37. This larger zoning lot would mean that the development the Department of Buildings has approved does not comply with the tower-on-base regulations, under section 23-651 of the Zoning Resolution, without the contextual base of 60 to 85 feet extended continuously along the street line including to East 88th Street construction must be stopped and you must correct this error.

Had the Department of Buildings been presented with (1) the applicant's actual plan, to create a tiny lot just 15% of the proposed size at 4 feet by 22 feet, which could never be improved, and (2) that it would be kept in the same ownership, we do not believe the Department of Buildings would have made the same determination.

For your reference we have included a memorandum from George M. Janes & Associates prepared for Carnegie Hill Neighbors with more technical details upon which we have based my review and believe will be of value for your reference. We have also included a comparison of technical drawings as well as copies of the Zoning Resolution Determination, Zoning Lot Description, and Uniform Commercial Code filings for the development site and tiny 4 foot lot in question.

While we realize that we are beyond any challenge period, as Commissioner of the Department of Buildings you have the discretion to reopen determinations and approvals to examine them for errors and omissions. We request that you place an immediate stop work order on the above referenced development site while you reopen and examine Department's Zoning Resolution Determination, existing work permits and approvals for errors and omissions.

Sincerely,

Benjamin Kallos
Council Member

Gale A. Brewer
Manhattan Borough President

BENJAMIN J. KALLOS
NEW YORK CITY COUNCIL MEMBER
DISTRICT 5, MANHATTAN

Cc: Mayor de Blasio
Carl Weisbrod, Department of City Planning